

## STATE OF WEST VIRGINIA

At a Regular Term the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on May 9, 2018, the following order was made and entered:

**RE: Request for Public Comment on Proposed Revisions to the Governance Documents of the West Virginia State Bar – West Virginia State Bar Constitution, West Virginia State Bar Bylaws, West Virginia State Bar Administrative Rules, and Definition of the Practice of Law No. 18-Rules-04**

On this day came the Court, on motion by the members of the of the West Virginia State Bar Board of Governors Subcommittee on Governance, (“Subcommittee”) and proceeded to consider the proposed revisions to the documents that govern the West Virginia State Bar (“State Bar”). Those documents are the West Virginia State Bar Constitution, West Virginia State Bar Bylaws, West Virginia State Bar Administrative Rules, and Definition of the Practice of Law.

This process began in 2012, when the State Bar presented to the Court proposed revisions to the State Bar Bylaws. Upon review at that time, the Court determined that a global revision of the documents that govern the State Bar should be undertaken, and by order entered May 23, 2012, the Court appointed a committee to be charged with reviewing the State Bar governing documents and drafting the revisions. The committee largely concluded its work in the spring of 2017, and the Court at that time approved the State Bar’s request to provide the Committee’s work to outside counsel for review and finalization of the revisions. In January 2018, then-president of the State Bar, Meshea Poore, appointed the Subcommittee to finalize the proposed revisions so that they could be presented to the Board of Governors. The proposed revisions were presented to the Board of Governors, and at its meeting on April 8, 2018, the Board of Governors approved the proposed revisions. A majority of the members of the State Bar present at the April 9, 2018 business meeting likewise approved the proposed revisions. On April 23, 2018, the proposed revisions were submitted to the Court for review.

The Court has jurisdiction pursuant to Article VIII §1 of the West Virginia Constitution. Upon review, the Court is of the opinion that the proposed amendments should be published for comment for a period of ninety-days. Comments must be filed

in writing with the Clerk of the Court on or before **August 14, 2018**. The Court expresses its gratitude to the Subcommittee members, Dean Rohrig, State Bar President, John McGhee, Past President, and Rory L. Perry II, District 8 Board Member.

The proposed revisions are attached hereto. The proposed additions are indicated by underscoring, and deletions are indicated by strikethrough. As noted by the Subcommittee, the "Drafting Comments" are intended to be neutral explanations of the proposed revisions to each document.

A True Copy

Attest: *Geddyhe Nash Laise*  
Clerk of Court



## WV STATE BAR CONSTITUTION

### Article I. Name and Location of Office

This agency of the Supreme Court of Appeals of West Virginia shall be known as the "The West Virginia State Bar." Its principal office shall be maintained in the capitol city of the State of West Virginia, or at such other place as may be designated by the board of governors.

### Article II. Objects and Purposes

The objects of the West Virginia State Bar shall be to protect the interests of the public; to advance the administration of justice and the science of jurisprudence; to improve the relations between the public and the bench and the bar; to uphold and elevate the standards of honor, integrity, competency and courtesy in the legal profession; and to encourage cordial relations among its members.

It is the purpose of the West Virginia State Bar to give effect to pertinent rules of the Supreme Court of Appeals of West Virginia, and to perform the functions expressed in this constitution and bylaws.

### Article III. Membership

The membership of the West Virginia State Bar shall consist of all persons lawfully admitted to the practice of the law in the State of West Virginia. No person shall practice law in the State of West Virginia unless he or she is an active member in good standing of the West Virginia State Bar or is permitted to practice without becoming an active member of the State Bar in accordance with the Rules of Professional Conduct or Rules for Admission to the Practice of Law; provided, however, that persons approved to practice under the pro bono emeritus program are permitted to practice within the scope of the State Bar rule applicable to that program.

### Article IV. Government: Board of Governors; Officers and Committees

The West Virginia State Bar shall be governed by a board of governors. There shall be ~~a lawyer disciplinary board and a committee on unlawful practice. There shall also be, and for~~ each state bar district created by the bylaws there shall be a committee on grievances. ~~Such~~ The board shall select a president, a president-elect, a vice president, an immediate past president, an executive director, and the members of ~~said~~ said committees. ~~Such~~ The board may from time to time create, alter and terminate other offices and committees, with such powers,

authority and duties as it may deem proper. All officers, except the executive director and administrative assistants, and the members of ~~such~~ committees shall be selected ~~either~~ from the membership of ~~such board or from~~ the West Virginia State Bar.

## **Article V. Meetings**

The members of the West Virginia State Bar shall convene in one general meeting each year, which shall be known as the annual meeting, and in such special meetings as shall be called by the board of governors. Such meetings shall be held at times and places fixed by ~~said~~ the board and may be held concurrently with any meeting of the board. The members present at an annual or a special meeting shall constitute a quorum.

## **Article VI. Amendments**

Subject to the approval of the Supreme Court of Appeals of West Virginia, this constitution may be altered or amended at any annual meeting, or by mail or electronic voting procedures, on recommendation of the board of governors by ~~vote of~~ a majority of the voting members ~~present~~ or, without such recommendation, at an annual meeting by vote of two thirds of the members present.

[DRAFTING COMMENTS: Minor capitalization and nomenclature changes were made. Instead of "The West Virginia State Bar" the nomenclature is the "West Virginia State Bar." Similar changes are made throughout the Bylaws and new Administrative Rules. The purpose clause of Article II is consistent with the view that the State Bar operates through its constitution and bylaws and exists to give effect to the rules promulgated by the Court. In other words, the "rules and regulations" that were part of the current governance documents should be separated from the approval and amendment structure that applies to the constitution and bylaws. The new State Bar Administrative Rules are promulgated directly by the Court—with the advice of the Board of Governors—and effectuated by the State Bar.

In Article III, the last sentence was expanded to reflect that in certain circumstances, lawyers can practice law without being an active member of the State Bar. (i.e. pro hac vice admission, temporary practice under R.Pr.C. 5.5). In addition, pro bono/emeritus members are permitted to practice law despite the fact that they are not active members. In Article IV, the outdated reference to the lawyer disciplinary board was eliminated. In accordance with current practice, the immediate past-president is a named officer. In Article V, language was added to allow the Board flexibility to combine bar membership meetings with board meetings. Language was likewise added in Article VI to provide flexibility in voting procedures for amending the constitution.]

## CONTENTS

<b>West Virginia State Bar Bylaws .....</b>		<b>1</b>
<b>Article 1</b>	<b>Definitions and Rules of Construction.....</b>	<b>1</b>
Bylaw 1.01	<del>§1</del> Definitions.....	1
Bylaw 1.02	Rules of construction.....	1
<b>Article 2</b>	<b>Members .....</b>	<b>2</b>
Bylaw 2.01	<del>§1</del> Classes of <del>membership</del> members .....	2
Bylaw 2.02	<del>§2</del> Register and Enrollment of members; register; obligation to maintain current contact information.....	2
Bylaw 2.03	<del>§3</del> Active membership.....	3
Bylaw 2.04	<del>§7</del> Enrollment as an active but not practicing member Active non-practicing members .....	3
Bylaw 2.05	<del>§4</del> Enrollment as an inactive member. Inactive members.....	4
Bylaw 2.06	<del>§8</del> Transfer from active but not practicing to active memberships. Transfer to active membership.....	5
Bylaw 2.07	Judicial members .....	5
Bylaw 2.08	Pro bono/emeritus members .....	6
Bylaw 2.09	Suspended members.....	6
Bylaw 2.10	Disbarred members .....	7
Bylaw 2.11	Resigned members .....	7
<b>Article 3</b>	<b>Active Membership Fees.....</b>	<b>8</b>
Bylaw 3.01	Authority to set annual membership fees .....	8
Bylaw 3.02	<del>§1</del> Amount of annual membership fee .....	9
Bylaw 3.03	<del>§2</del> Payment of annual membership fee .....	9
Bylaw 3.04	Authority to set other fees .....	10
<b>Article 4</b>	<del>III(A)</del> <b>Financial Responsibility Disclosure.....</b>	<b>11</b>
Bylaw 4.01	<del>§1. Purpose.</del> Required annual disclosure .....	11
<b>Article 5</b>	<b>Board of Governors .....</b>	<b>11</b>
Bylaw 5.01	<del>§1.</del> Powers and duties .....	11
Bylaw 5.02	<del>§2. Membership.</del> Members of the Board of Governors .....	12

Bylaw 5.03	<del>§ 3.</del> Election and term .....	12
Bylaw 5.04	<del>§ 4.</del> State Bar districts .....	14
Bylaw 5.05	<del>§ 5.</del> Qualifications of district governors .....	14
Bylaw 5.06	<del>§ 6.</del> Nomination of governors .....	15
Bylaw 5.07	<del>§ 7.</del> Election of governors .....	15
Bylaw 5.08	<del>§ 8.</del> Vacancies; removals .....	16
Bylaw 5.09.	<del>§ 9.</del> Meetings; quorum .....	16
<b>Article 6</b>	<del><b>Article V. Officers</b></del> .....	<b>17</b>
Bylaw 6.01	Types of officers .....	17
Bylaw 6.02	<del>§ 1.</del> Selection of <del>president</del> , officers and terms .....	17
Bylaw 6.03	<del>§ 5.</del> Qualifications of officers .....	18
Bylaw 6.04	<del>§ 6.</del> Nomination of officers .....	18
Bylaw 6.05	<del>§ 7.</del> Vacancies; removals .....	19
Bylaw 6.06	<del>§ 8.</del> President; duties and authority .....	19
Bylaw 6.07	<del>§ 9.</del> President-elect and vice president; duties and authority	20
Bylaw 6.08	Immediate past president .....	20
Bylaw 6.09	<del>§ 10.</del> Executive Director; duties and authority .....	20
Bylaw 6.10	<del>§ 11.</del> Compensation; expenses .....	21
<b>Article 7</b>	<del><b>Executive Committee Ch. V. Committees</b></del> .....	<b>22</b>
Bylaw 7.01	Executive Committee .....	22
<b>Article 8</b>	<del><b>Article VII. Committee on Unlawful Practice Committee</b></del> <b>22</b>	
Bylaw 8.01	<del>§ 1.</del> Jurisdiction .....	22
Bylaw 8.02	<del>§ 2.</del> Powers .....	22
Bylaw 8.03	<del>§ 3.</del> Members; terms; vacancies; removals .....	23
Bylaw 8.04	<del>§ 4.</del> Officers; subcommittees .....	23
Bylaw 8.05	<del>§ 5.</del> Meetings; quorum .....	23
	<del>§ 6. Summons and subpoena powers.</del> .....	24
	<del>In any investigation or hearing under this article, such committee, any grievance committee, or any authorized member of either thereof, or any governor or officer of the state bar shall have the power, by summons or subpoena issued under the hand of any authorized member of either committee or of any governor or such officer, to summon and examine witnesses under oath administered by any member of said committees,</del>	

	<del>any governor or such officer, and to compel their attendance and the production of any and all books, papers, letters and other documents necessary or material to the inquiry.</del> .....	24
	<del>§ 7. Effect of summons or subpoena.</del> .....	24
	<del>Any such summons or subpoena issued as provided in the preceding section shall have the same force and effect as a summons or subpoena issued by a circuit court of the State of West Virginia. If any witness or other person shall fail or refuse to appear, or to be sworn, or to testify, or to produce books, papers, letters or other documents demanded, upon application to a circuit court or the judge thereof within the congressional district in which any investigation or hearing is being conducted, a rule or an attachment shall be issued against such witness or other person as in cases of contempt.</del> .....	24
Bylaw 8.06	<del>§ 8. Reports to executive director</del> .....	24
Bylaw 8.07	Subpoena and contempt power .....	24
Bylaw 8.08	Immunity.....	25
<b>Article 9</b>	<del><b>Article VIII. Grievance Committees</b></del> .....	<b>26</b>
Bylaw 9.01	<del>§ 1. Duties</del> .....	26
Bylaw 9.02	<del>§ 2. Members</del> .....	26
<b>Article 10</b>	<del><b>Article IX. Miscellaneous Provisions</b></del> .....	<b>26</b>
Bylaw 10.01	<del>§ 1. Seal</del> .....	26
Bylaw 10.02	<del>§ 2. Service of process</del> .....	26
Bylaw 10.03	<del>§ 3. Nonliability of State Bar and its members</del> .....	27
Bylaw 10.04	<del>§ 4. Representation</del> .....	27
Bylaw 10.05	<del>§ 5. Limitation</del> .....	27
Bylaw 10.06	<del>§ 6. Official publication</del> .....	27
Bylaw 10.07	§ 7. Fiscal year.....	27
Bylaw 10.08	<del>§ 8. Parliamentary rules</del> .....	27
Bylaw 10.09	<del>§ 9. Costs</del> .....	27
Bylaw 10.10	<del>§ 10. Privacy of record</del> .....	27
Bylaw 10.11	Election of American Bar Association Representative.....	28
Bylaw 10.12	West Virginia State Bar Administrative Rules.....	28
<b>Article 11.</b>	<del><b>Article X. Amendments and Referenda</b></del> .....	<b>29</b>
Bylaw 11.01	<del>§ 1. Amendments at annual meeting</del> .....	29
Bylaw 11.02	<del>§ 2. Amendments by mail or electronic vote</del> .....	30

Bylaw 11.03	<del>§ 3.</del> Referenda .....	30
<b>Article 12</b>	<b>Annual Meeting Resolutions .....</b>	<b>30</b>
Bylaw 12.01	Procedure for annual meeting resolutions .....	30
<b>Article 13</b>	<b>Communications and Notice .....</b>	<b>31</b>
Bylaw 13.01	Communications and notice to State Bar.....	31
Bylaw 13.02	Communications and notice from State Bar .....	31
<b>Article 14</b>	<b>Legal Practice Entities .....</b>	<b>31</b>
Bylaw 14.01	Registration of practice entities .....	31
<b>Article 15</b>	<b>Mandatory continuing legal education .....</b>	<b>32</b>
Bylaw 15.01	Obligation to maintain continuing legal education.....	32
Bylaw 15.02	Mandatory Continuing Legal Education Commission.....	32
Bylaw 15.03	Powers and Duties of the Commission .....	32
<b>Article 16</b>	<b>Judicial and Lawyer Assistance Program .....</b>	<b>34</b>
Bylaw 16.01	Judicial and Lawyer Assistance Program .....	34
<b>Article 17</b>	<b>Young Lawyer Section .....</b>	<b>34</b>
Bylaw 17.01	Young Lawyer Section.....	34

## WEST VIRGINIA STATE BAR BYLAWS

### Article 1 Definitions and Rules of Construction.

#### Bylaw 1.01 ~~§1.~~ Definitions.

In these bylaws unless the context or subject matter otherwise requires:

(a) “State Bar” means the West Virginia State Bar;

(b) “Board” and “Board of Governors” mean the board of governors of the West Virginia State Bar;

(c) “Contributing Member” means a member of the West Virginia State Bar who during the fiscal year in question pays to the State Bar in addition to his or her annual membership fee, five or more dollars; provided, however, that this is not a separate class of membership, and no such member shall by reason of such contribution acquire or have any rights or privileges other than those of a member;

(d) “Governor” means a governor of the West Virginia State Bar;

(e) “Member” means a member of the West Virginia State Bar;

(f) “Member of the Armed Forces” means a member in good standing of the West Virginia State Bar in active service in the armed forces of the United States on July 1 of such year, provided that this definition shall not apply to members who have entered such service as a career or to members on temporary training duties;

(g) “Executive Director” means the executive director of the West Virginia State Bar;

(h) “Judge of Court of Record” or “Judicial Member” means a Family Court Judge, Circuit Court Judge, and Supreme Court of Appeals Justice;

(i) “Practice of Law” means the provision of legal services, as more completely set forth in the Rules of Professional Conduct and the Definition of the Practice of Law as promulgated by the Supreme Court of Appeals including, but not limited to private practice, in-house counsel positions, or public employment;

(j) “State Bar Administrative Rules” means the body of rules approved by the Supreme Court in accordance with Bylaw 10.12 that apply to and govern the administration of the West Virginia State Bar; and

(k) “Member in Good Standing” means a member of the West Virginia State Bar who is not suspended or disbarred, has not resigned, and who is in any of the following membership classes: active; active non-practicing; inactive; judicial; or emeritus/pro bono.

#### Bylaw 1.02 Rules of construction.

(a) The singular shall include the plural, and vice versa.

(b) Reference to “active member” or “active members” does not include “active non-practicing” members unless specifically stated to include both membership classes.

[DRAFTING COMMENTS: The original article has been separated into two sections for purposes of readability. Article 1 incorporates new definitions for contributing members, members of the armed forces, and judicial members. It also adds a definition of the phrase "practice of law." Subsections (j) and (k) of Section 1.01 are also new, and are intended to clarify two frequently-used terms.]

## **Article 2    Members**

### **Bylaw 2.01    ~~§ 1~~ Classes of membership members**

All persons admitted to the practice of law in West Virginia are required to be enrolled as members of the West Virginia State Bar. The membership members of the West Virginia State Bar shall be divided into three the following classes: (a) active members; (b) active but not non-practicing members; and (c) inactive members; (d) judicial members; (e) emeritus/pro bono members; (f) suspended members; (g) disbarred members; and (h) resigned members.

~~In addition, the board may from time to time establish, alter, and terminate such classes of contributing or sustaining members, composed of active and/or inactive members, as it may deem advisable, but no member of any such class shall by reason of such membership acquire or have any rights or privileges other than those of a member in good standing, active or inactive, whichever he or she may be.~~

[DRAFTING COMMENTS: This section clarifies the classes of members. The class of "judicial members" was added, along with the final four classes. Emeritus/pro bono members have unique attributes, and this class of membership should be defined separately.

Because West Virginia has a mandatory bar, which is now explicitly recognized in the first sentence of Bylaw 2.01, and because of the importance of maintaining a complete and transparent register, suspended, disbarred, and resigned members should have their status reported by the State Bar. Suspended and disbarred members remain technically on the rolls, but are identified as suspended or disbarred and are not members in good standing. Those who have been granted permission by the Court to voluntarily resign are identified as resigned members. For purposes of preparing certificates of good standing, and to allow accurate reporting of the status of all our members, it is important that these classes of membership be included.

The "contributing member" language was deleted because that is not a true class of membership. Instead, the term is now defined in Bylaw 1.01.]

### **Bylaw 2.02    ~~§ 2~~ Register and Enrollment of members; register; obligation to maintain current contact information**

(a) *Enrollment and register.* The Executive Director shall keep a register for the enrollment of members of the State Bar. Upon admission to the practice of law in accordance with the Rules for Admission to Practice Law in West Virginia, each member shall enroll by completing and filing with the executive director a registration form transmitting a registration form to the Executive Director containing such information as may be prescribed by the Board,

including but not limited to: (1) full name under which the practice of law is conducted; (2) date of birth; (3) mailing address of record; (4) physical residence address; (5) email address of record; (6) principal office address; (7) telephone number of record; (8) fax number of record; and (9) date admitted by the West Virginia Supreme Court of Appeals.

(b) *Obligation to maintain current contact information.* All members, except disbarred and resigned members, must promptly notify the Executive Director of any change in contact information within ten days of such change. Written communications from the State Bar to members shall be sent to the mailing or email address of record, or both.

[DRAFTING COMMENTS: Bylaw 2.02 was significantly revised to provide greater detail regarding the information that members must supply at the time of enrollment. A new section was added to clarify that members have the obligation to maintain current contact information. In order to better signal this responsibility to members, the title of the section was expanded and subsections were added as a way of highlighting this obligation.

The "upon admission" clause was added in the second sentence of subsection (a) in order to be consistent with the language in the following sections related to each of the classes of membership. The required notification of any change in contact information will in all likelihood soon be made online using the membership portal, and the methodology can be spelled out in the corresponding administrative rule. Communications generally with the State Bar are by the methods in Bylaw Article 13.]

### **Bylaw 2.03 ~~§3~~ Active membership**

~~An active member in good standing shall be a person lawfully admitted to the practice of law in the State of West Virginia, who is lawfully engaged in the practice of law in this State, who is enrolled as an active member, who is not under suspension, and who shall each year duly pay the annual active membership fee to the state bar.~~

Any lawyer who has been admitted to practice law in the State of West Virginia by taking the oath and signing the roll of attorneys before the Supreme Court of Appeals pursuant to the Rules for Admission to the Practice of Law in West Virginia, who complies with these Bylaws and the Rules of the Supreme Court of the State of West Virginia governing the practice of law, and has not changed to another membership class or been suspended or disbarred, shall be an active member.

### **Bylaw 2.04 ~~§7 Enrollment as an active but not practicing member~~ Active non-practicing members**

(a) Any ~~member of the state bar not under suspension, who~~ lawyer who has been admitted to practice law in the State of West Virginia by taking the oath and signing the roll of attorneys before the Supreme Court of Appeals pursuant to the Rules for Admission to the Practice of Law in West Virginia, who is not under suspension or disbarred and does not desire to engage in the Practice of Law in this State, may, upon written request to the Executive Director, be enrolled as an active ~~but not~~ non-practicing member so long as such member shall

each year pay the annual ~~inactive~~ active membership fee to the State Bar. No member of the State Bar ~~practicing law~~ who engages in the Practice of Law in this State, or ~~occupying~~ occupies a position in the employ of or rendering any legal service for an active member, or ~~occupying~~ occupies a position wherein he or she is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, ~~except judges of courts of record~~, shall be ~~enrolled as an inactive member~~ an active ~~but not non-practicing~~ member.

~~(b) § 9 Privileges of active but not practicing members.~~ Any active ~~but not non-practicing~~ member shall ~~not practice law~~, but may vote in any meeting, election or referendum of the State Bar, and hold office in the State Bar. In relation to either voting for or holding office as a district governor, the district of an active non-practicing member shall be the district of the member's mailing address of record as maintained pursuant to Bylaw 2.02. With the exception of the right to engage in the Practice of Law, an active ~~but not non-practicing~~ member shall enjoy the same rights and responsibilities as an active member. An active ~~but not non-practicing~~ member shall not be required to comply with mandatory continuing legal education ~~rules and regulations~~ requirements, or the reporting requirements related to financial responsibility and IOLTA.

#### **Bylaw 2.05 ~~§ 4 Enrollment as an inactive member.~~ Inactive members**

~~(a) Any member of the state bar not under suspension, who~~ lawyer who has been admitted to practice law in the State of West Virginia by taking the oath and signing the roll of attorneys before the Supreme Court of Appeals pursuant to the Rules for Admission to the Practice of Law in this State West Virginia, who is not under suspension and does not desire to engage in the Practice of Law in this State, may, upon written request to the Executive Director, be enrolled as an inactive member, so long as such member shall each year duly pay the annual inactive membership fee to the State Bar. Failure to pay such membership fee shall result in administrative suspension pursuant to Bylaw 2.09. Inactive members who are seventy years of age or older are not required to pay the membership fee. Every judge of a court of record in this State shall be enrolled as an inactive member during his or her continuance in office, but shall not be required to pay the annual inactive membership fee to the state bar. A member of the faculty of the College of Law, West Virginia University who has not engaged in the practice of law in this State may be enrolled as an inactive member. No member of the State Bar who engages in the Practice of Law ~~practicing law~~ in this State, or ~~occupying~~ occupies a position in the employ of or renders any legal service for an active member, or ~~occupying~~ occupies a position wherein he or she is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, ~~except judges of courts of record~~, shall be enrolled as an inactive member.

~~(b) § 6 Privileges of inactive members.~~ An inactive member shall not ~~practice law~~, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. He or

she may attend meetings of the State Bar, participate in the debates of such meetings, and be appointed ~~upon~~ to a special committee but not to a standing or administrative committee. An inactive member shall not be required to comply with mandatory continuing legal education requirements. He or she shall be An inactive member is entitled to receive the official publication of the State Bar and such notices and publications as are provided to the active members.

**Bylaw 2.06** ~~§ 8 Transfer from active but not practicing to active memberships.~~  
**Transfer to active membership**

Any active but not non-practicing member not under suspension, or any inactive member, any judicial member, or any emeritus/pro bono member may be enrolled as an active member upon written request to the Executive Director, and upon a showing that the member: is not under suspension; has fully complied with pertinent mandatory continuing legal education rules and regulations requirements and the reporting requirements related to financial responsibility and IOLTA; has paid any penalties and previously assessed unpaid fees; and has paid the full annual active membership fee for the current year, less any membership fee paid for the current year for the member's prior classification. Upon such request and showing, the member shall be immediately transferred to the active ~~roll~~ membership class.

**Bylaw 2.07** **Judicial members**

(a) Every Judge of a Court of Record of this State shall be enrolled as a judicial member during his or her time in office.

(b) A judicial member shall not engage in the Practice of Law, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. He or she may attend meetings of the State Bar, participate in the debates of such meetings, and may serve on special, standing, or administrative committees unless prohibited by court rule. He or she shall be entitled to receive the official publication of the State Bar and such notices and publications as are mailed to the active members. A judicial member is not required to pay annual membership fees.

(c) Judicial members are required to promptly notify the State Bar when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for judicial membership, and must apply to change to another membership class as set forth in these bylaws.

(d) A Family Court Judge, Circuit Court Judge, or Supreme Court Justice who has been approved by order of the Supreme Court of Appeals to continue serving solely as a judicial officer under senior status, or temporary status if a Family Court Judge, shall be enrolled as a judicial member as long as the senior or temporary status is effective. A Circuit Court Judge or Supreme Court Justice who has been approved by order of the Supreme Court of Appeals to serve as a judicial officer under senior status and to return to the active practice of law, or a temporary Family Court Judge not serving in such capacity on a full-time basis who is also

engaged in the practice of law, shall be enrolled as an active member as long as he or she is engaged in the active practice of law, and shall abide by all requirements for active membership.

### **Bylaw 2.08 Pro bono/emeritus members**

Any member on inactive status who has a current and valid certificate of approval to participate in the emeritus attorneys' pro bono participation program, as more fully set forth in the State Bar Administrative Rule 8, may engage in certain practice activities subject to the limitations and conditions as set forth therein. Except as otherwise provided in State Bar Administrative Rule 8, members approved as pro bono/emeritus members shall have the same privileges and obligations as inactive members.

### **Bylaw 2.09 Suspended members**

(a) *Administrative suspension by the State Bar.* Members are subject to administrative suspension by the State Bar for failure to comply with any of the following requirements that are applicable to the class of membership, as more fully set forth in these Bylaws and in the State Bar Administrative Rules: mandatory continuing legal education requirements, including the mandatory Bridge-the-Gap program; membership fee requirements; or financial responsibility disclosure requirements. Administrative suspension by the State Bar is distinguished from administrative suspension by the Supreme Court of Appeals for incompetency or disability under Rules 3.21 and 3.23 of the Rules of Lawyer Disciplinary Procedure.

(1) Members under administrative suspension by the State Bar shall not engage in the Practice of Law, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. They may not attend meetings of the State Bar or be appointed to or serve on any State Bar Committee. Members administratively suspended by the State Bar are not entitled to receive the official publication of the State Bar, but are entitled to receive notices and other publications that are routinely provided to members.

(2) Members under administrative suspension by the State Bar may be reinstated to their former status upon satisfaction of all the conditions applicable to the suspension, as set forth in the State Bar Administrative Rules.

(b) *Disciplinary suspension.* Members are subject to disciplinary suspension for failure to comply with the Rules of Professional Conduct and for such other reasons as more fully set forth in Rule 3.14 of the Rules of Lawyer Disciplinary Procedure. The Clerk of the Supreme Court of Appeals shall promptly provide the Executive Director a copy of any disciplinary order that suspends a member.

(1) Members under disciplinary suspension shall not engage in the Practice of Law, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. They may not attend meetings of the State Bar or be appointed to or serve on any State Bar Committee. Members under disciplinary suspension are not entitled to receive the official publication of the State Bar or to receive notices and other publications as are provided to the active members.

(2) Members under disciplinary suspension must comply with all the requirements set forth in the order of suspension and satisfy any outstanding financial obligations to the State Bar prior to being restored to any non-suspended status. For all disciplinary suspensions in which a petition for reinstatement is not required, the Office of Disciplinary Counsel shall promptly inform the Executive Director of the date on which all the conditions of the disciplinary suspension have been satisfied. For all disciplinary suspensions in which a petition for reinstatement is required, the date of the final order of the Supreme Court Appeals granting the petition for reinstatement shall constitute the date on which all the conditions of the disciplinary suspension have been satisfied.

### **Bylaw 2.10 Disbarred members**

(a) Members are subject to being disbarred from the practice of law for failure to comply with the Rules of Professional Conduct and for such other reasons as more fully set forth in Rule 3.14 of the Rules of Lawyer Disciplinary Procedure. The Clerk of the Supreme Court of Appeals shall promptly provide the Executive Director a copy of any order, decision, or opinion that annuls a member's license to practice law.

(b) Disbarred members shall not engage in the Practice of Law, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. They may not attend meetings of the State Bar or be appointed to or serve on any State Bar Committee. Disbarred members are not entitled to receive the official publication of the State Bar or to receive notices and other publications as are provided to the active members.

(c) The date of the final order of the Supreme Court of Appeals granting a petition for reinstatement shall constitute the date on which a disbarred member may be restored to another status.

### **Bylaw 2.11 Resigned members**

(a) In order to formally resign from the practice of law and conclude all connections to the West Virginia State Bar, a member must file a petition for voluntary resignation under Rule 3.26 of the Rules of Lawyer Disciplinary Procedure and thereafter obtain an order of the Supreme Court of Appeals granting the petition. Upon receipt of an order of the Supreme Court granting a petition for voluntary resignation, the Executive Director shall change the membership class to resigned. Following resignation, reinstatement to another class of membership requires application to the West Virginia Board of Law Examiners and admission pursuant to the Rules for Admission to the Practice of Law.

(b) A resigned member shall not engage in the Practice of Law, vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. He or she may not attend meetings of the State Bar or be appointed to or serve on any State Bar Committee. A resigned member is not entitled to receive the official publication of the State Bar or to receive notices and other publications as are provided to the active members.

[DRAFTING COMMENTS: Bylaws 2.03 through 2.06 have been re-ordered and revised for consistency and clarity. Bylaws 2.07 through 2.11 are new. Former sections four and six have been combined into a single Bylaw 2.05 that describes the enrollment and privileges of inactive membership. A similar consolidation was made in Bylaw 2.04 for former sections seven and nine regarding active non-practicing membership. Members in the active non-practicing classification are entitled to vote and hold office under the current bylaws. But due to their non-practicing status, they do not meet the "principal office" condition for either voting for district governors in Bylaw 5.06 or holding office as a district governor in Bylaw 5.05. To address this inconsistency, the following sentence was added to Bylaw 2.04: "In relation to either voting for or holding office as a district governor, the district of an active non-practicing member shall be the district of the member's mailing address of record as maintained pursuant to Bylaw 2.02."

Former sections five and eight, which involved transfer to active membership and were practically identical, have been combined into a single Bylaw 2.06. Bylaw 2.07 on judicial membership is new, and contains language to clarify that senior status circuit judges and justices, and part-time temporary Family Court Judges, who are permitted to practice law are treated as active members rather than judicial members.

Bylaws 2.09 and 2.10 are new provisions that cover the parameters of suspended and disbarred members, including a distinction between administrative suspension and disciplinary suspension.

Bylaw 2.11 was added to clarify the difference between an inactive member and a resigned member. Members who no longer wish to be obligated to pay inactive membership dues, or for other reason no longer wish to maintain any form of State Bar membership, can formally resign using the process set forth in Rule 3.26 of the Rules of Lawyer Disciplinary Procedure. Once a member has resigned, however, the member will continue to be listed as "resigned" in the membership register. By expanding and clarifying all the membership classes, the State Bar will be able to more accurately report the status of West Virginia lawyers. Accurately reporting the status of lawyers in a transparent and understandable fashion is a central function of the Bar.

Former § 11 relating to the Emeritus Pro Bono program has been relocated to State Bar Administrative Rule 8.]

## **Article 3 Active Membership Fees**

### **Bylaw 3.01 Authority to set annual membership fees**

~~§ 1 Amount. The annual membership fees for members shall be fixed by the board. Anytime the board shall desire to increase the annual membership fee, it shall choose either of the two following procedures:~~

- ~~(1) Approval by two thirds (2/3) of the entire authorized board.~~
- ~~(2) The submission of the proposed increase to all the active members, by mail, with a majority of the members being required to vote in favor of the proposed increase.~~

~~The board may put such increased fees into effect upon securing the approval of the supreme court of appeals. A schedule of annual membership fees must be approved by no fewer~~

than two-thirds of the Board and shall take effect upon approval by the Supreme Court of Appeals, which shall condition its approval upon a majority of the active practicing and active non-practicing members agreeing to any increase in such fashion as the Court may deem appropriate in a written order.

### **Bylaw 3.02 ~~§1~~ Amount of annual membership fee**

(a) *Active members and active non-practicing members.* The annual membership fee for active members and active non-practicing members varies depending on the number of fiscal years since the member was first admitted to the practice of law, and shall be as follows:

- (1) Less than one fiscal year: one hundred dollars (\$100);
- (2) One to three fiscal years: two hundred dollars (\$200);
- (3) Over three fiscal years: two hundred fifty dollars (\$250);

~~Inactive Members \$100~~

~~The fee for an active but not practicing member shall be the same as the fee for an active member.~~

~~Any active member first admitted to practice after the 2nd day of July and before the 1st day of May of a fiscal year shall pay an active membership fee of fifty dollars (\$50.00) for said fiscal year in which admission takes place. The next active membership fee for any such member shall be considered the first annual membership fee payment.~~

(b) *Inactive members.* The annual membership fee for inactive members who are less than seventy years of age is one hundred dollars (\$100).

(c) *Members admitted by reciprocity.* Any active member admitted to practice law in West Virginia without examination pursuant to ~~in accordance with the Rule 4.0 of the supreme court of appeals respecting Admission of Attorneys From Other States Rules for Admission to the Practice of Law~~ shall be considered an active member who has made four or more annual membership fee payments, but if any such member is first admitted to practice after December 31st and before June 30 of the fiscal year shall be an active membership fee of seventy five dollars (\$75.00) for said fiscal year in which admission takes place. deemed to have been admitted over three years and shall pay an annual membership fee of two hundred fifty dollars (\$250).

### **Bylaw 3.03 ~~§2~~ Payment of annual membership fee**

(a) *Obligation to pay annual membership fee.* Each member shall pay the applicable annual membership fee to the ~~executive director~~ State Bar on or before the first day of July each year for the ensuing fiscal year. Failure to pay on time will result in late fees and subject the member to possible suspension as set forth in State Bar Administrative Rule 3.03.

(b) *Exemptions from annual payment.*

(1) Judicial members, inactive members who are seventy or more years of age, emeritus/pro bono members, and Members of the Armed Forces are exempt from annual membership payments, but may voluntarily pay membership fees. ~~(d) The board may waive the~~

~~payment of annual membership fees of members engaged in the active military service of the United States. (f) Judges are not required to, but may voluntarily, pay active membership fees.~~

~~(2) (b) Any person active member who is first admitted to practice law between May first and July first is exempt from paying an active membership fee for until the 1st day of the next July, the fiscal year in which the admission takes place, but such person must nevertheless register as an active member before engaging in the practice of law must complete the registration process set forth in Bylaw 2.02 before engaging in the Practice of Law.~~

~~(3) (e) A member of the state bar who is suspended during the entire fiscal year as a result of disciplinary proceedings shall not be is not required to pay the annual membership fee for that year. Upon the expiration of any suspension resulting from disciplinary proceedings, a member is required to pay full membership fees for the current year before reinstatement as an active member.~~

~~(c) Refunds prohibited. (e) No part of any annual active or inactive membership fee shall be refunded by reason of death, resignation, entering office as a Judge of a Court of Record, removal from the State, suspension, disbarment, or for any other reason.~~

### **Bylaw 3.04 Authority to set other fees**

The Board has authority to set fees for administrative items such as late payments, penalties, legal entity registration, applications for mandatory continuing legal education accreditation, and requests for continuing legal education credit hours. A schedule of fees and any changes to fees must be approved by no fewer than two-thirds of the Board. An approved schedule of fees must be posted to the State Bar website and distributed electronically to all members in good standing on an annual basis.

[DRAFTING COMMENTS: This article has been reorganized into sections that are more cohesive. Bylaw 3.02 has been reworked very carefully to preserve the current approval structure, but also to give the Court some flexibility with regard to the manner in which the entire bar membership approves any increase in annual membership fees.

The exemptions section of Bylaw 3.03 pulls together all the various exemptions that were scattered throughout the former sections one and two. The general authority to suspend for nonpayment remains in the bylaws, with the specifics now set forth in State Bar Administrative Rule 3. Accordingly, former Article III, §§ 3-5 have been relocated to State Bar Administrative Rule 3.

Bylaw 3.04 was added in order to clarify that the Board has authority to set the amount of administrative fees and penalties. Only the amount of membership fees requires formal Court approval.]

## Article 4 ~~III(A)~~ Financial Responsibility Disclosure

### Bylaw 4.01 ~~§1. Purpose.~~ Required annual disclosure

~~The purpose of this Bylaw is to require disclosure about the financial responsibility for professional liability claims of each active lawyer admitted to practice law in West Virginia. Each lawyer, Upon admission to the Practice of Law in West Virginia, and with each subsequent annual membership dues payment, shall submit the disclosure required by this Bylaw.~~ each active member of the State Bar is required to disclose information about the member's financial responsibility for professional liability claims. Failure to provide the disclosure in the manner set forth in State Bar Administrative Rule 4 will result in penalties and subject the member to possible suspension as set forth in Rule 4.

[DRAFTING COMMENTS: The general authority to require financial responsibility disclosure remains in the bylaws, with the specifics now set forth in new State Bar Administrative Rule 4. Accordingly, former Article III(A), §§ 2-6 have been relocated to Rule 4.]

## Article 5 Board of Governors

### Bylaw 5.01 ~~§1. Powers and duties~~

The powers of the West Virginia State Bar shall be exercised by the Board of Governors.

The Board shall have general charge of the administration of the affairs of the State Bar and it shall diligently and vigilantly formulate policies and ~~do such things as and when in its judgment may be~~ take other actions deemed necessary and proper for the accomplishment of the objects and purposes of the State Bar.

The Board may establish, and may combine and terminate, standing, administrative, and special committees as it may deem advisable, and may vest in and delegate to committees such of its jurisdiction, functions, powers, and authority as it may deem proper. Committees may be composed of ~~its~~ the Board's own members or of members of the State Bar, or both. The members of such committees shall hold office at the pleasure of the Board.

The Board may establish, and may combine and terminate, sections of the State Bar, and may establish foundations and special funds for the furtherance of the objects and purposes of the State Bar and receive contributions to such foundations and special funds from members and others.

The Board may promulgate, and may amend and revoke, ~~rules and regulations~~ policies and procedures for the transaction of its business, for the procedure in meetings of members of the State Bar, for the procedure and reports of committees and sections, and for the general administrative conduct of the State Bar.

The Board shall fix salaries and provide for the payment thereof and of other necessary expenses of the State Bar. It shall cause proper books of account to be kept, have them audited

at least annually, and have presented to each annual meeting a statement of the receipts and expenditures of the State Bar.

The Board may borrow monies, on behalf of ~~this the West Virginia~~ State Bar, in such amount and for such period of time and upon such terms and rate of interest as approved by it. The power to borrow as herein provided shall include the power to execute promissory notes, bonds, and other evidences of indebtedness and to secure the same by granting any security therefore which the Board of Governors may deem necessary or advisable in connection with exercising powers as provided herein, including the pledging of assets or granting deeds of trust or trust indentures.

The ~~West Virginia~~ State Bar may: (1) ~~(i)~~ purchase, acquire, own, lease or otherwise hold such property, real or personal, deemed useful for the operations of the ~~West Virginia~~ State Bar, upon such terms, conditions and for such price as approved by the Board of Governors; (2) ~~(ii)~~ acquire, construct, equip, maintain, and operate buildings, structures, projects, and appurtenant facilities, of any type or types deemed useful for the operations of the ~~West Virginia~~ State Bar, upon such terms, conditions and for such price as approved by the Board of Governors; and (3) ~~(iii)~~ sell, encumber, or dispose of any property, real or personal, held or owned by the ~~West Virginia~~ State Bar.

Any authority granted herein relating to borrowing monies or to acquiring or disposing of any real property is subject to the approval of the West Virginia Supreme Court of Appeals.

The enumeration above and elsewhere in these Bylaws of particular powers or duties of the Board, or of officers or committees, shall not be deemed to imply any denial of, or any restriction or limitation upon, the general and plenary powers of the Board to govern and administer the State Bar and to exercise all its powers.

### **Bylaw 5.02 ~~§ 2. Membership.~~ Members of the Board of Governors**

The Board of Governors shall consist of ~~24 members as follows:~~ the following twenty-five voting members and one non-voting member:

(a) The president, president-elect, vice-president, and immediate past president; ~~(b) [deleted]~~

(b) ~~(e)~~ One governor from each of the sixteen State Bar districts ~~herein established set forth in Bylaw 5.04;~~

(c) ~~(f)~~ Three additional governors from ~~district 8~~ State Bar District Eight;

(d) ~~(e)~~ One ~~African American~~ minority lawyer elected ~~by the method described herein~~ as described in Bylaw 5.06;

(e) ~~(d)~~ The Chairperson of the Young Lawyers Section; and

(f) The Dean of the West Virginia University College of Law, as a non-voting member.

### **Bylaw 5.03 ~~§ 3. Election and term~~**

~~In the year 1951, an election shall be conducted for governors in all the state bar districts, for terms as follows:~~

- (a) One member each from state bar districts 1, 2, 3, 4 and 5 for a term of one year;
  - (b) One member each from state bar districts 6, 7, 8, 9 and 10 for a term of two years;
- and,
- (c) One member each from state bar districts 11, 12, 13, 14, 15 and 16 for a term of three years.

In each year thereafter except for the year 1977, governors shall be elected, each for three-year terms, from the state bar districts in which vacancies occur in that year by reason of the expiration of the term of office of a governor theretofore elected. No governor who has served three years shall be eligible to succeed himself or herself.

Three additional governors shall be elected from district 8 in the manner described in this paragraph. In each of the years 1985 and 1986, one governor shall be elected from district 8, and each governor so elected shall serve until the conclusion of the 1987 annual meeting. In 1987, and each third year thereafter, three governors shall be elected from district 8, and each governor so elected shall serve a three-year term, serving until the conclusion of the annual meeting three years hence. No governor who has served three successive years shall be eligible to succeed himself or herself. The procedures described in this paragraph shall not affect the election of a governor from district 8 as described in subsection (b) above.

In any year in which there is more than one office to fill in the same district, those voting shall be entitled to vote for as many candidates as the number of positions to be filled. All such candidates shall run at large.

The term of office of each governor shall commence at the conclusion of the annual meeting next succeeding his or her election, and he or she shall hold office until his or her successor is elected and qualified. Assuming that it is not possible for the first additional district 8 governor to take office at the conclusion of the 1985 annual meeting, that governor shall take office as soon as he or she is elected and qualified, and shall serve until the conclusion of the 1987 annual meeting. The election for this district 8 governor shall be conducted in accordance with Article IV, Section 7 of these Bylaws. The governor so elected shall not be eligible to succeed himself or herself.

(a) Each year an election shall be conducted for governors. The yearly elections shall be staggered in the following four-year cycle beginning in the year 2019:

(1) Year One: State Bar Districts One through Five;

(2) Year Two: State Bar Districts Six through Eight;

(3) Year Three: State Bar Districts Nine through Twelve and the Minority Lawyer and;

(4) Year Four: State Bar Districts Thirteen through Sixteen.

(b) Governors shall be elected, each for four-year terms, from the State Bar districts in which vacancies occur in that year by reason of the expiration of the term of office of a governor previously elected in that district. No governor who has served a full term shall be eligible to succeed himself or herself.

(c) In any year in which there is more than one office to fill in the same district, those voting shall be entitled to vote for as many candidates as the number of positions to be filled. All such candidates shall run at large.

(d) The term of office of each governor shall commence at the conclusion of the annual conference of the State Bar meeting next succeeding his or her election, and he or she shall hold office until his or her successor is elected and qualified, including any extended period necessitated by changes in election cycles or terms.

**Bylaw 5.04 ~~§4.~~ State Bar districts**

For the purpose of election of governors, the State is divided into ~~state bar districts as follows~~ the following State Bar districts:

District 1 — Brooke, Hancock, and Ohio Counties

District 2 — Marshall, Pleasants, Tyler, and Wetzel Counties

District 3 — Calhoun, Gilmer, Ritchie, Wirt, and Wood Counties

District 4 — Clay, Jackson, Mason, Putnam, and Roane Counties

District 5 — Cabell and Wayne Counties

District 6 — McDowell and Mingo Counties

District 7 — Boone, Lincoln, and Logan Counties

District 8 — Kanawha County

District 9 — Raleigh and Wyoming Counties

District 10 — Mercer, Monroe, and Summers Counties

District 11 — Fayette, Greenbrier, and Nicholas Counties

District 12 — Braxton, Pendleton, Pocahontas, Randolph, Upshur, and Webster

Counties

District 13 — Doddridge, Harrison, and Lewis Counties

District 14 — Marion and Monongalia Counties

District 15 — Barbour, Preston, Taylor, and Tucker Counties

District 16 — Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, and Morgan

Counties

**Bylaw 5.05 ~~§5.~~ Qualifications of district governors**

~~A governor shall have his or her principal office for the Practice of Law in the State Bar district which he or she represents, and his or her removal thereof from such district shall forthwith terminate his or her governorship. A governor shall be an active member of the State Bar in good standing, and his or her loss of that status in any manner shall forthwith terminate his or her governorship.~~

A governor shall be an active member with his or her principal office for the practice of law in the State Bar district he or she represents, or an active non-practicing member whose mailing address of record is in the represented district. An active member's change of principal office, or an active non-practicing member's change of mailing address, to a location outside the

district shall automatically terminate a governorship. A governor shall maintain State Bar membership in good standing, and a loss of that status in any manner shall automatically terminate a governorship.

**Bylaw 5.06 ~~§-6.~~ Nomination of governors**

(a) Nomination for the office of governor shall be by written petition signed by not less than ten members of the State Bar eligible to vote in the district where such nominee has his or her is qualified for office, except that where there are fewer than ninety eligible members in such the district, the signatures of ten percent of the members shall be sufficient. No member shall sign more than one nominating petition in any year. If in any year the Executive Director does not receive, within the time fixed by the Board, from any state bar district for which a governor is to be elected in that year, a petition nominating an eligible person for governor, the President shall appoint a committee from the Board, and that committee shall nominate at least two eligible persons.

~~(b) § 10. Election of African American lawyer to the board of governors. Beginning the year 1985, an African American lawyer will be elected by African American lawyers to serve a 3 year term on the board of governors. In order to identify African American lawyers desiring to vote for such African American lawyer position, the executive director shall in 1985, and every 3rd year afterward, In each year in which a minority lawyer (as defined in Administrative Rule 2.01) is to be elected as a governor, the Executive Director shall identify African American minority lawyers so registered with the State Bar and send them a notice regarding the nomination for the position on the Board of Governors. Nomination for the position shall be by written petition signed by not less than ten African American minority members of the State Bar eligible to vote, except that if there are fewer than ninety eligible African American minority lawyers in the state, the signatures of ten percent of the such African American minority lawyers shall be sufficient. No African American minority lawyer should shall sign more than one nominating petition in any year. If in any year the Executive Director does not receive, within the time fixed by the Board, a petition nominating an African American minority lawyer for governor, the president shall appoint a committee from the Board, and that committee shall nominate at least two eligible African American minority lawyers.~~

**Bylaw 5.07 ~~§-7.~~ Election of governors**

Each district governor shall be elected by a secret mail an electronic vote of the active members having their principal offices for the practice of the law in the State Bar district and active non-practicing members whose mailing address of record is in that district. Each governor in the minority lawyer position shall be elected by an electronic vote of the minority lawyers so registered as active members and active non-practicing members of the State Bar. Such elections shall be conducted and canvassed, and any tie votes determined by lot in accordance with such rules and regulations as the board may promulgate from time to time

State Bar Administrative Rule 5.05. ~~In every such election the ballots shall be returned to the Clerk of the Supreme Court of Appeals and remain in his or her custody until canvassed.~~

**Bylaw 5.08 ~~§8.~~ Vacancies; removals**

Vacancies in the office of governor shall be filled by the Board for the unexpired term. If any governor be determined by the Board to have become incapacitated from performing his or her duties as governor, or if any governor be absent from any two consecutive meetings of the board, without cause deemed adequate by the Board, he or she may be removed by the Board.

**Bylaw 5.09. ~~§9.~~ Meetings; quorum**

The Board may meet at any place in the State of West Virginia, and shall regularly meet at least once each quarter of the fiscal year. The Board shall meet for its final quarterly meeting of the fiscal year on the day preceding the opening day of each annual meeting, and shall meet immediately following the adjournment of each annual meeting conference of the State Bar membership. New governors and officers shall begin their terms following the adjournment of the annual conference. The President may call other meetings of the Board. Upon written request of five Governors, the President or the Executive Director shall within five days thereafter call a meeting of the Board. Attendance at and participation in any such Board meeting by means of conference telephone or similar electronic other remote communications equipment by which all persons participating in the meeting can hear and speak to each other is expressly permitted if such equipment is available for the meeting site. Any Board member wishing to attend a scheduled meeting remotely shall provide notice to the Executive Director at least 5 days in advance of the meeting.

One half plus one of the voting membership of the Board shall constitute a quorum of the Board. Members of the Board shall be considered present at a meeting if they attend in person or by means of conference telephone or other electronic remote communications equipment as permitted in the previous paragraph. Only those members so present may vote on matters before the Board; voting by proxy is not permitted.

[DRAFTING COMMENTS: The former Article was disjointed. The re-write consolidates and simplifies all the provisions where possible. For example, the African-American lawyer provisions are folded into the general provisions rather than standing alone and are broadened to cover minority lawyers generally. The provision defining the office of Immediate Past President was moved to the new Article 6.

The details of the election process are removed from the bylaws and are now contained in Administrative Rule 5. Bylaw 5.07 was revised to take into account that the voting process is electronic. Additionally, language regarding active non-practicing members has been added for clarification in Bylaw 5.07. Like active members, active non-practicing members can "vote in any meeting, election or referendum of the State Bar, and hold office in the State Bar." (Bylaw 2.04.) Since active non-practicing members don't have a principal office as qualification to vote in district

elections, or hold office, the added language provides linkage to the member's district by his or her mailing address of record.

The term of office for governors was lengthened from the current three-year term. In conjunction with this change to four-year terms, the election cycle was adjusted to four years.

Reference to the ability of the Board to issue "rules and regulations" was removed in order to avoid confusion with the Court's ability to promulgate administrative rules. Instead, the Board has the ability to issue policies and procedures.]

## **Article 6 ~~Article V.~~ Officers**

### **Bylaw 6.01 Types of officers**

~~Ch. II ¶1. Offices created.~~

~~The state bar shall have the following officers:~~

~~(a) [Abrogated]~~

~~(b) President.~~

~~(c) President-elect.~~

~~(c) Vice president.~~

~~(e) Executive director.~~

The State Bar shall have the following officers: a President, who shall also serve as the Chair of the Board of Governors; a President-elect; a Vice President; an Immediate Past President; and an Executive Director, who serves as the Secretary of the Board.

### **Bylaw 6.02 ~~§1.~~ Selection of president, officers and terms**

(a) *President.* Each year, at its meeting on the day preceding the opening day of the State Bar annual ~~meeting~~ conference, the Board shall select a as President of the State Bar, the sitting President-elect, who shall serve for the year beginning with the adjournment of such annual ~~meeting~~ conference of the State Bar and continuing until the beginning of the term of his or her successor, and who shall not be eligible to succeed himself or herself. ~~Ch. II ¶3(a)~~ Each President-elect of the State Bar shall be the President of the State Bar for the year commencing with the adjournment of the annual conference of the State Bar at which his or her term of office as President-elect terminates and continuing until the beginning of the term of his or her successor as President.

(b) *President-elect.* ~~§ 2. Selection of president-elect and vice president term.~~ Each year, at its meeting on the day preceding the opening day of the annual ~~meeting~~ conference, the Board shall select a as President-elect of the State Bar, and a the sitting Vice President, each of whom shall serve for the year beginning with the adjournment of such annual ~~meeting~~ conference of the State Bar and continuing until the beginning of the term of his or her successor as President-elect.

(c) *Vice president.* Each year, at its meeting on the day preceding the opening day of the annual conference of the State Bar, the Board shall elect a Vice President of the State Bar. The

Vice President shall be elected by secret ballot from the nominees for such office presented to the Board from the committee on nominations and any additional floor nominees, pursuant to Bylaw 6.04. If no nominated candidate receives more than 50 percent of the votes on the first ballot, the two candidates receiving the most votes shall have a run-off election by secret ballot until one candidate receives a majority of the votes. Only Board members who voted on the first vote are eligible to vote in any run-off election. Those members attending by means of conference telephone or other remote communications equipment must waive their right to secret ballot in order to vote. The candidate elected shall serve as Vice President for the year commencing with the adjournment of the annual conference of the State Bar immediately following his or her election and continuing until the beginning of the term of his or her successor as Vice President.

~~(d) Executive director. § 3. Selection of executive director; term.~~ The Board shall from time to time select an Executive Director, who shall hold office at the will and pleasure of the Board. ~~Ch. II ¶5(a) Each year, at its meeting on the day preceding the opening day of the annual meeting, the Board shall select an executive director, who shall serve until the beginning of the term of his or her successor.~~

~~§ 4. Selection of other officers; terms. The Board may from time to time create such other offices, with such powers and duties, as it may deem advisable, and may at any time terminate the same. The Board shall select the persons to fill such offices at such times and for such terms as it may determine.~~

### **Bylaw 6.03 ~~§ 5.~~ Qualifications of officers**

~~The president, president elect and vice president and all other~~ All officers, ~~except the executive director and administrative assistants,~~ shall be active or active non-practicing members in good standing of the State Bar. The Executive Director and administrative assistants may or may not be members of the State Bar, as the Board may prescribe. When active State Bar membership in good standing is required of any officer, his or her loss of that status in any manner shall ~~forthwith~~ automatically terminate his or her term of office.

### **Bylaw 6.04 ~~§ 6.~~ Nomination of officers**

~~The board shall~~ Each year ~~select~~ the Board shall select a committee on nominations, consisting of such number of its own members as it may then determine, ~~which shall.~~ The committee on nominations shall report to the Board at its final quarterly meeting preceding the annual meeting of the fiscal year. Such report shall name a nominee or nominees for ~~each of the offices of president, president elect and vice president.~~ Additional nominations may be made from the floor following the report of the committee. Any member of the Board serving the final year of his or her term as governor may be nominated as a candidate for the office of Vice President. ~~Ch. II ¶ 6 The Board shall each year select a committee on nominations, consisting of such number of its own members as it may then determine, which shall report to the Board at~~

~~its meeting on the day preceding the annual meeting. Such report shall name a nominee or nominees for each of the offices of president and president elect.~~

**Bylaw 6.05 ~~§7.~~ Vacancies; removals**

Vacancies in any office shall be filled by the Board for the unexpired term. If any officer is determined by the Board to have become incapacitated from performing his or her duties as such officer, he or she may be removed by the Board.

**Bylaw 6.06 ~~§8.~~ President; duties and authority**

~~(a) The President shall be the chief executive officer of the State Bar and he or she shall faithfully endeavor to accomplish a successful prosecuting of its objects, aims, and purposes. The President shall preside at all meetings of the State Bar, or in lieu thereof, the president or the board may designate a president officer. The presiding officer~~ President shall further perform those duties which are usually devolve upon such committed to a chief officer, and such duties as may be prescribed from time to time by the Board.

~~Ch. II ¶2. Chairman of the Board.~~

~~(a) Each president of the state bar shall be the chairperson of the board of the state bar, for the year commencing with the adjournment of the annual meeting at which his or her term of office as president terminates and continuing until the termination of the term of his or her successor as president.~~

~~(b) The chairperson of the board is hereby designated as the presiding officer of the board of governors, and shall preside at all meetings of the board during his or her term of office.~~

~~(c) The chairperson of the board shall also recommend to the appointing power, the president or the board, as the case may be, suitable members for appointment as members of standing and special committees and as chairperson of such committees: (i) At the beginning of the year; (ii) as vacancies occur during the year; and (iii) as such committees are created. He or she shall also from time to time recommend to the board such changes as may seem advisable in the scope and function of committees and in their personnel.~~

~~Ch. II ¶3. President.~~

~~(a) Each president elect of the state bar shall be the president of the State Bar, for the year commencing with the adjournment of the annual meeting at which his or her term of office as president elect terminates and continuing until the termination of the term of his or her successor as president elect.~~

~~(b) The president shall be the chief executive officer of the state bar and shall preside at all meetings of the state bar, or, in lieu thereof, the president or the board may designate a presiding officer. The presiding officer shall further perform those duties which usually devolve upon such officer, and such duties as may be prescribed from time to time by the board.~~

(b) The President shall be the chair of the Board of Governors and shall preside at all meetings of the Board during his or her term of office.

(c) The President shall appoint, or recommend to the Board, as the case may be, suitable members for standing, special, and administrative committees and as chairperson of such committees. The President shall also from time to time recommend to the Board such changes as may seem advisable in the scope and function of committees and in their personnel.

#### **Bylaw 6.07 ~~§9.~~ President-elect and vice president; duties and authority**

(a) The President-elect and the Vice President assist the President in the execution of those duties which usually devolve upon such officers and shall perform such duties and have such authority as may be prescribed from time to time by the Board.

~~Ch. II ¶4(a) Each year, at its meeting on the day preceding the opening day of the annual meeting, the board shall select a president-elect and a vice-president of the state bar, each of whom shall serve for the year beginning with the adjournment of such annual meeting and continuing until the beginning of the term of his or her successor.~~

(b) Ch. II ¶4(b) In the absence of the President, the President-elect (and in his or her absence, the Vice President) shall preside at all meetings of the Board or State Bar, unless a temporary presiding officer has been designated by the President, the President-elect, the Vice President, or the Board.

~~Ch. II ¶4(c) [Abrogated]~~

(c) Ch. II ¶4(d) The President-elect shall be responsible for the advancement of public acceptance of the State Bar program and shall supervise and coordinate the activities of all State Bar sections and committees engaging in the presentation of any part of such program to the public. The President-elect shall automatically succeed to the office of president as set forth in paragraph 3, above Bylaw 6.02(a).

~~Ch. II ¶4(e) The president-elect and vice-president shall be responsible for the advancement of the state bar program through local bar association meetings and shall, during his or her term of office, arrange with each local bar association for the holding of at least one meeting on some phase of such program.~~

~~Ch. II ¶4(f) The president-elect and vice-president shall also assist the president in the execution of those duties which usually devolve upon such officers, and such other duties as may be prescribed from time to time by president or the board.~~

#### **Bylaw 6.08 Immediate past president**

The President, for the year following his or her completion of the term of president, shall be known as the Immediate Past President and shall continue to be a voting member of the Board until the next president shall assume this position.

#### **Bylaw 6.09 ~~§10.~~ Executive Director; duties and authority**

The Executive Director of the State Bar shall attend all meetings of the State Bar and of the Board and shall ~~record~~ arrange for the recording of the proceedings of all such meetings. He or she shall take charge of all funds of the State Bar and deposit them in depositories selected by

the Board. He or she shall cause books of account to be kept, which shall be the property of the State Bar and which shall be open to the inspection of the President, ~~or of any Governor, or fully any~~ authorized committee of the State Bar. At each annual meeting of the State Bar ~~he or she~~ the Executive Director shall report upon the activities of the State Bar during the past year and make such recommendations as he or she shall deem proper. ~~He or she shall make~~ At each meeting of the Board, the Executive Director shall make such financial and other reports as it may require. He or she shall prepare a financial report, which shall be filed with the Supreme Court of Appeals ~~of West Virginia~~ no later than November first of each year, which shall contain a copy of the annual independent audit report for the immediately preceding fiscal year, a statement of income and expenses for the immediately preceding fiscal year, a copy of projected income and expenses for the current fiscal year, and such other information as requested by the Chief Justice ~~of the Supreme Court of Appeals of West Virginia~~. He or she shall attend generally to the correspondence of the State Bar and perform such other duties as are directed by the Board. The Executive Director, with the approval of the Board, may employ such administrative assistants and other personnel as the work of his or her office may require. The Executive Director shall give such bond as may be required by the Board, the premium of which shall be paid by the State Bar. ~~Ch. II ¶5(b) The executive director of the state bar shall perform the duties set forth in Article 5, Section 10 of the by laws of the state bar.~~

#### **Bylaw 6.10 ~~§11~~ Compensation; expenses**

No governor ~~nor~~ or officer, except the Executive Director, and no member of any committee shall receive compensation for services, but any such person may be reimbursed for necessary and actual traveling and subsistence expenses when authorized by the Board. Administrative assistants and other personnel employed by the State Bar shall receive compensation for services.

[DRAFTING COMMENTS: Article 6 is a consolidation of former Article V and Chapter II of the former Rules and Regulations. The office of immediate past president has been added and defined. Bylaws 6.06 through 6.09 incorporate the content of former Chapter II and ¶¶ 2-6 of the Rules and Regulations. In several instances, the former rules and regulations simply repeated the provisions of the bylaws. When that occurred, the repetitive items were deleted.

The provisions in former Chapter II of the Rules and Regulations, which state that the former president serves as chair of the board, and recommends committee members to the president or the Board, as the case may be, was eliminated as archaic. Those duties were added to the office of president rather than the office of immediate past president, the language was reworded accordingly.

The provision that permits the Board to create other offices was eliminated as unnecessary. The various references to "administrative assistants" in the discussion of officers was also eliminated as unnecessary. In light of current trends and in order to preserve future flexibility, the mandatory requirement that the Executive Director should be a member of the West Virginia Bar was eliminated.]

**~~Article VI. Procedure for Disciplining, Suspending and Disbarring Attorneys at Law [Superseded]~~**

**Article 7 Executive Committee ~~Ch. V. Committees~~**

**Bylaw 7.01 Executive Committee**

~~¶ 1. Creation of Committees. The committees named in the succeeding paragraphs are hereby created, with the jurisdictions, functions, powers and authorities respectively specified.~~

~~¶ 2. Executive committee.~~ (a) The Executive Committee shall consist of the President, the President-elect, ~~and~~ the Vice President, and four Governors nominated by the President and selected each year by the Board.

(b) Between the meetings of the Board, the Executive Committee shall have and may exercise all of the jurisdiction, functions, powers, and authorities of the Board.

(c) The Executive Committee shall meet on the call of the President. Upon request of two members of the committee the Executive Director shall call a meeting of the committee. Attendance at and participation in meetings may be in person or remotely by means of conference telephone or ~~similar two-way electronic~~ other communications equipment permitting two-way communications by all persons in attendance. Four members of the Executive Committee shall constitute a quorum thereof.

[DRAFTING COMMENTS: Article 7 derives from Chapter V of the former Rules and Regulations. The ambiguous references to other unlisted committees was eliminated as unnecessary, in light of the fact that the Board clearly has the authority to establish committees as set forth in Article 5. Accordingly, the article was re-named as "Executive Committee," since that is the only subject that is addressed.]

**Article 8 ~~Article VII. Committee on Unlawful Practice~~ Committee**

**Bylaw 8.01 ~~§ 1.~~ Jurisdiction**

The ~~committee on~~ Unlawful Practice Committee shall have jurisdiction over all matters and questions which may be considered as constituting the unlawful practice of law under the definition of the practice of law adopted by the Supreme Court of Appeals of West Virginia by rule effective May 1, 1947, and any amendments or changes thereto, and in accordance with other applicable principles of law governing and defining the practice of law in this and other jurisdictions.

**Bylaw 8.02 ~~§ 2.~~ Powers**

(a) ~~Such~~ The Unlawful Practice Committee shall investigate on its own initiative or upon request of any court or judge, or ~~upon the verified~~ written complaint of any person, any

matter involving the alleged unlawful practice of law. ~~Such~~ The Committee is empowered to dismiss any complaint. The Unlawful Practice Committee is authorized to present to the Supreme Court for approval to enter into an agreement to desist from unlawful practices, or when the facts warrant, institute appropriate proceedings in the name of the West Virginia State Bar, or in the name of any authorized member of the Unlawful Practice Committee or any member thereof, in any court having jurisdiction, for the purpose of securing appropriate relief.

(b) ~~Such~~ The Committee may act as a ~~committee~~ whole, or through any subcommittee thereof, consisting of at least three members.

(c) In addition to the provisions of these Bylaws, the procedures regarding matters before the Committee are governed by State Bar Administrative Rule 7.

### **Bylaw 8.03 ~~§-3. Members; terms; vacancies; removals~~**

~~The committee on Unlawful Practice Committee~~ shall consist of ~~seven~~ nine members, with eight members being selected by the Board from the active members of the State Bar and the ninth member being a current or senior status circuit court judge selected by the Board. The Board shall endeavor to select members who have a diversity of practice areas and geographic locations. When first constituted, three members shall be selected for terms of one year, two for terms of two years, and two for terms of three years. Thereafter, In each year, members shall be selected, each for three-year terms, to fill vacancies occurring in that year by reason of the expiration of the terms of office of members ~~therefore~~ previously selected. Vacancies occurring for other reasons shall be filled by the Board for the unexpired terms. If a member of ~~such the~~ Committee ~~be~~ is determined by the Board to have become incapacitated from performing his or her duties as ~~such a~~ member, or ~~be~~ is absent from any two consecutive meetings of ~~such the~~ Committee without cause deemed adequate by the Board, he or she may be removed by the Board. The term of office of each member shall commence at the conclusion of the ~~annual final quarterly meeting designated by~~ of the Board in in the fiscal year of the appointment. Vacancy appointments for unexpired terms shall commence immediately.

### **Bylaw 8.04 ~~§-4. Officers; subcommittees~~**

~~For such committee~~ A chairperson and vice chairperson shall be designated annually by the Board from the members of ~~such the~~ Unlawful Practice Committee. ~~Such~~ The Committee may designate other officers and subcommittees, from its own members, with such of its powers and responsibilities as it may deem proper.

### **Bylaw 8.05 ~~§-5. Meetings; quorum~~**

(a) ~~Such~~ The Unlawful Practice Committee shall meet at any place in the State of West Virginia upon call of its chairperson or vice chairperson, or upon call of the President of the State Bar. Upon written request of five governors, the President or Executive Director shall call a meeting of ~~such the~~ Committee.

(b) Three members of the Committee shall constitute a quorum.

**~~§ 6. Summons and subpoena powers.~~**

~~In any investigation or hearing under this article, such committee, any grievance committee, or any authorized member of either thereof, or any governor or officer of the state bar shall have the power, by summons or subpoena issued under the hand of any authorized member of either committee or of any governor or such officer, to summon and examine witnesses under oath administered by any member of said committees, any governor or such officer, and to compel their attendance and the production of any and all books, papers, letters and other documents necessary or material to the inquiry.~~

**~~§ 7. Effect of summons or subpoena.~~**

~~Any such summons or subpoena issued as provided in the preceding section shall have the same force and effect as a summons or subpoena issued by a circuit court of the State of West Virginia. If any witness or other person shall fail or refuse to appear, or to be sworn, or to testify, or to produce books, papers, letters or other documents demanded, upon application to a circuit court or the judge thereof within the congressional district in which any investigation or hearing is being conducted, a rule or an attachment shall be issued against such witness or other person as in cases of contempt.~~

**Bylaw 8.06 ~~§ 8. Reports to executive director~~**

~~Such~~ The Committee shall report to the Executive Director in writing immediately upon initiating any investigation or other action, and shall thereafter report to him or her from time to time the status thereof, and upon final disposition of any matter shall forward to him or her the Executive Director a final report thereon with the complete file thereof.

**Bylaw 8.07 Subpoena and contempt power**

(a) The Committee shall have power to issue subpoenas through the Clerk of the Supreme Court of Appeals. The Clerk shall prepare and have available for issuance at the request of any party, subpoenas returnable before the Committee or its appointed hearing officer for attendance of witnesses or for the production of documentary evidence. Subpoenas, and other process of the Committee, may be served in the same manner provided for service of subpoenas in the circuit courts of this State or may be served by certified mail. The Committee shall have jurisdiction co-extensive with the circuit courts of this State to compel the attendance of witnesses and the production of documents; and the failure of any person without adequate excuse to obey a subpoena or other process of the Committee shall constitute contempt of the Committee, which may invoke the aid of any circuit court to impose sanctions for such contempt. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this State.

(b) The Committee or its appointed hearing officer may punish breaches of order and unprofessional conduct committed in its presence on the part of counsel, or any other person, by censure or exclusion from any hearing or may invoke the aid of any circuit court in keeping

order. Such court, in case of the refusal of any person to maintain order before the Committee or hearing officer, shall issue an order requiring such person to maintain order. Any failure to obey such order of the court may be punished by such court as contempt thereof. The Committee or hearing officer may designate a person, or persons to act as bailiff or bailiffs to be in attendance at any hearing.

### **Bylaw 8.08 Immunity**

Persons performing official duties under the provisions of these Bylaws and Administrative Rule 7, including, but not limited to, the Committee, the Executive Director of the State Bar and his or her staff, counsel appointed to assist in the prosecution of alleged unauthorized practice of law, and hearing officers shall be immune from suit for all conduct in the course of their official duties.

[DRAFTING COMMENTS: Federal courts have examined the structure of the West Virginia UPL Committee and concluded that its function is judicial in nature, and therefore the *Rooker-Feldman* doctrine precludes exercise of federal jurisdiction over general challenges seeking review of its decisions. *See Allstate Ins. Co. v. West Virginia State Bar*, 998 F.Supp. 690 (S.D.W.Va. 1998); *affirmed*, 233 F.3d 813 (4th Cir. 2000). In light of this fact, it seems prudent to retain the existing general structure of the UPL Committee. To the extent still pertinent, these provisions are based upon Article VII of the former bylaws. Based upon antitrust caselaw developments, however, significant changes in UPL enforcement procedures are needed in order to maintain antitrust immunity under federal law. Beginning with *Parker v. Brown*, 63 S. Ct. 307 (1943), the U.S. Supreme Court has, under long-standing federalism principles, interpreted the antitrust laws to confer broad immunity for anticompetitive conduct of States when acting in their sovereign capacity. However, more recent decisions of the Court have narrowed this state-action immunity. For example, in *Goldfarb v. Virginia State Bar*, 95 S. Ct. 2004 (1975), the Court held that some actions by state agencies are not immune from antitrust claims. "The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members." 95 S. Ct. at 2015. The most recent Supreme Court case, *North Carolina State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), makes it clear that certain procedural requirements must be in place to preserve state-action immunity when active market participants regulate any aspect of a profession. Under this latest decision, when a State empowers a group of active market participants (such as the State Bar's UPL Committee) to decide who can participate in a particular market or profession, then a two-part test must be met to maintain *Parker* state-action immunity. First, any anticompetitive decision must be in furtherance of a clearly articulated state policy. Here, that is satisfied by the State's definition of the practice of law promulgated by the W. Va. Supreme Court for the benefit and protection of the public. Second, as emphasized in the *North Carolina Board* decision, there must be "active supervision" by the State. The U. S. Supreme Court has identified the requirements of active supervision to include: 1) an actual review of the substance of the anticompetitive decision; 2) the power to veto or modify decisions to ensure they accord with state policy; and 3) the State supervisor may not itself be an active market participant. The new procedural process reflected in

these Bylaws and in Bar Administrative Rule 7 has been added to maintain antitrust immunity and to withstand procedural and substantive due process challenges relating to UPL proceedings.]

## **Article 9 ~~Article VIII.~~ Grievance Committees**

### **Bylaw 9.01 ~~§1.~~ Duties**

The grievance committee in each State Bar district shall ~~investigate within such district all matters within the jurisdictions of the lawyer disciplinary board and committee on unlawful practice, and shall make report and recommendation thereon to the appropriate committee and to the executive director. It shall also perform such other functions and duties in its district as the Board may prescribe from time to time. including, when authorized by the board, the exercise of all rights, powers and duties of every kind provided for the lawyer disciplinary board and committee on unlawful practice.~~

### **Bylaw 9.02 ~~§2.~~ Members**

~~Such~~ Grievance committees shall consist of ~~such~~ the number of members, appointed by the Board, for such terms as the Board may from time to time determine. Each ~~such~~ grievance committee shall have a chairperson, selected annually by the Board.

[DRAFTING COMMENTS. Article 9 was simplified in order to give the State Bar flexibility with regard to grievance committees, which are apparently rarely used at present. Nevertheless, the rules committee felt that it was important to retain a mechanism to handle non-disciplinary grievances.]

## **Article 10 ~~Article IX.~~ Miscellaneous Provisions**

### **Bylaw 10.01 ~~§1.~~ Seal**

The State Bar shall have a seal having the words and figures "~~THE~~ WEST VIRGINIA STATE BAR — May 1, 1947" and such other design as the Board may prescribe, for the authentication of its proceedings and records. The courts in this State shall take judicial notice of ~~such~~ the seal, and in all cases copies of resolutions, proceedings, or records in the office of the State Bar, certified by the Executive Director under ~~such~~ the seal, shall be equal to the original in evidence. The seal shall remain in the custody of the Executive Director at the office of the State Bar unless otherwise ordered by the Board.

### **Bylaw 10.02 ~~§2.~~ Service of process**

Service of any notice or process upon the State Bar may be had upon the President or Executive Director.

### **Bylaw 10.03 ~~§3.~~ Nonliability of State Bar and its members**

The State Bar, its members, officers, governors, and committees shall not be liable to any member of the State Bar, or to any other person, firm or corporation, for any damage incident to ~~any investigation, complaint, charge, prosecution, proceeding or trial.~~ acts done while in the performance of their official duties.

### **Bylaw 10.04 ~~§4.~~ Representation**

Except as expressly otherwise provided in these Bylaws, no section, committee, or member shall assume to represent the State Bar in any court or elsewhere unless authorized to do so by the Board or by the President.

### **Bylaw 10.05 ~~§5.~~ Limitation**

Except as expressly otherwise provided in these Bylaws, no recommendation or report of a section, committee, or member shall become the recommendation or report of the State Bar until approved by the Board.

### **Bylaw 10.06 ~~§6.~~ Official publication**

The official publication of the State Bar shall be "The West Virginia Lawyer," which shall be published under the supervision and direction of the Board.

### **Bylaw 10.07 § 7. Fiscal year**

The fiscal year of the State Bar shall begin on July 1 of each year and end on June 30 of the next succeeding calendar year.

### **Bylaw 10.08 ~~§8.~~ Parliamentary rules**

Unless otherwise specifically resolved, the rules contained in the latest edition of ~~"Robert's Rules of Order, Revised"~~ *The Modern Rules of Order* shall govern the proceedings at all meetings of the State Bar and of the Board in all cases to which they are applicable, and in which they are not inconsistent or in conflict with the Constitution of the State Bar, these Bylaws, State Bar Administrative Rules, and the ~~rules and regulations~~ policies and procedures adopted by the Board.

### **Bylaw 10.09 ~~§9.~~ Costs**

No costs shall be recoverable against the State Bar, its members, officers, governors, or committees; and it shall be required to pay only such fees, costs and charges incident to any court proceeding as other departments of the state government are required to pay.

### **Bylaw 10.10 ~~§10.~~ Privacy of record**

Except to the extent expressly provided in these Bylaws, or otherwise required by law, no person shall have any right to see or inspect, or to have a copy of, any paper, document, or

other record relating to any matter at any time before ~~the lawyer disciplinary board, the committee on unlawful practice committee,~~ any grievance committee, the committee on elections, the West Virginia Judicial and Lawyer Assistance Program, any other committee, the Board of Governors, or in the possession of any officer, except a current member of the committee in question, as to its records, or a governor or officer of the State Bar, as to any such record.

### **Bylaw 10.11 Election of American Bar Association Representative**

An American Bar Association Representative shall be elected by the Board of Governors. Any individual who has served as president of the State Bar shall be eligible to be nominated for the position. Nominations can be made by any individual serving on the Board. The term shall be for two years and shall begin at the end of the American Bar Association Annual Meeting next following the election. An individual may serve additional terms, including consecutive terms. The American Bar Association Representative elected by the Board of Governors shall be elected in the same manner as the officers; and the provisions in these Bylaws with respect to qualifications, vacancies, and removal of officers apply throughout any terms of service.

### **Bylaw 10.12 West Virginia State Bar Administrative Rules**

(a) Authority. In accordance with West Virginia Code §51-1-4a and the inherent authority of the Supreme Court to regulate the practice of law under Article VIII of the West Virginia Constitution, the West Virginia State Bar is authorized to enforce the West Virginia State Bar Administrative Rules as adopted by the Supreme Court. The former Rules and Regulations of the State Bar are abolished. The State Bar does not have independent authority to promulgate rules, but does have the authority to publish and amend policies and procedures for the internal management of its operations.

(b) Amendments. The Board, the Executive Director, or the chair of any committee may propose an amendment to the State Bar Administrative Rules by forwarding a summary of the proposed amendment to the Clerk of the Supreme Court of Appeals, with a copy to the Chief Justice. The summary must contain a description of the proposed amendment and full text of affected rules showing the changes that are recommended using strikethrough and underline to indicate the specific changes. Proposed amendments must be made sufficiently in advance to allow time for the Court to review the proposal, place the proposal for public comment, and make revisions prior to the effective date.

(c) Consideration of proposed amendments. The Court will promptly consider any proposed amendments and the Clerk will inform the Executive Director of the outcome of the Court's consideration. Any amendments that are proposed by the Court on its own motion will be delivered to the Executive Director for input from the Board of Governors or other appropriate persons or committees prior to the time the proposed amendments are placed for public comment.

[DRAFTING COMMENTS: Apart from the addition of Bylaws 10.11 and 10.12, no substantial changes were made to this section. The immunity language in Bylaw 10.03 was simplified. Outdated references to Board-promulgated rules and the lawyer disciplinary board were also deleted. Although Bylaw 10.11 is new, it generally represents the current practice of the State Bar regarding election of an ABA Representative. However, the current practice has been modified in two respects regarding the period of service. First, a two-year term better coincides with the ABA governance timeframes. Second, no term limits should be imposed since prior experience and longevity provide more effective ABA representation. Bylaw 10.12 provides a structure for amendments to the State Bar Administrative Rules, and makes clear that the State Bar does not have independent authority to promulgate rules. Elimination of Robert's Rules of Order in favor of the Modern Rules of Order, in Bylaw 10.08, was approved by the Board of Governors in November 2015.]

## **Article 11. ~~Article X.~~ Amendments and Referenda**

### **Bylaw 11.01 ~~§1.~~ Amendments at annual meeting**

(a) Subject to the final approval of the Supreme Court of Appeals, the Constitution or these Bylaws may be altered or amended at any annual meeting by the State Bar membership, on recommendation of the Board, by vote of a majority of the members present or, without such recommendation, by vote of two thirds of the members present.

(b) For an amendment to be properly brought before an annual meeting by a member without a recommendation of the Board, the member must have given timely notice thereof in writing to the Executive Director of the State Bar. To be timely, a member's notice must be delivered to or mailed and received at the offices for the State Bar, not less than forty days prior to the meeting; provided, however, that in the event that less than fifty days' notice or prior public disclosure of the date of the meeting is given or made to members, notice by the member to be timely must be so received not later than the close of business on the eighth day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A member's notice to the Executive Director shall set forth as to each amendment the member proposes to bring before the annual meeting: (1) a brief description of the amendment; (2) the reasons for the amendment; (3) the added and deleted text of the amendment; and (4) the name and address of the member proposing such amendment.

## **Bylaw 11.02 ~~§ 2~~. Amendments by mail or electronic vote**

The Board may at any time recommend and submit to the members of the State Bar, by mail or electronic transmission voting procedures, proposed alterations or amendments to the Constitution and to the Bylaws of the State Bar, and such alterations or amendments shall become effective when approved by a majority of the members voting, and by the Supreme Court of Appeals.

## **Bylaw 11.03 ~~§ 3~~. Referenda**

For the purpose of ascertaining the opinion of the membership, the Board may at any time, ~~and when directed so to do at an annual meeting shall~~, refer and submit to the membership of the State Bar, defined questions affecting the substance or administration of the law, or affecting the functions or policy of the State Bar.

[DRAFTING COMMENTS: Changes were made to this article in order to dispense with the requirement that amendments always be addressed during annual bar meetings and permit an electronic vote on amendments to the constitution or bylaws.

## **Article 12 Annual Meeting Resolutions**

### **Bylaw 12.01 Procedure for annual meeting resolutions**

~~(a) Chapter VI. Procedure for the Presentation of Annual Meeting Resolutions.~~ The annual meeting of the State Bar provides the membership of the State Bar with an opportunity to address issues of concern. ~~So that the full membership may be notified adequately of pending issues to be discussed at the annual meeting and otherwise afforded the opportunity to vote with respect to such issues, the following procedural rules are adopted:~~

(b) Any active or active non-practicing member of the State Bar may submit a resolution or motion for consideration at the annual meeting of the State Bar. All annual meeting resolutions and motions, other than those previously approved by the Board for consideration at the annual meeting, must be received by the Executive Director of the Bar at least forty-five days prior to the commencement of the annual meeting of the State Bar. The Executive Director shall cause each resolution or motion, or a summary thereof, to be published in a state bar publication or distributed to the membership electronically at least twenty days prior to the commencement of the annual ~~convention~~ meeting. A notice stating the time and place of the annual meeting shall accompany publication or distribution of the resolution or motion or summary.

The Board ~~of governors~~ shall review all such proposed resolutions and motions prior to commencement of the annual meeting. The Board may in its discretion endorse, oppose, recommend amendment of, or otherwise state its official position respecting any proposed resolution or motion presented at the annual meeting.

[DRAFTING COMMENTS: This was moved from the former Chapter VI of the Rules and Regulations. The confusing reference to procedural rules was eliminated in the first paragraph. The bylaw provisions were also updated to permit electronic distribution of proposed resolutions and motions.]

## **Article 13 Communications and Notice**

### **Bylaw 13.01 Communications and notice to State Bar**

Unless otherwise specified, any communication or notice which is required or permitted to be sent to the State Bar or the Executive Director may be made by email to [executivedirector@wvbar.org](mailto:executivedirector@wvbar.org), or by first class mail or courier delivery service addressed to WV State Bar Executive Director, 2000 Deitrick Blvd., Charleston, WV 25311. If permitted by the Board, such communications may be made electronically using a web-based membership portal maintained by the State Bar.

### **Bylaw 13.02 Communications and notice from State Bar**

Unless otherwise specified, any communication or notice which is required or permitted to be sent from the State Bar to a member may be made by email or first class mail based upon the information on record with the State Bar. Notice to a member shall presumptively be deemed adequate if transmitted using the membership information on record with the State Bar. If permitted by the Board, such communications may be made electronically using a web-based membership portal maintained by the State Bar.

[DRAFTING COMMENTS: This is a new article intended to clarify the acceptable methods of communication between the Bar and its members. It permits notices to be made and received electronically or via a membership portal maintained by the State Bar on the Internet.]

## **Article 14 Legal Practice Entities**

### **Bylaw 14.01 Registration of practice entities**

The State Bar is the designee of the Supreme Court of Appeals for purposes of reviewing and issuing registration certificates for legal practice entities as required by law. The procedures for application, review, issuance, and renewal are set forth in the West Virginia State Bar Administrative Rules 11 and 12.

[DRAFTING COMMENTS: This a new article that contains the general authorizing language related to the State Bar's authority to issue registration certification for legal practice entities.]

## **Article 15 Mandatory continuing legal education**

### **Bylaw 15.01 Obligation to maintain continuing legal education**

~~Chapter VII, ¶ 1. Purpose. These rules establish minimum objective requirements, and the means by which such requirement shall be enforced, to satisfy every lawyer's~~ Every lawyer has a mandatory obligation to continue his or her legal education throughout the their period of his or her active practice in order to maintain the knowledge and skill necessary to fulfill their professional responsibilities. Failure to comply with mandatory continuing legal education requirements as set forth in State Bar Administrative Rule 6 may result in suspension from the practice of law and other sanctions.

### **Bylaw 15.02 Mandatory Continuing Legal Education Commission**

~~(a) Chapter VII, ¶ 2. Continuing Legal Education Commission. There is hereby established a~~ The Mandatory Continuing Legal Education Commission ("Commission") to administer the program of mandatory continuing legal education established by these rules. ~~2.1~~ The Commission shall consist of nine members, at least seven of whom shall be active members of the State Bar. It will elect its own chairperson. ~~2.2~~ Members of the Commission shall be appointed by the Board of Governors of the State Bar and confirmed by the Supreme Court of Appeals. Any vacancy occurring on the Commission shall be filled by the same appointment procedure. ~~2.3~~ At least three members of the Commission shall be under the age of 36 or admitted to The West Virginia State Bar for less than ten years. ~~2.4~~ Of the members first appointed, three shall be appointed for 1 year, three for 2 years and three for 3 years. Thereafter, Appointments shall be for a 3-year term. No member may serve more than two consecutive 3-year terms. Terms shall expire on June 30 of the applicable year. ~~2.5~~ Members shall continue to serve until their successors are appointed and confirmed notwithstanding any age or years-of-admission restrictions.

~~(b) For any meeting of the Commission a majority of the duly appointed members shall constitute a quorum. Attendance of and~~ Participation in meetings may be by conference telephone or similar two-way electronic remote communications equipment. ~~2.6~~

~~(c) The members of the Commission shall have judicial immunity from civil liability for acts or omissions occurring in the performance of their duties as provided in Bylaw 10.03. Any member of the Commission may be removed by the Supreme Court of Appeals for cause, which may include failure to attend Commission meetings, disability, or misconduct.~~ ~~2.7~~ Members of the Commission shall serve without compensation, but each member is entitled to reimbursement for his or her actual and necessary expenses in the performance of Commission duties.

### **Bylaw 15.03 Powers and Duties of the Commission**

~~Rules and Regulations, Chapter VII, ¶ 3. Powers and Duties of the Commission. The Commission shall administer the program of mandatory continuing legal education established by these rules and shall have the following powers and duties:~~

(a) ~~3.1~~ To ~~accredit~~ approve, pursuant to ~~its rules and regulations~~ State Bar Administrative Rule 6, individual courses and all or portions of the entire continuing legal education programs and presumptively ~~accredit~~ specific providers ~~sponsors~~ which, in the ~~judgement~~ judgment of the Commission, will provide legal education courses and programs that satisfy the educational objectives of ~~these rules~~ this Bylaw and State Bar Administrative Rule 6.

(b) ~~3.2~~ To determine the number of credit hours to be allowed for each accredited course.

(c) ~~3.3~~ To grant conditional, partial, or complete exemptions from the education requirements of these rules on an individual basis in cases of extreme hardship or extenuating circumstances.

(d) To notify each lawyer who is not in compliance with the reporting or minimum continuing legal education requirements of the specific manner of noncompliance.

(e) ~~3.4~~ To seek appropriate disciplinary action by the Supreme Court of Appeals in the case of any active member of the State Bar failing to comply with the mandatory continuing legal education requirements of these rules.

(f) ~~3.5~~ To meet, conduct hearings, and make determinations as required to administer the program of mandatory continuing legal education established by these rules.

(g) ~~3.6~~ To recommend reinstatement to active status in the case of any member of the State Bar attaining compliance with the mandatory continuing legal education requirements of these rules after having been suspended from active status for noncompliance.

(h) ~~3.7~~ To submit annually a written report to the Supreme Court of Appeals and to the Board of Governors of the State Bar of the Commission's activities during the preceding year and including any recommendations for changes in these rules to this Bylaw or State Bar Administrative Rule 6.

(i) ~~3.8~~ To report to the Board of Governors of the State Bar any significant deficiency in the availability of continuing legal education courses or programs within the State of West Virginia, considering the educational requirements of these rules.

(j) ~~3.9~~ To adopt, publish and enforce rules and regulations pertaining to its powers and duties. To promulgate, and amend and revoke, policies and procedures for the transaction of its business, for the procedure in meetings of the Commission, and for the general administrative conduct of the Commission that are consistent with this Bylaw and State Bar Administrative Rule 6.

(k) To impose and collect fees payable to the West Virginia State Bar as set forth in State Bar Administrative Rule 6.

[DRAFTING COMMENTS: Article 15 sets out the primary obligation to maintain continuing legal education, the structure of the Commission, and the powers and duties of the Commission. These items were formerly contained in Chapter VII of the Rules and Regulations. Consistent with the overall governance structure of these revisions, the primary authority is contained in the bylaws, with the nuts and bolts details set forth in the administrative rule. In addition to the Rules and Regulations in Chapter VII, the Commission has also adopted another set of "Regulations" that are not published

in the Michie's Court Rules volume. These stand-alone regulations are being incorporated into State Bar Administrative Rule 6.]

## **Article 16 Judicial and Lawyer Assistance Program**

### **Bylaw 16.01 Judicial and Lawyer Assistance Program**

The State Bar is authorized to coordinate with the West Virginia Judicial and Lawyer Assistance Program established in West Virginia State Bar Administrative Rule 9 to the extent necessary to effectively carry out the purposes of the program.

[DRAFTING COMMENTS: The Lawyer Assistance Program was originally promulgated as a stand-alone rule. By order entered September 20, 2017, the Court amended several rules to combine the functions and operations of the Lawyer Assistance Program with the Judicial Committee on Assistance and Intervention. The new combined program is funded by the State Bar and administered by a board of directors appointed by the Board of Governors. This bylaw authorizes the State Bar to coordinate with the program. The amended rules for the combined program, as promulgated by the Court in the September 20, 2017 order, are incorporated as State Bar Administrative Rule 9.]

## **Article 17 Young Lawyer Section**

### **Bylaw 17.01 Young Lawyer Section**

The Young Lawyer Section of the West Virginia State Bar is authorized to assist new lawyers in making the transition between law school and the practice of law by providing a means for personal and professional growth and encouraging participation in the activities of the Bar. The Young Lawyer Section, as provided in West Virginia State Bar Administrative Rule 13, implements and contributes to programs that promote education, leadership, and public service, and assists the State Bar in its mission to improve the administration of justice and increase the legal services provided to the citizens of West Virginia.

Table of Contents

**WEST VIRGINIA STATE BAR ADMINISTRATIVE RULES 1**

**Rule 1 Preamble ..... 1**

**Rule 2 Membership information..... 1**

2.01 Membership register.....1

2.02 Member obligation to maintain current contact information.....1

2.03 Use of membership information.....2

2.04 Registered firm administrator .....2

**Rule 3 Payment of fees; suspension; reinstatement..... 3**

3.01 Manner of payment.....3

3.02 ~~Art. III § 3.~~ Penalty for nonpayment of membership fees .....3

3.03 ~~Art. III § 4.~~ Administrative suspension for nonpayment of membership fees.3

3.04 ~~Art. III § 5.~~ Reinstatement of members administratively suspended for nonpayment of membership fees. ....4

3.05 Penalty for nonpayment of other fees.....4

**Rule 4 — ~~Article III(A)~~ Financial responsibility disclosure; suspension. 5**

4.01 ~~§ 2.~~ Required disclosure..... 5

4.02 Duty to update..... 6

4.03 ~~§ 3.~~ ~~Form and~~ Manner of reporting; availability to the public.....6

4.04 ~~§ 4.~~ ~~Non-compliance.~~ Penalty for nondisclosure ..... 6

4.05 ~~§ 5.~~ Administrative suspension for nondisclosure ..... 6

4.06 ~~§ 6.~~ Reinstatement of members administratively suspended for noncompliance with disclosure..... 7

**Rule 5 — ~~Chapter I.~~ Elections and Referenda ..... 7**

5.01 ~~¶ 1.~~ Committee on elections..... 7

5.02 ~~¶ 2.~~ Nominations for governor ..... 8

5.03 ~~¶ 3.~~ Preparation and ~~mailing~~ distribution of ballots..... 8

5.04 ~~¶ 4.~~ Voting of ballots ..... 9

<del>¶ 5. Checking and Custody of ballots</del> .....	9
5.05 <del>¶ 6. Canvassing of ballots.</del> .....	10
5.06 <del>¶ 7. Other elections and referenda.</del> .....	10

**Rule 6 — ~~Chapter VII. Rules to Govern~~ Mandatory continuing legal education..... 11**

6.01 <del>Regulation 1</del> Definitions .....	11
6.02 <del>Ch. VII ¶ 5. Minimum continuing legal education requirements; required reporting; carry-over credits</del> .....	11
6.03 <del>Bridge-the-Gap Seminar Program</del> .....	12
6.04            Exemptions from mandatory continuing legal education requirements.....	13
6.05 <del>Ch. VII ¶ 6. Obtaining credits to satisfy mandatory continuing legal education requirements</del> .....	14
6.06 <del>Ch. VII ¶ 7 Noncompliance and sanctions</del> .....	15
6.07 <del>Ch. VII ¶ 9. Change to active status</del> .....	17
6.08 <del>Ch. VII ¶ 4. Accreditation of providers and approval of courses, generally.</del> ..	18
6.09 <del>Regulation 4 Standards for approval of continuing legal education activities</del> .....	19
6.10 <del>Regulation 4B Standards and Procedures for accreditation of providers, and approval of programs and activities</del> .....	23
6.11 <del>Regulation 11. Ethics in reporting continuing legal education activities</del> ....	24
6.12 <del>Regulation 12 Time limits</del> .....	24
6.13 <del>Ch. VII. ¶ 8. Confidentiality</del> .....	24

**Rule 7 — ~~Ch. III. Procedure for committees on~~ Unlawful Practice Committee matters .....25**

7.01 <del>Ch. III ¶ 1. Origin of cases</del> .....	25
7.02 <del>Ch. III. ¶ 2. Form of complaint</del> .....	26
7.03 <del>Ch. III ¶ 3. Filing complaints</del> .....	26
7.04            Investigation; consideration by committee.....	26
<del>Ch. III. ¶ 5. Verification and correction of defects in complaint.</del> .....	27
<del>Ch. III ¶ 6. Improper or inadequate complaint.</del> .....	27
<del>Ch. III. ¶ 7. Reports to Committee Chairperson or Designated Reviewing Member by Bar Counsel. Investigation of complaints and recommendation</del> .....	27
7.05            Administrative review proceedings .....	28

7.06	Review by Supreme Court.....	29
7.07	<del>Ch. III, ¶ 12. Payment of expenses.....</del>	<del>29</del>
	<del>Ch. III ¶ 8. Action following investigation and recommendation.....</del>	<del>30</del>
	<del>Ch. III ¶ 9. Institution of proceedings.....</del>	<del>30</del>
<b>Rule 8</b>	<b><del>Art. II, § 11. Emeritus attorneys’ pro bono participation program</del></b>	<b>31</b>
.....		
8.01	<del>Art. II, § 11(b) Definitions.....</del>	<del>31</del>
	<del>(a) (1) "The active practice of law" means that an attorney has been engaged in the practice of law, which includes including, but is not limited to, private practice, in-house counsel positions, public employment or academic employment.....</del>	<del>31</del>
8.02	<del>Certification.....</del>	<del>34</del>
8.03	<del>Activities.....</del>	<del>34</del>
8.04	<del>Withdrawal of certification.....</del>	<del>35</del>
8.05	<del>Mandatory continuing legal education and membership fees.....</del>	<del>35</del>
<b>Rule 9</b>	<b>West Virginia Judicial and Lawyer Assistance Program .....</b>	<b>36</b>
9.01	Preamble.....	36
9.02	Establishment of the West Virginia Judicial and Lawyer Assistance Program (WVJLAP) (WVJLAP).....	36
9.03	Board of Directors.....	37
9.04	Executive Director of the program.....	38
9.05	Volunteers.....	40
9.06	Services.....	41
9.07	Referrals.....	42
9.08	Confidentiality.....	42
9.09	Privilege and immunity.....	43
9.10	Costs.....	43
9.11	Miscellaneous.....	43
<b>Rule 10</b>	<b>Client trust accounts; IOLTA Program .....</b>	<b>44</b>
10.01	Obligation to maintain client trust account.....	44
10.02	Obligation to maintain separate IOLTA trust account, reporting.....	44
10.03	Determining what funds to deposit in an IOLTA trust account.....	45

10.04	<i>Eligible financial institutions</i> .....	45
10.05	<i>IOLTA account requirements</i> .....	46
10.06	<i>Lawyer instructions to IOLTA account institution</i> .....	47
10.07	<i>Exemptions from the IOLTA Program</i> .....	48
10.08	<i>Overdraft notification</i> .....	48
10.09	<i>Disposition of IOLTA funds whose owners cannot be located or cannot be identified</i> .....	49
<del>10.11</del> 10.10	<i>IOLTA Advisory Committee</i> .....	50
10.11	<i>IOLTA Advisory Committee Financial Assistance Protocol</i> .....	50
<del>10.10</del> 10.12	<i>Distribution of IOLTA funds by the West Virginia State Bar</i> .....	52
<b>Rule 11 Legal Corporations</b> .....		<b>53</b>
11.01	<i>Prior approval</i> .....	53
11.02	<i>Application</i> .....	54
11.03	<i>Review</i> .....	54
11.04	<i>Requirements</i> .....	54
11.05	<i>Notification</i> .....	55
11.06	<i>Annual renewal</i> .....	55
11.07	<i>Transition requirements</i> .....	55
<b>Rule 12 Limited Liability Partnerships and Professional Limited Liability Companies</b> .....		<b>57</b>
12.01	<i>Prior Approval</i> .....	57
12.02	<i>Application</i> .....	57
12.03	<i>Review</i> .....	58
12.04	<i>Requirements</i> .....	58
12.05	<i>Notification</i> .....	58
12.06	<i>Annual Renewal</i> .....	59
12.07	<i>Amendments</i> .....	59
12.08	<i>Transition requirements</i> .....	59
<b>Rule 13 Young Lawyer Section</b> .....		<b>61</b>
13.01	<i>Membership and mission</i> .....	61
13.02	<i>Young Lawyer Board—powers and duties</i> .....	61

13.03	<i>Young Lawyer Board—membership</i> .....	61
13.04	<i>Qualifications of Young Lawyer Board district representatives</i> .....	62
13.05	<i>Nomination of Young Lawyer Board district representatives</i> .....	62
13.06	<i>Election and term</i> .....	62
13.07	<i>Election procedure</i> .....	63
13.08	<i>Election of a minority lawyer to the Young Lawyer Board</i> .....	63
13.09	<i>Removal from the Young Lawyer Board</i> .....	63
13.10	<i>Young Lawyer Board vacancies</i> .....	64
13.11	<i>Officers</i> .....	64
13.12	<i>Compensation; expenses</i> .....	65
<b>Rule 14 Succession planning</b> .....		<b>65</b>
14.01	<i>Successor designations</i> .....	65
14.02	<i>Registry of successor designations</i> .....	66
14.03	<i>Responsibility for costs if court-appointed trustee is required</i> .....	66



# WEST VIRGINIA STATE BAR ADMINISTRATIVE RULES

## **Rule 1 Preamble**

Pursuant to the Supreme Court's inherent and exclusive authority to promulgate rules governing and regulating the practice of law in West Virginia, including the creation of the West Virginia State Bar in accordance with that authority and W.Va. Code § 51-1-4a, these West Virginia State Bar Administrative Rules are to be enforced by the West Virginia State Bar.

## **Rule 2 Membership information**

### **2.01 Membership register**

(a) In accordance with Bylaw 2.02, the State Bar shall maintain a register containing information about members. In a manner to be approved by the Board, the register must be made publicly available online in a web-based system for use by courts, other states, and members of the public to obtain the current status of a member, as well as the member's mailing address, and if in active status, the member's telephone number, facsimile number, and financial responsibility disclosure information.

(b) Any member who comes under a minority classification, as hereinafter defined, may choose to include in his or her registration this minority status. Any member so registered is eligible to vote, nominate, and be nominated for the position of Minority Lawyer on the State Bar Board of Governors.

(c) "Minority" is used, similar to federal law, to mean four particular groups who share a race, color, or national origin, as follows: 1) American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintain their culture through a tribe or community; 2) Asian or Pacific Islander - A person having origins in any of the original people of the Far East, Southeast Asia, India, or the Pacific Islands; 3) Black - A person having origins in any of the black racial groups of Africa; and 4) Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

### **2.02 Member obligation to maintain current contact information**

As required by Bylaw 2.02(b), each member is required to notify the State Bar within ten days of any change in the member's contact information, including e-mail address. In a manner to be approved the Board, the Bar may permit or require all updates to member contact information to be made using a web-based membership portal maintained by the State Bar.

### **2.03 Use of membership information**

(a) Use by the State Bar. Membership information maintained by the State Bar may be used by the State Bar to carry out its official obligations, including, but not limited to the following specific uses.

(b) Use by governmental third parties. The State Bar is permitted to allow governmental third parties to obtain access to information in the membership register if a written memorandum of understanding between the Bar and the governmental third party is approved by the Board that sets forth the purpose of the access, the means of access, the items to be made available, and other components necessary to ensure an accurate, orderly, and secure exchange of information.

(c) Use by non-governmental third parties; member opt-out. The State Bar is permitted to allow non-governmental third parties to obtain access to information in the membership register if a written contract between the Bar and the non-governmental third party is approved by the Executive Committee that sets forth the purpose of the access, the means of access, the items to be made available, the fee for access, and other components necessary to ensure an accurate and orderly delivery of information. Pursuant to Bylaw 3.04, the Board may establish fees for access to membership information by non-governmental third parties. In a manner to be approved by the Board, a member may opt-out of having the member's contact information provided to non-governmental third parties.

### **2.04 Registered firm administrator**

In order to facilitate the bulk update of membership information by law firms, state agencies, and other similar entities, the Bar may provide a method to register and approve an administrator who assumes the obligation to provide current member contact information as required by Rule 2.02. In the event a member separates from employment with an organization with a registered firm administrator, the member is required to notify the State Bar within ten days and provide current contact information.

[DRAFTING COMMENTS: Rule 2 is new. It provides specific details about how membership information is maintained, what information is publicly available online, and the ways in which the State Bar is permitted to use membership information. It also provides some flexibility for the Bar in how members are required to keep contact information current. Rule 2.03 allows the Board to approve methods for governmental third parties to access membership information (i.e. for case management systems and status reporting). This rule also addresses ways in which non-governmental third parties may access membership information, including an opportunity for members to opt out of allowing their membership information to be used by non-governmental third parties. The rule makes clear that fees can be charged for access to membership information. Finally, Rule 2.04 provides a method for bulk updates of membership information by a firm administrator.]

## **Rule 3 Payment of fees; suspension; reinstatement**

### **3.01 Manner of payment**

Membership fees and other fees are payable in a manner to be determined by the Board, which may include required use of a web-based membership portal maintained by the State Bar. In order to facilitate the bulk payment of membership fees by law firms, state agencies, and other similar entities, the Bar may provide a method to register and approve an administrator who assumes the obligation to pay membership fees and other fees or penalties.

### **3.02 ~~Art. III § 3.~~ Penalty for nonpayment of membership fees**

(a) *Active and active non-practicing members.* On After the first day of September of each year, a penalty of ~~\$25.00~~ in an amount set by the Board, not less than \$200, shall be added to all delinquent active membership fees. assessed to any active or active non-practicing member who is delinquent in his or her membership fees. On or after this date, †The Executive Director shall notify all members in default in the payment of membership fees of their delinquency, and that the penalty has attached, and that the member will be automatically suspended if the membership fee and penalty are not paid within sixty days of the mailing date of the notice. Such notice shall be given by United States certified or registered mail, addressed to such member at his or her last known post-office mailing address of record.

(b) *Inactive members.* The State Bar is not required to send annual membership fee notices to inactive members who have failed to pay inactive membership fees for a period of three years. After the first day of September of the third year, the Executive Director shall notify each such member of the delinquency in the payment of the membership fees, and that the member will be automatically suspended if the membership fees are not paid within sixty days.

### **3.03 ~~Art. III § 4.~~ Administrative suspension for nonpayment of membership fees**

(a) *Active members.* If an active member remains in default for sixty days after the date of mailing the notice provided by ~~the preceding section~~ Rule 3.02, he or she shall be automatically suspended from active membership in the State Bar and shall not further engage in the Practice of Law until he or she has been reinstated. The Executive Director shall give notice of such suspension to the Judges of Courts of Record ~~of the judicial circuit in which such delinquent member principally practices in the State~~, the Clerk of the Supreme Court of Appeals and such other courts, clerks, tribunals, or bodies — judicial, administrative or executive — as the Board of Governors may designate, ~~and it shall be the duty of said judges, courts, clerks, tribunals, and bodies as are so notified to refuse and deny to such member the privilege of appearing and practicing in said courts, tribunals, and bodies until such time as such member shall have been reinstated as an active member.~~ Written notice of the suspension

shall be given to ~~such~~ the delinquent member and service thereof shall be complete upon ~~mailing the same addressed to such suspended member at his or her last address appearing on the records of the state bar.~~ by certified or registered mail, addressed to such member at his or her mailing address of record. It is the duty of every member of the State Bar to keep informed relative to the payment of his or her ~~dues~~ membership fees, and failure to receive notice of nonpayment or suspension shall not affect the operation of such suspension.

(b) Active non-practicing and inactive members. If an active non-practicing or inactive member remains in default for sixty days after the date of mailing the notice provided by Rule 3.02, he or she will be automatically suspended from membership in the State Bar and shall not be entitled to any rights or privileges of membership until he or she has been reinstated.

### **3.04 ~~Art. III § 5.~~ Reinstatement of members administratively suspended for nonpayment of membership fees.**

(a) Active members. Whenever an active member suspended solely for nonpayment of membership fees ~~shall have~~ has paid all accrued fees and penalties, and ~~shall have~~ has shown that the member is in compliance with the pertinent ~~CLE~~ mandatory continuing legal education rules and requirements, he or she shall be automatically reinstated and the Executive Director shall thereupon give notice thereof to the judges, courts, clerks, tribunals, and bodies to which notice has been given of the suspension of such member for the nonpayment of membership fees. In addition to the ~~twenty-five dollar (\$25.00)~~ penalty authorized by ~~Article 3, Section III~~ Rule 3.02, a ~~penalty~~ reinstatement fee ~~seventy-five dollars (\$75.00)~~ in an amount set by the Board, not less than \$200, shall be added to the fees owed by ~~all~~ active members who are suspended for the nonpayment of membership fees.

(b) Active non-practicing members. Whenever an active non-practicing member is suspended for nonpayment of membership fees has paid all accrued fees and penalties, he or she shall be reinstated by the Executive Director. In addition to the penalty authorized under Rule 3.02, a reinstatement fee in an amount set by the Board, not less than \$200, shall be added to the fees owed by active non-practicing members who are suspended for the nonpayment of membership fees.

(c) Inactive members. Whenever an active non-practicing member is suspended for nonpayment of membership fees has paid all accrued fees and penalties, he or she shall be reinstated by the Executive Director. A reinstatement fee in an amount set by the Board, not less than \$100, shall be added to the fees owed by inactive members who are suspended for the nonpayment of membership fees.

### **3.05 Penalty for nonpayment of other fees**

Any penalties for nonpayment of other fees shall be determined by the Board as authorized under Bylaw 3.04.

[DRAFTING COMMENTS: Rules 3.01 and 3.05 are new and provide flexibility in the methodology for payment of fees and penalties. The other provisions of this Rule are derived from Article III of the former Bylaws. Principal changes involve increased sanctions for nonpayment of membership fees and clarification of how sanctions affect different member classifications.]

## **Rule 4 — ~~Article III(A)~~ Financial responsibility disclosure; suspension**

~~§ 1. Purpose. The purpose of this Bylaw is to require disclosure about the financial responsibility for professional liability claims of each active lawyer admitted to practice law in West Virginia. Each lawyer, upon admission to practice law in West Virginia, and with each subsequent annual membership dues payment, shall submit the disclosure required by this Bylaw.~~

### **4.01 ~~§ 2~~ Required disclosure**

On or before July 1 of each year every active lawyer member shall — personally or through a registered firm administrator — disclose to the West Virginia State Bar ~~on or before September 1 of each year:~~

(a) (1) whether the lawyer is engaged in the private practice of law (5) member is exempt from the provisions of this Rule because the member is engaged in the Practice of Law as a full-time government lawyer or in-house counsel and does not represent clients outside that capacity;

(b) whether the member is engaged in the private Practice of Law; and

(1) if so engaged, whether the lawyer member is currently covered by professional liability insurance with limits of not less than \$100,000 per claim and \$300,000 policy aggregate covering generally insurable acts, errors, and omissions occurring in the Practice of Law, other than an extended reporting endorsement;

(2) if the lawyer member is so engaged and not covered by professional liability insurance in the above minimum amounts, whether the lawyer member has another form of adequate financial responsibility which means funds, in an amount not less than \$100,000, available to satisfy any liability of the lawyer member arising from acts or omissions by the lawyer member or other persons employed or otherwise retained by the lawyer member and that these funds shall be available in the form of a deposit in a financial institution of cash, bank certificate of deposit or United States Treasury obligation, a bank letter of credit or a surety or insurance company bond and describing same with reasonable particularity; and

(3) whether there ~~is~~ are any unsatisfied final judgments ~~after appeal~~ against either the lawyer member, or any firm or any professional corporation in which the lawyer member has practiced, for acts, errors or omissions, including, but not limited to, acts of dishonesty, fraud

or intentional wrongdoing, arising out of the performance of legal services by the lawyer member, including the date, amount, and court where ~~the~~ each judgment(s) was rendered.

#### **4.02 Duty to update**

It is the duty of every active lawyer member — personally or through a registered firm administrator — to report within 10 days any changes which to the financial responsibility disclosure that occur between the annual reporting required in Rule 4.01.

#### **4.03 ~~§ 3. Form and Manner of reporting; availability to the public~~**

The ~~foregoing~~ required disclosure in Rule 4.01 shall be certified by each active lawyer member admitted to practice law in West Virginia on the State Bar's Active Membership Fee Notice and shall be made available to the public by such means as may be designated by the West Virginia State Bar. In a manner to be approved the Board, the Bar may require the financial responsibility disclosure to be made using a web-based membership portal maintained by the State Bar.

#### **4.04 ~~§ 4. Non-compliance. Penalty for nondisclosure~~**

After the first day of September of each year, a penalty ~~of twenty-five dollars (\$25.00)~~ in an amount set by the Board, not less than \$200, shall be assessed to any active lawyer member who has not complied with this Bylaw the financial responsibility disclosure requirement. On or after this date, †The Executive Director shall notify all members in noncompliance of their delinquency and noncompliant members that the penalty has attached because of their delinquency, and that the member will be automatically suspended if the disclosure requirement is not met within sixty days of the mailing date of the notice. Such notice shall be given by United States certified or registered mail, addressed to such member at his or her last known post office mailing address of record.

#### **4.05 ~~§ 5. Administrative suspension for nondisclosure~~**

If an active member fails to ~~disclose by~~ comply with the disclosure requirement within sixty days after the mailing date of mailing of the notice provided in the preceding Section (4) Rule 4.04, he or she shall be automatically suspended from active membership in the State Bar and shall not further engage in Practice of Law until he or she has been reinstated. On or after this date, †The Executive Director shall give notice of such suspension to the Judges of the Courts of Record of the judicial circuit in which such noncompliant member principally practices in the State, the Clerk of the Supreme Court of Appeals and such other courts, clerks, tribunals, or bodies — judicial, administrative or executive — as the Board of Governors may designate. and it shall be the duty of said judges, courts, clerks, tribunals and bodies as are so notified to refuse and deny to such member the privilege of appearing and practicing in said courts, tribunals and bodies until such time as such member shall have been

~~reinstated as an active member. Written Notice of such the suspension shall be given to such the non-compliant member and service thereof shall be complete upon mailing the same addressed to such non-compliant member at his or her last address appearing on the records of the State Bar, by certified or registered mail, addressed to the member at his or her mailing address of record.~~

#### **4.06 ~~§ 6.~~ Reinstatement of members administratively suspended for noncompliance with disclosure**

Whenever a member suspended solely for noncompliance with disclosure ~~shall have~~ has paid all accrued penalties and fees and shall have has shown that the member is in compliance with the disclosure requirements and pertinent ~~CLE rules and mandatory continuing legal education~~ requirements, he or she shall be automatically reinstated and the Executive Director shall thereupon give notice thereof to the judges, courts, clerks, tribunals, and bodies to which notice has been given of the suspension of such member for the noncompliance with disclosure. In addition to the ~~\$25.00~~ penalty authorized by ~~Article III(A) Section 4 Rule 4.04~~, a penalty reinstatement fee of \$75.00 in an amount set by the Board, not less than \$200, shall be added to the fees owed by all members who are suspended for ~~the~~ non-compliance with the financial responsibility disclosure requirements.

[DRAFTING COMMENTS: The provisions of this Rule are derived from Article III(A) of the former Bylaws. Section 1 of Article III(A), in modified form, is contained in Bylaw 4.01 as the general authority to require financial responsibility disclosure. The specifics, from sections 2-6 of Article III(A), are set out in Administrative Rule 4 above, with the principal change being an increase in the monetary sanction for non-disclosure.]

### **Rule 5 — ~~Chapter I.~~ Elections and Referenda**

#### **5.01 ~~¶ 1.~~ Committee on elections**

(a) The President shall annually appoint a committee on elections, consisting of ~~three~~ up to twelve active and active non-practicing members in good standing, who shall not be members of the Board of Governors. A quorum for conducting business shall consist of three members. The nomination of a member of ~~such the~~ committee for the office of governor shall automatically vacate his or her membership. Any vacancy in ~~such the~~ committee shall be filled by the President. ~~Failure to act shall create a vacancy.~~

(b) The President shall designate the chairperson of ~~such the~~ committee. The Executive Director of the State Bar shall act as the secretary of ~~such the~~ committee and shall keep a record of its proceedings.

(c) ~~Said~~ The committee shall have jurisdiction over, and shall supervise the conduct of, the election for governors, and, at the request of the Board, other elections and referenda.

(d) Any question arising as to the regularity of a nomination, or the qualifications of any person nominated, or otherwise in connection with the nomination of candidates, or the conduct of an election or a referendum, shall be referred by the Executive Director to ~~said the~~ committee. The committee shall promptly meet and determine any such question, and shall report its decision to the Executive Director and to the Board. The Executive Director shall thereupon ~~mail a copy of~~ transmit such the decision to such persons affected thereby as the committee may direct.

(e) Any nominee or candidate who is adversely affected by such a decision as to his or her nomination or as to the election, or any active or active non-practicing member of the State Bar who is adversely affected by such a decision as to his or her right to vote in ~~such any~~ election, may appeal therefrom to the Board of Governors. ~~Such The~~ appeal shall be perfected by filing with the Executive Director a notice of appeal, containing a clear statement of the grounds on which the decision of the committee is alleged to be erroneous, within five days from ~~the mailing of the copy~~ transmittal of the decision as provided ~~for~~ in ~~paragraph 1(d)~~ Rule 5.01(d).

## **5.02 ~~¶2~~ Nominations for governor**

~~(a) In the year 1978, and in each year thereafter,~~ On or before January 20th of each year the Executive Director shall mail to each active and active non-practicing member in good standing of each State Bar district from which a governor is to be elected, a notice of ~~such fact~~ the upcoming election and a form of nominating petition. No member shall sign more than one nominating petition in any election year. All nominating petitions shall be submitted to the Executive Director in the year in which the election takes place, ~~(b) All nominating petitions shall be filed with the Executive Director,~~ not later than the 10th day of February of the respective election year.

(b) On or before January 20<sup>th</sup> of each year in which a minority lawyer is to be elected as a governor in that position, the Executive Director shall mail to each active and active non-practicing member in good standing who is registered as a minority lawyer with the State Bar, a notice of the upcoming election and a form of nominating petition. No eligible member shall sign more than one nominating petition submitted to the Executive Director in the year in which the election takes place. All nominating petitions shall be submitted to the Executive Director not later than the 10<sup>th</sup> day of February of the election year.

## **5.03 ~~¶3~~ Preparation and mailing distribution of ballots.**

(a) The Executive Director shall ~~prepare a sufficient number of appropriate ballots for~~ transmit directions for accessing the electronic ballot to the voters of each district in which an election is to be held. Each ballot shall contain in alphabetical order the names of all qualified persons nominated for the district. On or before the 1st day of March, ~~an appropriate ballot shall be mailed~~ a notice with directions for accessing the electronic ballot shall be emailed to

each active and active non-practicing member in good standing of each such district, ~~together with a ballot envelope and an addressed envelope for the return of the ballot.~~

(b) If an active member shall changes his or her principal office between the time the ballots are mailed ~~emailed~~ and the date of the election, or if an active non-practicing member changes his or her residence address in this interim period, whereby he or she cannot vote for governor from his or her former place of maintaining his or her principal office or residence, he or she shall, upon supplying the Executive Director, ~~on or before~~ notice of such change at least five days preceding the date of the election, be entitled to vote for governor from his or her new place of maintaining his or her principal office or residence if such new district is on the ballot for that year, and the Executive Director shall, upon receipt ~~such~~ of satisfactory notice and proof of change, ~~and upon surrender of the ballot, if any, previously mailed to such member,~~ supply such member with access to a proper ballot for his or her new place of residence or principal office district.

(c) ~~When a member entitled to vote has not for any reason received his or her ballot, or when such ballot has been lost or destroyed, another ballot shall be supplied him or her by the Executive Director upon receipt of proof satisfactory to the Executive Director of such nonreceipt, loss of destruction. The outside envelope for such ballot shall be marked "duplicate."~~

#### **5.04 ~~¶~~ 4. Voting of ballots**

(a) ~~After the ballot has been marked by the member to whom it is mailed, such member shall enclose the ballot in the envelope furnished by the Executive Director marked "ballot," which envelope shall in turn be enclosed in an envelope addressed to the Clerk of the Supreme Court of Appeals of West Virginia, also furnished by the Executive Director, upon which there shall be a blank where the member shall typewrite or print his or her name and address and another blank on which he or she shall sign his or her name in ink.~~

(b) ~~No ballot shall be accepted by said clerk nor counted by said the committee on elections unless it is enclosed in a properly signed outside envelope and unless it is received by said clerk not later than midnight of March 20th of the election year, unless the deadline is extended for good cause by order of the Supreme Court of Appeals.~~

#### **~~¶~~ 5. Checking and Custody of ballots**

~~Said Clerk shall have the custody of the ballots after they are voted until such ballots are canvassed. They shall be safely kept by said clerk in the outside envelopes containing the ballots with the members' signatures thereon and with the seals thereof unbroken until the ballots are canvassed.~~

### 5.05 ~~¶6.~~ **Canvassing of ballots.**

(a) The results of the electronic ballots shall be canvassed by the committee on elections. On March 21st of each year, or within five days thereafter, not counting weekends and holidays, ~~said the~~ committee shall meet and ~~receive from the Clerk the ballot envelopes as he or she received them~~ review the electronic ballot results.

~~(b) Upon receipt of the ballots from said clerk, said committee shall segregate them as to districts and determine the genuineness of the signatures on the outside envelopes. In case an envelope marked "duplicate" and another envelope bearing the same signature is found, the ballots contained in the envelope marked "duplicate" shall not be counted. Said committee shall thereupon count the said envelopes and make record thereof, remove the inner ballot envelopes therefrom and destroy the outer envelopes before counting the ballots. They shall then count the ballots.~~

~~(c) (b)~~ The nominee who receives the plurality of the votes cast in his or her district shall be declared to be elected from that district. If for any district two or more nominees are found to have received an equal and the highest number of votes, ~~said the~~ committee shall ~~then and there determine the tie by lot,~~ cause a run-off election to be conducted by electronic ballot, in such manner as it may select, and the one so determined shall be certified as elected.

~~(d) (c)~~ ~~Said~~ The committee shall certify to the Executive Director of the State Bar the results of the election, ~~and shall deliver a copy of the certificate of results to said clerk, who shall preserve the same among the records of his or her office.~~

~~(e) (d)~~ The Executive Director shall forthwith publicly announce the results of the canvass and notify each candidate ~~by mail~~ of the results of the election. At the ~~annual~~ Board's quarterly meeting following the election the Executive Director shall present the certificate of ~~said the~~ committee on elections and the President shall officially declare the result.

~~(f) Upon the completion of the canvass, said committee shall seal the ballots in an envelope and deliver them to the Executive Director, who shall keep them for one year and then destroy them, unless otherwise ordered by the Board.~~

### 5.06 ~~¶7.~~ **Other elections and referenda.**

Unless otherwise provided by order of the Supreme Court of Appeals, the applicable provisions hereof of this Rule shall apply to any election on the adoption of proposed amendments to the Constitution and Bylaws and to any referendum on any proposal submitted to the membership under the applicable provisions of Article ~~X~~ 11 of the Bylaws.

[DRAFTING COMMENTS: This Rule is derived from Chapter I of the State Bar Rules and Regulations. In addition to formatting and consistency changes, the Rule now provides flexibility with regard to certain types of notice and eliminates archaic provisions that have not been followed. The electronic voting procedures have been in use for several years under a Supreme Court Administrative Order. In addition, inserted language would allow the Court to

issue an order modifying deadlines and procedures. This has already been done at least once, and it may be necessary when these changes are ultimately promulgated.]

## **Rule 6 — ~~Chapter VII. Rules to Govern~~ Mandatory continuing legal education**

### **6.01 ~~Regulation 1~~ Definitions**

(a) "Active non-practicing lawyers" — An active non-practicing member of the West Virginia State Bar as defined in Bylaw 2.04.

(a)(b) ~~Regulation 1,1.~~ "Approved activity" — a continuing legal education activity that is offered by a presumptively-accredited provider under Rule 6.08, or an individual continuing legal education activity that has been approved by the Mandatory ~~CLE~~ Continuing Legal Education Commission ("Commission").

(b)(c) ~~Regulation 1,2.~~ "Commission" — The Mandatory Continuing Legal Education ("MCLE") Commission established in Bylaw 15.02.

(c)(d) ~~Regulation 1,3.~~ "Credit hour" — ~~See regulation 4A13.~~ Each period of fifty minutes of instruction actually attended in an approved activity.

(d)(e) ~~Regulation 1,4.~~ "Inactive lawyers" — An inactive member of the West Virginia State Bar as defined in Bylaw 2.05. ~~who is in good standing but who is not an active member as defined in Article II of the Bylaws of the West Virginia State Bar.~~

(e)(f) ~~Regulation 1,5.~~ "In-house activity" — Activities ~~sponsored~~ offered by law firms, corporate legal departments, governmental legal agencies, or similar entities for the education of lawyers who are members of the firm, department, or entity.

(f)(g) ~~Regulation 1,6.~~ "Lawyer" or "active member" — An active member ~~in good standing~~ of the West Virginia State Bar as defined in Bylaw 2.03.

(g)(h) ~~Regulation 1,7.~~ "Reporting period" — A time period during which a certain number of credit hours must be obtained.

(h)(i) ~~Regulation 1,8.~~ "Provider" — An entity that offers ~~or sponsors~~ a continuing legal education program.

(i)(j) ~~Regulation 1,9.~~ "Rule": Rules to govern Mandatory Continuing legal Education in West Virginia. "Written materials" — Any materials, whether in writing or electronic digital format, required to be provided as part of the approval of a continuing legal education activity. ~~The "contemporaneously provided" component of the definition seems less like a definition and more like a proscriptive matter that is better suited for another location in the rule.]~~

### **6.02 ~~Ch. VII ¶ 5.~~ Minimum continuing legal education requirements; required reporting; carry-over credits**

(a) *Obligation.* As a condition of maintaining his or her license to practice law in the State of West Virginia, every active member ~~of the State Bar~~ shall satisfy the ~~following~~

minimum continuing legal education and reporting requirements in this Rule. ~~5.1 During each of the first two fiscal years (July 1-June 30) following the adoption of these rules, each active member of the state bar shall complete a minimum of six hours of continuing legal education as approved by these rules or accredited by the Commission. Completion of such activities should be reported by the attorney no later than July 31 of each phase in year.~~

(b) *MCLE requirements.* ~~Ch. VII. ¶5.2 After the above two year phase in period, Each active member of the state bar shall complete a minimum of twenty-four hours of continuing legal education, as approved by these rules this Rule or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses on legal ethics, office management, substance abuse, and/or elimination of bias in the legal profession.~~

(c) *Reporting.* ~~On or before the first day of July 31, 1990, and every other July 31 thereafter, of every even year, each attorney active member must file a report of completion of such continuing legal education activities. The Commission recommends that such report be completed on Form C—Certification of Completion of Approved MCLE Activity. The reporting is to be completed electronically using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based report must include a \$25 fee with the report or it will not be processed.~~

(d) *Carryover credits.* ~~Attorneys who exceed the minimum MCLE requirements in this Rule may carry a maximum of six credit-hours forward to only the next reporting period, except that no carryover credits can be applied to the three-hour minimum requirement for courses on legal ethics, office management, substance abuse attorney wellness, requirement and/or elimination of bias in the legal profession.~~

### **6.03 Bridge-the-Gap Seminar Program**

(a) ~~Ch. VII ¶5.3A~~ *Obligation.* ~~New graduates and new admittees, beginning July 1, 1999, are required to complete a mandatory Bridge-the-Gap seminar Program sponsored by the West Virginia State Bar within six months prior to admission or within twelve twenty-four months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap seminar shall be recorded at least once per year. Program shall be provided by the State Bar at least twice per year at locations within West Virginia. The Bridge-the-Gap course Program will be provided free of charge to new admittees as an audio tape or video tape or CD-Rom/DVD. MCLE Continuing legal education credit shall be available for completing the mandatory Bridge-the-Gap seminar Program.~~

(b) *Suspension.* ~~Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap seminar Program within sixty days six months after written notice of noncompliance from the MCLE Commission shall have such lawyer's his or her license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with such this requirement. Any member of the West Virginia State Bar otherwise in good standing who is suspended for failure to complete the mandatory Bridge-the-Gap~~

Program shall be reinstated as a member of the West Virginia State Bar upon completion of the mandatory course, payment of a reinstatement fee of \$200, and fulfillment of any other such applicable administrative requirements.

(c) Exemption. A member required to complete the Bridge-the-Gap Program may, upon application to and approval by the Executive Director, be exempted from the requirement if: (1) the member can certify having been admitted to practice in another jurisdiction for a minimum of five years; or (2) the Commission can certify that the member has completed a mandatory new lawyer training program offered by the state bar of another jurisdiction of at least seven credits, including two credits of legal ethics, office management, attorney wellness, or elimination of bias in the legal profession. The request for an exemption must be filed no later than twenty-four months after admission to the West Virginia State Bar and no extensions of time are permitted.

(d) Extension of time. The time for completion of the Program may, upon application to and approval by the Executive Director, be extended. Written applications for an extension must be received by the Executive Director no later than thirty days after the deadline to complete the Program or obtain an exemption. If the written application includes supporting documentation that demonstrates hardship or other good cause for an extension, the member will be permitted to complete the Program at the next regularly scheduled opportunity. If the application for extension does not demonstrate hardship or good cause warranting an extension, the member must pay a late fee of \$200 and complete the Program at the next regularly scheduled opportunity.

#### **6.04 Exemptions from mandatory continuing legal education requirements**

(a) ~~Ch. VII ¶5.3B~~ Any lawyer not previously admitted to practice in West Virginia who is admitted during the first twelve months of any 24-month reporting period is required to complete ~~12~~ twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, ~~or substance abuse~~ attorney wellness, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer not previously admitted who is admitted during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(b) Any lawyer previously admitted to the State Bar who is restored to active status pursuant to Rule 6.07 during the first twelve months of any 24-month reporting period is required to complete twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney wellness, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer who is restored to active status under Rule 6.07 during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(c) ~~Ch. VII ¶5.4~~ For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial or

complete exemptions of these minimum continuing legal education requirements. Any such exemption shall be reviewed by the Commission at least once during each reporting period, unless a lifetime conditional exemption has been granted.

~~(d) Ch. VII ¶5.5 Active but not non-practicing and inactive members, Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Senior Status Justices, Senior Status Circuit Judges~~ judicial officers as specified in Bylaw 2.07(d), the Clerk of the Supreme Court of Appeals, the Deputy Clerk of the Supreme Court of Appeals, and any other individuals as may hereafter, from time to time, be designated by the Supreme Court of Appeals, are not required to comply with these requirements.

#### **6.05 ~~Ch. VII ¶6.~~ Obtaining credits to satisfy mandatory continuing legal education requirements**

Members of the State Bar may obtain credit for purposes of the mandatory continuing legal education requirements ~~established by these rules~~ as follows:

~~(a) Ch. VII ¶6.1~~ One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course. A credit hour does not ordinarily include coffee breaks, introductory remarks, keynote speeches, business meetings, or dinner speeches.

~~(b) Ch. VII ¶6.2~~ One hour of credit may be obtained for each period of fifty minutes of digital or electronically presented video cassette, videotape, or audio cassette instructions, providing provided that such video/audio tape digital or electronic presentation is accredited by the Commission.

~~(c) Ch. VII ¶6.3~~ No more than half of the total required mandatory continuing legal education requirements may be satisfied by ~~video/audio tape instructions~~ digital or electronic presentations.

~~(d) Ch. VII ¶6.4~~ A maximum of six hours of mandatory continuing legal education credit may be obtained for the teaching of ~~an~~ each individual accredited course when the period of teaching lasts for at least fifty minutes. If the teacher participates in a panel discussion or teaches for a period of less than fifty minutes, three hours of credit may be obtained. No more than half of the total required mandatory continuing legal education credit for any reporting period may be satisfied by teaching credits.

~~(e) Ch. VII ¶6.5~~ The Commission may give credit for ~~the following forms of~~ publication, including, but not limited to, publishing an article in the law review of an ABA-accredited law school; publishing an article in the official publication of the State Bar; authorship or co-authorship of a book; contribution of a paper published in a legal society's annual, hardbound collection; publication of an article in a bar journal in another state; and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists. ~~6-6~~ The Commission has authority to allocate the amount of credits to be given for publication ~~in Paragraph 6.5 above.~~

(f) A lawyer may obtain one credit hour for every three completed hours of pro bono legal service which satisfies Rule 6.1 of the West Virginia Rules of Professional Conduct and is performed during the reporting period through one or more of the following approved pro bono organizations: (1) Legal Aid of West Virginia; (2) the State Bar's West Virginia Free Legal Answers Program; (3) the State Bar's Tuesday Legal Connect Program; and (4) the West Virginia University College of Law Center for Law and Public Service. The approved pro bono organizations shall report each lawyer's pro bono service hours by June 1 of each year in the format required by the Commission. A maximum of six hours of mandatory continuing legal education credit for approved pro bono service hours may be obtained for any two-year reporting period, and no additional service or credit hours may be carried over to the next reporting period. The Commission has the authority to review a lawyer's pro bono service hours to ensure compliance with this rule.

(g) Under the following requirements, a lawyer may obtain one credit hour for attendance at three Alcoholics Anonymous ("AA") meetings. The lawyer must report attendance at AA meetings by email to the Executive Director of the West Virginia Judicial and Lawyer Assistance Program ("WVJLAP") within 30 days of each such attendance. WVJLAP shall report each lawyers AA meeting attendance by June 1 of each year in the format required by the Commission. A maximum of six hours of mandatory continuing legal education credit for AA meeting attendance may be obtained for any two-year reporting period and no meeting attendance or credit hours for such attendance may be carried over to the next reporting period.

~~Ch. VII ¶6.7 The Commission may by its rules and regulations establish additional methods or standards for obtaining credits to satisfy the mandatory continuing legal education requirement.~~

~~Ch. VII ¶6.8 [Abrogated].~~

~~Ch. VII ¶6.9 [Abrogated].~~

## **6.06 ~~Ch. VII ¶7~~ Noncompliance and sanctions**

(a) Noncompliance with the reporting or minimum continuing education requirements of these this Rules may result in the suspension of a lawyer's license to practice law until such lawyer has complied with such these requirements.

(b) ~~Ch. VII ¶7.1~~ As soon as practicable after July 1, the Commission shall notify all active members of the State Bar who are not in compliance with the reporting or minimum continuing education requirements of these rules this Rule of the specific manner in which such member has failed, or appears to have failed, to comply with these rules this Rule. Any member of the State Bar shall have until October 1 to correct such noncompliance or provide the Commission with proper and adequate information to establish that such member is in compliance with these rules this Rule. A delinquency fee of \$50.00 shall be imposed upon

any lawyer who does not submit a report of MCLE activity by July 31, including a request for teaching or publication credit. A delinquency fee of \$100.00 shall be imposed upon any lawyer who does not submit a report of MCLE activity by October 1.~~The following delinquency fee schedule for any lawyer requiring notice of noncompliance with reporting or minimum continuing legal education requirements is hereby established, effective July 1, 1990:~~

<del>Form C, certificate of attendance or online submission not received by July 31</del>	\$50.00
<del>Form C, certificate of attendance or online submission not received by October 1</del>	\$100.00
<del>Form D or Form E (request for publication or teaching credit) not received by July 31</del>	\$50.00

(c) An additional fee of \$100.00 shall be paid upon application for reinstatement by those attorneys whose licenses have been suspended for failure to comply with the MCLE requirement. This fee is in addition to the reinstatement fee charged for suspension for non-payment of membership fees. The attorney will not be reinstated unless all outstanding fees have been paid. MCLE credits, if reported late, ~~on a delinquent Form C~~, will not be entered until all outstanding fees have been paid.

(d) ~~Ch. VII ¶7.2~~ As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the ~~most recent~~ mailing address maintained on the ~~of~~ record ~~of~~ with the State Bar, to any active member ~~of the state bar~~ who has still not established himself or herself to be in compliance with ~~these rules~~ this Rule for the preceding two-year reporting period that after thirty days, the Commission will notify the Supreme Court of Appeals of such this fact and request the Court to suspend such lawyer's license to practice law until the lawyer has established that he or she has complied with the requirements of ~~these rules~~ this Rule for the preceding two-year reporting period.

(e) ~~Ch. VII ¶7.3~~ During such thirty-day period, any lawyer having received a thirty-day notice may demand a hearing before the Commission. Any such hearing shall be conducted within a reasonable period of time after receipt of the demand. At such hearing the lawyer shall have the burden of establishing either (1) ~~(a)~~ that he or she is in fact in compliance with the requirements of ~~these rules~~ this Rule or (2) ~~(b)~~ that he or she is entitled to an exemption. In the event such burden is not carried, the Commission shall by appropriate petition notify the Supreme Court of Appeals that the lawyer has failed to comply with the reporting or education requirements for the preceding two-year reporting period and request the Court to enter an appropriate order suspending such lawyer's license to practice law in the State of West Virginia until ~~such time as such~~ the lawyer has complied with such requirements. Any adverse decision by the Commission may be appealed to the Supreme

Court of Appeals. In the event such lawyer does not prevail at such hearing or appeal, he or she shall be assessed with the costs thereof.

(f) ~~Ch. VII ¶7.4~~ In the event no demand for a hearing is received within the thirty-day period, the Commission shall by appropriate petition notify the Supreme Court of Appeals of the names of any members of the State Bar who have failed to comply with the reporting or education requirements of ~~these rules~~ this Rule for the preceding two-year reporting period and request the Court to enter an appropriate order suspending each such lawyer's license to practice law in the State of West Virginia until ~~such time as such~~ the lawyer has complied with such requirements.

(g) ~~Ch. VII ¶7.5~~ A lawyer who has not complied with the mandatory continuing legal education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two-year reporting period. However, any credit obtained may only be used to satisfy the mandatory continuing legal education requirements for one reporting period.

(h) ~~Ch. VII ¶7.6~~ No lawyer shall be permitted to make use of a transfer from active to inactive or active ~~but not~~ non-practicing membership in the State Bar as a means to circumvent the mandatory continuing legal education requirements of ~~these rules~~.

~~Ch. VII ¶7.7 During the two year phase-in period all references in this section 7 to "two year reporting period" shall be read as "one year reporting period."~~

## **6.07 ~~Ch. VII ¶9.~~ Change to active status**

(a) Any person previously enrolled as an active member of the State Bar who ~~has been~~ is an active non-practicing or an inactive member of the State Bar, administratively suspended for nonpayment dues by the State Bar, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that he or she has complied with a minimum of twelve hours of continuing legal education, as approved by ~~these rules~~ this Rule or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, ~~or substance abuse~~ attorney wellness, or elimination of bias in the legal profession within twelve months immediately preceding the application to change to active status. ~~Effective July 1, 1994,~~ Any person previously enrolled as an active member of the State Bar who has served as a Justice of the Supreme Court of Appeals, ~~or a Judge of a Circuit Court Judge, or Family Court Judge~~ immediately preceding the change to active status shall be exempt from this requirement but shall be subject to the mandatory continuing legal education requirements upon change to active status.

(b) ~~Ch. VII ¶9.1~~ Any lawyer who was administratively suspended solely for the nonpayment of dues by the State Bar for any reason under Bylaw 2.09(a) and who is returned to active status within six months of the date of suspension ~~may be reinstated to active status by bringing the dues current and~~ will not be required to submit any additional information

regarding mandatory continuing legal education provided that the attorney has otherwise been in compliance with the continuing legal education requirements.

#### **6.08 ~~Ch. VII~~ 4. Accreditation of providers and approval of courses, generally**

(a) ~~Only~~ The Commission may ~~has sole authority to~~ accredit providers and approve courses and programs for purposes of the mandatory continuing legal education requirements established by this Rule.

(b) ~~Ch. VII~~ 4.1 Courses (including video and audio tapes) from the continuing legal education programs sponsored by the following organizations are presumptively accredited until and unless the Commission determines otherwise: Contact MCLE Coordinator for current list. The Commission may establish a list of presumptively accredited providers whose courses—including those provided through digital and electronic mediums—are approved activities. The Commission shall publish the list of providers that are presumptively accredited on the State Bar website and update the list periodically.

(c) ~~Ch. VII~~ 4.2 Courses sponsored offered by other organizations that are not on the list described in Rule 6.08(b) may be accredited approved by the Commission upon the request of an individual lawyer or organization on a case-by-case basis in accordance with this Rule. in accordance with the procedures, rules and regulations of the Commission pertaining to accreditation. 4.3 Continuing legal education courses or programs sponsored by other organizations may be accredited by the Commission upon the request of the organization in accordance with the procedures, rules and regulations of the Commission pertaining to accreditations.

(d) ~~Ch. VII~~ 4.4 To be accredited approved, a course shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the practice of law (which includes professional responsibility and office practice); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should must include the distribution of good high quality written materials pertaining to the subjects covered. One hour courses presented by local bar associations shall be exempt from the written materials requirement. In rare instances, providers other than local bar associations may exhibit good cause for waiver of the written materials requirement. A provider seeking a waiver of the written materials requirement shall present a written request of such waiver to the Commission, explaining why the provider believes that written materials should not be provided. The Commission will consider each request for a written waiver on a case-by-case basis.

(e) ~~Ch. VII~~ 4.5 One hour of continuing legal education credit for purposes of the mandatory continuing legal education requirements established by these rules shall be given for each period of fifty minutes of instruction in an accredited course. Based upon this standard, sponsors providers of accredited courses approved activities given in West Virginia shall include with their course materials a statement that, "This course or program qualifies

has been approved for \_\_\_\_\_ hours of continuing legal education credit ~~under the~~ in West Virginia." ~~Rules for Mandatory Continuing Legal Education.~~

~~(f) Ch. VII ¶4.6~~ The Commission may refuse to accredit a course ~~or change or remove~~ may ~~revoke~~ the accredited status of any ~~sponsor~~ provider ~~which that~~ misrepresents the extent to which ~~any information relating to course or program is qualified approved approval~~ under ~~these rules~~ this Rule.

~~(g) Ch. VII ¶4.7~~ In cases where ~~accreditation approval~~ approval could not be reasonably obtained in advance for a given course, an individual lawyer may request ~~approval after attendance in accordance with this Rule. , in accordance with the procedures, rules and regulations of the Commission, accreditation for a course after he or she has attended such course.~~

~~(h) Ch. VII ¶4.8~~ All decisions of the Commission concerning accreditation of providers and approval of courses shall be final.

#### **6.09 ~~Regulation 4~~ Standards for approval of continuing legal education activities**

~~(a) Regulation 4A1.~~ A continuing legal education activity qualifies for ~~accreditation approval~~ approval if the Commission determines that: ~~(1) a-~~ it is an organized program of learning (including a workshop, symposium or lecture) which contributes directly to the professional competency of a lawyer; ~~(2) b-~~ it deals primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of the member; ~~-, and may include activities which that involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting tax law seminar, may be approved;~~ ~~(3) d-~~ each activity is taught by a person qualified by practical or academic experience to teach the activity the person covers. ~~Legal subjects should normally be taught by lawyers;~~ ~~(4) e-~~ while comprehensive written materials need not be distributed for every course, thorough, high quality, readable, carefully prepared written outlines and/or materials ~~should~~ pertaining to the subjects covered shall be distributed to attendees at or before the time the course is offered in accordance with Rule 6.08(d); and (5) the provider must keep digital records of all attendees for a minimum of three years following the activity, and those attendee records must be made available to the Commission upon request.

~~(b) Regulation 4A2.~~ No credit shall be given for any activity attended before being admitted to the West Virginia State Bar, including preparation for admission to the West Virginia State Bar. ~~However, CLE activities completed after graduation from law school but before admission to the West Virginia State Bar may be approved, if taken in the applicable reporting period. Bar review courses taken by members of the West Virginia State Bar in preparation for admission to the Bar in another state may be considered for CLE credit. If not sponsored by a presumptively accredited provider, requests should be made on Form A. Graduate courses may also be considered for credit on the same basis.~~

(c) Regulation 4A3. Credit may be earned through teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity. In awarding credit for teaching or participating as a panelist in an approved program, the Commission will be controlled by Rule ~~6.4~~ 6.05(d). ~~In general, actual presentation time will be weighed more heavily than preparation time in determining credit to be awarded. The maximum credit available for teaching in one calendar day is 10 credits. The maximum credit available for teaching and/or participating in panel discussions in any two year reporting period is 18 credits.~~

(d) Regulation 4A4. Credit hours for writing an article published in the law review of an ABA-accredited law school or for other approved publication activity shall be allocated in the year of publication and limited as provided ~~for~~ in Rule ~~6~~ 6.05(e).

(e) Regulation 4A5. An in-house activity may be approved for continuing legal education credit under the rules ~~and regulations~~ applicable to any other provider, plus the following additional requirements: (1) a. the courses shall be submitted through electronic format for approval on a course-by-course basis, rather than an accredited-provider basis; (2) b. the courses shall be submitted for approval at least thirty ~~(30)~~ days in advance; (3) c. an outline or written materials must be presented to the ~~Mandatory Continuing Legal Education~~ Commission through the appropriate West Virginia State Bar electronic interface at the time of submission for approval and written, digital, or electronic copies of the outline and/or materials must be distributed to all attendees at the course; (4) d. the courses must be open to observation by the Justices of the Supreme Court of Appeals of West Virginia, the officers or staff of the State Bar, the members of the Board of Governors of the State Bar, and members or staff of the ~~Mandatory Continuing Legal Education~~ Commission; (5) e. the courses must be scheduled and arranged at a time and location so as to be free of interruptions from telephone calls and other office matters; ~~f. the provider must keep records of who attends, and those records must be made available to the Commission upon request; g. for teaching an in-house program one hour of credit may be obtained for each hour of instruction;~~ (6) h. No more than half of the mandatory continuing legal education requirements may be satisfied by in-house teaching or attendance at in-house activities; and (7) i. an in-house activity on legal ethics may not be taught by a member of the firm or entity sponsoring offering such activity.

(f) Regulation 4A6. Client-oriented seminars shall not be approved for CLE credit.

(g) Regulation 4A7. The total credit for ~~video, audio, correspondence, telephone seminars, computer-based~~ digital or electronic training courses and in-house instruction shall not exceed half of the mandatory continuing legal education requirements.

(h) Regulation 4A8. A lawyer attending a ~~videotape or audiotape~~ digital or electronic presentation or training course is entitled to credit hours under the following circumstances: (1) a. if a course is ~~accredited~~ an approved activity, an audiotape or videotape digital or electronic distribution of that course is presumptively accredited also an approved activity; (2) b. Any ~~videotape or audiotape~~ presentations which digital or electronically distributed

presentation produced by an provider that is ~~are~~ not presumptively accredited must meet the requirements for ~~accreditation~~ approval set forth in ~~4A1-a,b,c,d~~ Rules 6.08(c) and 6.09(a); (3) ~~e.~~ Unless the entire ~~videotape or audiotape program~~ digital or electronically distributed presentation has been produced by a presumptively accredited ~~sponsor~~ provider, the person or organization ~~sponsoring~~ offering the program — or the attorney seeking credit — must receive advance approval and ~~accreditation~~ from the Commission by submitting ~~Form A— Course Approval~~ the appropriate information using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(i) ~~Regulation 4A9.~~ The Commission may permit an active member to meet the full ~~Mandatory CLE~~ mandatory continuing legal education requirements by attending or participating in a seminar ~~which~~ that includes a ~~videotape~~ digital or electronic presentation as part of a live program.

(j) ~~Regulation 4A10.~~ Simultaneous ~~satellite~~ electronic synchronous broadcasts will be ~~allowed~~ approved for the full ~~CLE credit~~ mandatory continuing legal education requirements if the following criteria are met: (1) the broadcast is designed and organized for interaction among a group of attorneys; (2) ~~the broadcast does not fall within the definition of an in-house seminar;~~ (2) the broadcast is merely a distribution of a live program with the same qualified speakers which would address a seminar with live attendees; (4) ~~and~~ (3) attendees are able to have questions answered ~~either by a live moderator or by a telephone hook-up to a moderator~~ through synchronous or asynchronous digital media. (5) ~~written materials should be sent in advance and may be distributed through the State Bar office or through a private entity sponsoring such programs.~~

(k) ~~Regulation 4A11.~~ The mandatory continuing legal education requirements may not be satisfied by receiving credit for teaching the same activity more than once during a two-year reporting period.

(l) ~~Regulation 4A12.~~ A lawyer may receive credit for authorship and publication of legal materials by submitting ~~Form D.~~ a. an application for credit hours for authorship and publication of such materials must be made to the Commission and include using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the application or it will not be processed. The application must include: (1) ~~I.~~ a copy of the work and a statement by the applicant that the material is an original work; and (2) ~~ii.~~ the name and address of any other person participating in the authorship of the published material, and a statement with respect to the extent to which the applicant contributed to the authorship of the material; and (3) ~~iii.~~ A a statement that the authored material has been published in a publication having distribution to at least 300 attorneys; and including (4) the name and address of the publisher. b. Credit hours shall be allocated for the authorship and publication of the material in the year in which the publication actually occurs. c. The Commission will determine the number of credits to be

allocated to the authorship and publication of the work. ~~In general, more credits~~ Credits will be awarded for scholarly pieces involving legal research as indicated by citation to authority ~~or otherwise.~~ ~~d.~~ A lawyer may not receive more than ~~18~~ half of his or her credit hours for authorship and publication of any materials in any two-year reporting period except as set forth in Rule 6.04(a).

~~Regulation 4A13. For purposes of calculating credit, a “credit hour” means each period of fifty minutes of instruction in an accredited course. a. Ordinarily, the following may not be counted for credit: coffee breaks; introductory remarks; keynote speeches; business meetings; and dinner speeches. b. The hours of credit merely reflect a maximum that may be earned through attendance. Only actual attendance by the lawyer earns credit.~~

~~Regulation 4A14. Credit hours from one reporting period may not be used to satisfy the requirements of another reporting period.~~

~~(m) Regulation 4A15. An attorney may not earn double credit for either (1) (a) attending the same seminar held in different locations or (2) (b) attending a seminar and completing an audio or video tape~~ a digital or electronically distributed presentation of the same seminar.

~~Regulation 4A16. A law related correspondence course may be approved for continuing legal education credit under the rules and regulations applicable to any other course or program, plus the following additional requirements: a. The courses shall be submitted for approval on a course-by-course basis rather than on an accredited provider basis. b. The course must be part of a structured course of study. c. a written outline or written materials fully describing the course must be presented to the mandatory Continuing Legal Education Commission at the time of submission for approval. In awarding credit for correspondence courses, the Commission shall consider the extent to which the lawyer’s educational effort in the course is evaluated by the sponsor. d. No more than six (6) hours of mandatory continuing legal education requirements may be satisfied by correspondence course activities.~~

~~Correspondence courses will be reported as audio, video, and in-house activities.~~

~~Regulation 4A17. A telephone course may be approved for continuing legal education credit under the rules and regulations applicable to any other course or program, plus the following additional requirements: a. The course if sponsored by a presumptively accredited provider, shall be automatically approved for MCLE credit. b. Written materials should be provided to participants prior to the activity. c. The telephone seminar is designed and organized for interaction among a group of attorneys. d. The telephone seminar is merely a state-of-the-art telecommunication of a live program with the same qualified speakers who would address a seminar with all live attendees. e. The telephone seminar provides an opportunity for attendees to have questions answered by the speakers. f. No more than half of the total mandatory continuing legal education requirement may be satisfied by telephone seminar activities. Telephone seminar courses will be reported as audio, video, in-house, correspondence and computer-based training activities.~~

(n) ~~Regulation 4A18.~~ To earn continuing legal education credit for attendance at any Bar Committee meeting, the Committee must submit an approved agenda at least ~~(30)~~ thirty days in advance, which lists the topics covered and a brief biographical sketch of each speaker. Presentations at Bar Committee meetings must include at least ~~(50)~~ fifty minutes of actual instruction. No audio or video taped presentations of Bar Committee meetings will be approved. If the meeting is approved by the ~~Committee for Course Accreditation~~ Commission, only those members of the Bar Committee may earn continuing legal education credit. Committee meeting attendance credit may not be earned by attorneys that are not members of that Committee. The maximum number of continuing legal education credits that may be earned from attendance at Bar Committee meetings during any two-year reporting period is ~~(3.0)~~ three credits.

(o) ~~Regulation 4A19.~~ Any person employed on a full-time or part-time basis as a professor of law or other instructor of courses in a law school or other academic institution shall not receive CLE credit for teaching those courses.

(p) ~~Regulation 4A20.~~ Computer-based Digital or electronic training courses may be approved for continuing legal education credit under the rules ~~and regulations~~ applicable to any other course or program, plus the following additional requirements: (1) ~~a.~~ the computer-based digital or electronic training course must be part of a structured course of study; (2) ~~b.~~ a written outline or written materials fully describing the course must be presented to the ~~Mandatory Continuing Legal Education~~ Commission at the time of submission for approval; (3) in awarding credit for ~~computer-based~~ digital or electronic training courses, the Commission shall consider the extent to which the lawyer's educational effort in the course is evaluated by the ~~sponsor~~ provider; (4) ~~e.~~ The ~~sponsor~~ provider shall provide the number of credits possible for completion of the course; and (5) credit reported shall not exceed the maximum number of credits as designated by the ~~sponsor~~ provider.

#### **6.10 ~~Regulation 4B Standards and Procedures for accreditation of providers, and approval of programs and activities~~**

(a) ~~Regulation 4B1.~~ *Presumptive accreditation of providers.* ~~a.~~ A provider not presumptively accredited by the Commission ~~desiring accreditation of legal education activities shall~~ may apply for presumptive accreditation on Form B by submitting an application in the form required by the Commission. ~~b.~~ Presumptively accredited providers shall provide to the Commission, upon request, a list of all courses offered in the preceding year by August 30 of each year. ~~c.~~ A list of all lawyers in attendance at any presumptively accredited program shall be maintained by the provider for not less than three years and made available to the Commission upon request. ~~d.~~ Presumptively accredited providers shall allow the West Virginia State Bar or MCLE Commission members and staff to audit, free of charge, any of its accredited continuing legal education programs. ~~e.~~ Failure to comply with

MCLE rules and/or regulations shall result in the ~~removal~~ revocation of presumptively accredited status.

~~(b) Regulation 4B2. Prior approval of individual activities of providers who are not presumptively accredited. a-~~ A provider desiring prior approval of an activity shall apply for approval ~~on Form A~~ by submitting an application in the form required by the Commission at least 30 days in advance of the commencement of the activity. ~~and each activity must comply with 4B1.c, d and e Rule 6.09(a).~~ ~~b-~~ A lawyer desiring prior approval of an activity shall apply for approval ~~on Form A~~ to the Commission using the web-based membership portal maintained by the State Bar at least 30 days in advance of the commencement of the activity. ~~or shall provide the Commission with a written explanation for the delay in application. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.~~

~~(c) Regulation 4B3. Post-approval of activities of providers that are not presumptively accredited. a-~~ A lawyer seeking approval of an activity ~~which that~~ was not conducted by a presumptively accredited provider and was not otherwise approved shall request credit within 30 days after completion of such activity by submitting Form A using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

~~(d) Multiple providers. Regulation 44.~~ Courses sponsored offered by more than one provider are presumptively accredited if at least one of the ~~sponsors~~ providers is presumptively accredited.

\* \* \* \*

## REGULATIONS 5 through 10 (RESERVED)

### 6.11 ~~Regulation 11.~~ Ethics in reporting continuing legal education activities

~~Regulation 11,1.~~ The filing of a false report, form, or statement, or any other misrepresentation may result in the initiation of a disciplinary proceeding for engaging in unethical conduct.

### 6.12 ~~Regulation 12~~ Time limits

~~Regulation 12,1.~~ For good cause shown, any time limitations or requirements imposed by ~~these regulations~~ this Rule may be modified by the Commission.

### 6.13 ~~Ch. VII. ¶ 8.~~ Confidentiality

The files, records, and proceedings of the Commission, as they relate to or arise out of the compliance or noncompliance of an active member of the State Bar with the requirements of ~~these rules~~ this Rule, shall be deemed confidential and shall not be disclosed, except in furtherance of the Commission's duties, or upon written request of the lawyer affected, or as directed by the Supreme Court of Appeals.

~~Ch. VII. ¶ 10. Judicial CLE. Members of the state bar recommended that a mandatory education plan, similar to the one outlined in these rules, be adopted for West Virginia judges, justices and magistrates.~~

[DRAFTING COMMENTS: Rule 6 integrates and reconciles three different governance documents. The first was previously reviewed and approved by the Court: Chapter VII of the Rules and Regulations of the State Bar, entitled “Rules to Govern Mandatory Continuing Legal Education.” The second, however, is a stand-alone document that was not reviewed or approved by the Court and is posted on the State Bar’s website, entitled: “Regulations, WV Mandatory Continuing Legal Education Commission.” The third source for this rule is the October 25, 2017 Supreme Court Administrative Order relating to changes in the Bridge-the-Gap Program. This Rule incorporates those documents, with some modifications to be consistent with changes already made in other areas. The major governance provisions relating to a lawyer’s basic obligation to maintain CLE credits, the existence of the Commission, and its powers and duties, are now all contained in Article 15 of the Bylaws. Rule 6 is intended to set forth the nuts and bolts of the process. When combining the disparate parts, a number of inconsistencies in terminology (accredited vs. approved, provider vs. sponsor) needed to be addressed on a uniform basis. In Bylaw Article 15 and this Rule, the term “accredited” is used to apply to a provider; while the term “approved” applies to an individual course. All of the courses offered by a “presumptively accredited” provider are approved, whereas an unaccredited provider must apply for approval on a course-by-course basis. The provisions set forth in Rule 6.03 relating to the Bridge-the-Gap Program are a revised version of amendments that were drafted by the Young Lawyer Section, approved by the Board of Governors, and by the Supreme Court in October 2017.]

## **Rule 7— ~~Ch. III. Procedure for committees on Unlawful Practice~~ Committee matters**

### **7.01 ~~Ch. III ¶ 1. Origin of cases~~**

A case before the ~~lawyer disciplinary board or the committee on Unlawful Practice Committee,~~ may originate: In either such upon a request for investigation from the Unlawful Practice Committee, ~~or its counsel, or in any~~ upon a request from a grievance committee, ~~on the motion of such committee; or~~ upon the request of the Board, ~~or the president, the president-elect or vice president, or~~ upon the request of any court of record or judge thereof, or upon the ~~verified~~ complaint of any member of the State Bar or any other person.

## **7.02 ~~Ch. III, ¶ 2.~~ Form of complaint**

Each request or complaint shall be in writing, and be filed with the ~~bar counsel~~ Executive Director, and shall state facts sufficient to justify the exercise of the jurisdiction of the ~~appropriate~~ Committee, and shall be accompanied by all pertinent documents.

## **7.03 ~~Ch. III, ¶ 3.~~ Filing complaints**

~~All such complaints and requests within the jurisdiction of these committees, received or made by any member or committee of the State Bar, whether or not such member is a member of one of said committees, shall be by such member promptly filed with the bar counsel Executive Director. Complaints against, or factually involving, the chairperson of either committee, bar counsel or committee counsel shall be filed with the executive director and shall be immediately referred to the committee chairperson, vice-chairperson or other committee member, not conflicted or disqualified, for investigation.~~

(a) All complaints regarding the unauthorized practice of law shall be filed with the Executive Director. Any complaints received by any Committee member, State Bar member, or by any other person shall be transmitted forthwith to the Executive Director.

(b) Upon receipt of any such complaint or request alleged to be within the jurisdiction of any of said the Committees, ~~bar counsel~~ the Executive Director shall promptly acknowledge its receipt, give it a case number, and enter it in his or her State Bar records.

(c) Once assigned a case number, all requests for investigation and complaints shall thereafter be denominated as complaints.

(d) All complaints and investigations related thereto shall remain confidential until such time as the Committee dismisses the complaint for failure to state a cognizable claim pursuant to Rule 7.04(b) or issues a written finding pursuant to Rule 7.04(e) as to whether the respondent engaged in the unauthorized practice of law.

## **7.04 Investigation; consideration by committee**

(a) Complaints shall be initially reviewed and screened by the Committee, or referred to a designated subcommittee comprised of at least three Committee members for such review and screening.

(b) Upon the initial screening, the Committee or subcommittee shall make a determination as to whether the complaint states a cognizable claim regarding an alleged unauthorized practice of law. It may dismiss the matter and provide written notice of such dismissal to the complainant. It may determine that the alleged conduct of the respondent merits further investigation or proceedings, and in such event, the respondent shall be notified that an investigation is being undertaken. With the notice, the respondent shall also be served personally or by certified mail with the complaint, and provided a copy of the rules governing the investigation and disposition thereof.

(c) With the service of the complaint, the Committee shall direct that a written answer to the complaint be filed with the Committee within 30 days following the receipt of the complaint, or such shorter or longer period designated by the Committee; and the Committee may request the respondent to appear before the Committee for an informal conference during which the respondent may be offered an opportunity to enter into a written consent agreement to refrain from conduct constituting the unauthorized practice of law.

(d) At any time in the process, the Committee may refer the matter to a designated subcommittee of at least three members for further investigation and proceedings. The designated subcommittee shall make a written report to the Committee of any investigation and informal conference.

(e) Upon completion of its investigation, the Committee shall issue its written finding as to whether the respondent's conduct constitutes the unauthorized practice of law. After a finding by the Committee that the conduct of the respondent constitutes the unauthorized practice of law, unless the respondent enters into a written consent agreement to refrain from such further conduct, review proceedings shall be instituted as hereinafter provided under these rules.

#### **~~Ch. III. ¶ 5. Verification and correction of defects in complaint.~~**

~~If a complaint is not verified, or is not adequate in form or substance, the Executive Director, bar counsel or the chairperson to whom it is transmitted, may call upon any member of the State Bar to contact the complainant and endeavor to have it verified, or to remedy any deficiency in form or substance.~~

#### **~~Ch. III ¶ 6. Improper or inadequate complaint.~~**

~~When it is evident on the face of a complaint or request that it is frivolous or patently unfounded or if, after investigation, the complaint is unfounded or does not state proper or sufficient grounds for the exercise of the jurisdiction of a bar committee, the Unauthorized Practice Committee, or the Grievance Committee may dismiss the complaint and bar counsel shall notify the complainant of the findings of fact and conclusions of law or, in the case of an unauthorized practice complaint or grievance, the reasons therefor.~~

#### **~~Ch. III. ¶ 7. Reports to Committee Chairperson or Designated Reviewing Member by Bar Counsel. Investigation of complaints and recommendation~~**

~~Bar counsel shall promptly investigate each complaint received and, with his or her report of investigation, shall submit his or her recommendation of disposition to the chairperson of the appropriate committee or reviewing member of such committee selected under procedures established by such committee. Upon direction of the chairperson or~~

~~designated reviewing member the matter shall be referred to the Unauthorized Practice or Grievance Committee or closed.~~

## **7.05 Administrative review proceedings**

(a) Request for hearing. Upon the written request of the respondent, a formal hearing is authorized under this Rule after a finding by the Committee that the respondent has been involved in the unauthorized practice of law, or that activities the respondent seeks to undertake will involve the unauthorized practice of law. Written requests for a formal hearing must be received by the Executive Director of the State Bar within 30 days from the receipt of the adverse decision by the respondent.

(b) Hearing officer. The Executive Director shall appoint a hearing officer, who shall be a disinterested, practicing attorney in the State of West Virginia, to conduct a formal hearing. The Executive Director shall, by a written notice mailed to the respondent by certified mail at his or her address as stated in the hearing request, specify the date, time and place of the hearing, and the name of the hearing officer. Proceedings before a hearing officer shall be held in Charleston, West Virginia. In the discretion of the hearing officer, the proceedings may be held in the county where the respondent resides or where acts constituting unauthorized practice of law are alleged to have occurred.

(c) Time for hearing. Unless otherwise agreed by the Committee and respondent, the time of the hearing shall not be less than 20 days nor more than 40 days from the date of the receipt of the respondent's written request for a formal hearing. The hearing officer may extend or shorten the time period for good cause shown.

(d) Hearing process. The respondent may be represented by counsel and shall have the burden to present evidence in support of his or her position that the activities in question do not constitute the unauthorized practice of law. The Committee may designate a lawyer to represent it and to present evidence before the hearing officer in support of the Committee's findings. Unless waived by the parties with the approval of the hearing officer, the West Virginia Rules of Evidence shall be applicable when not inconsistent with these rules. Subpoena authority for witnesses and documents is provided under Bylaw 8.07. Subject to any limitations in Bylaw 8.07, the hearing officer shall have the procedural powers generally reposed in a court of record under West Virginia law. At all hearings before a hearing officer, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken by a competent court reporter.

(e) Reconsideration by Committee. Upon completion of the proceedings before the hearing officer, the hearing officer shall make a written report of findings and a recommendation based upon the definition of the practice of law, any other applicable court rules or statutes, and upon the evidence submitted. Such written report, together with a copy of the transcript of the hearing and any exhibits, shall be forwarded as soon as practicable to

the Committee. The Committee, within 45 days from the receipt of the written report and the record, shall review the report and advise the respondent in writing as to whether the Committee finds that the respondent's conduct constitutes the unlawful practice of law, and state its reasons therein.

#### **7.06 Review by Supreme Court**

(a) If the Committee makes a decision adverse to the respondent after review of the hearing officer's written report, and no written consent agreement is reached with the respondent to refrain from the conduct at issue within 30 days following the decision, the Committee shall file its decision, along with the record of proceedings, with the Clerk of the Supreme Court of Appeals within 10 days thereafter.

(b) If the respondent does not request a formal hearing under this Rule following a written finding by the Committee under Rule 7.04(e) that the respondent's activities constitute the unauthorized practice of law, and no consent agreement to refrain from such conduct is reached within 30 days of such finding, the Committee shall file its finding and accompanying record with the Clerk of the Supreme Court of Appeals within 10 days thereafter.

(c) Promptly after the report and record is filed with the Supreme Court, the Clerk shall mail a briefing schedule to all parties. After review of the proceedings before the hearing officer, and upon consideration of any exceptions and briefs, the Supreme Court may adopt the hearing officer's report or modify or reject it in whole or in part, and shall determine whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court concludes that the respondent has engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

(d) At any stage of an investigation or proceedings before the Committee, if the respondent enters into a written consent agreement to refrain from conduct alleged or found to constitute the unauthorized practice of law, the Committee shall file the consent agreement with the Supreme Court Clerk, along with the record before the Committee. Upon review, the Supreme Court may ratify or reject the agreement, in whole or in part, and may remand the matter to the Committee for further action.

(e) Nothing in these rules shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

#### **7.07 ~~Ch. III. ¶ 12.~~ Payment of expenses**

Duly authorized expenses incurred in connection with ~~legal ethics or~~ the investigation of unlawful practice activities, and any proceedings arising therefrom, shall be paid or

reimbursed by the Executive Director upon vouchers ~~therefor reviewed and approved by the chairperson of such the Committee, by bar counsel or the executive director.~~

### ~~Ch. III ¶ 8. Action following investigation and recommendation~~

~~When the report of investigation and recommendation is received by the Unauthorized Practice or Grievance Committee, it shall determine whether to: (1) close the case on the basis recommended; (2) refer the case to a grievance committee for investigation; or (3) retain the case before the Unauthorized Practice or Grievance Committee for further investigation.~~

### ~~Ch. III ¶ 9. Institution of proceedings~~

~~When the committee on unlawful practice decides to institute proceedings in a matter of importance, it may, but shall not be required to, present the matter, and its recommendation, to the Board of Governors.~~

### ~~Ch. III ¶ 13. Prehearing conferences. [Abrogated]~~

### ~~Ch. III. ¶ 15. Reopening. [Abrogated]~~

### ~~Ch. III. ¶ 16. Reinstatement questionnaire. [Abrogated]~~

### ~~Ch. III. ¶ 15. Informal advice of committee staff. [Abrogated]~~

[DRAFTING COMMENT]: To the extent still valid and pertinent, language for this rule was drawn from Chapter III of the former State Bar Rules and Regulations. Several provisions in this Chapter III have either been superseded by the Rules of Lawyer Disciplinary Procedure or become outdated and fallen into disuse. Additionally, these revised rules substantially re-design the procedures to be used by the UPL Committee. Based upon antitrust caselaw developments, significant changes in UPL enforcement procedures are needed in order to maintain antitrust immunity under federal law. Beginning with *Parker v. Brown*, 63 S. Ct. 307 (1943), the U.S. Supreme Court has, under long-standing federalism principles, interpreted the antitrust laws to confer broad immunity for anticompetitive conduct of States when acting in their sovereign capacity. However, more recent decisions of the Court have narrowed this state-action immunity. For example, in *Goldfarb v. Virginia State Bar*, 95 S. Ct. 2004 (1975), the Court held that some actions by state agencies are not immune from antitrust claims. "The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members." 95 S. Ct. at 2015. The most recent Supreme Court case, *North Carolina State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), makes it clear that certain procedural requirements must be in place to preserve state-action immunity when active market participants regulate any aspect of a profession. Under this latest decision, when a State empowers a group of active market participants (such as the State Bar's UPL Committee) to decide who can participate in a particular market or

profession, then a two-part test must be met to maintain *Parker* state-action immunity. First, any anticompetitive decision must be in furtherance of a clearly articulated state policy. Here, that is satisfied by the State's detailed definition of the practice of law promulgated by the W. Va. Supreme Court for the benefit and protection of the public. Second, as emphasized in the *North Carolina Board* decision, there must be "active supervision" by the State. The U. S. Supreme Court has identified the requirements of active supervision to include: 1) an actual review of the substance of the anticompetitive decision; 2) the power to veto or modify decisions to ensure they accord with state policy; and 3) the State supervisor may not itself be an active market participant. The new procedural process in these rules is designed to maintain antitrust immunity, and to withstand procedural and substantive due process challenges relating to UPL cases.

Finally, since the UPL committee process for investigation and proceedings must meet specific requirements, as just noted, it was no longer appropriate to keep the process for grievance committees under the same set of rules.]

## **Rule 8 ~~Art. II, § 11~~. Emeritus attorneys' pro bono participation program**

~~Art. II, § 11(a) Purpose. Individuals admitted to the practice of law in West Virginia have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rule establishing the Emeritus Attorneys' Pro Bono Participation Program is adopted.~~

### **8.01 ~~Art. II, § 11(b)~~ Definitions**

~~(a) (1) "The active practice of law" means that an attorney has been engaged in the practice of law, which includes including, but is not limited to, private practice, in house counsel positions, public employment or academic employment.~~

~~(a)(2) An "emeritus eligible attorney" may be an inactive member of the West Virginia State Bar is any active but not practicing member of the West Virginia state bar, any inactive member of the West Virginia state bar, or any person, retired from the active practice of law, who has been admitted to practice before the highest court of any other state or territory of the United States of America or the District of Columbia, and~~

~~A. Has engaged in the active practice of law for a minimum of ten years at any time prior to applying to participate in the emeritus program; and~~

~~B. Has been a member in good standing of the State Bar of West Virginia or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and~~

~~C. Agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes; and~~

~~D. — Neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and~~

~~E. — Is certified under paragraph (e) hereof.~~

~~(b)(3) An "approved legal assistance organization" for the purposes of this article is a not-for-profit organization offering legal services to lower income individuals in West Virginia in civil matters.~~

~~(c)(4) A "supervising attorney" as used herein is an active member of the State Bar of West Virginia is an attorney licensed to engage in the active practice of law in West Virginia who directs and supervises the activities of an emeritus attorney engaged in activities permitted under this Rule by this article. The supervising attorney must:~~

~~A. Be employed by or be a participating volunteer for an approved legal assistance organization; and~~

~~B. Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding or other legal services in which the emeritus attorney participates.~~

~~C. Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.~~

~~(c) Activities. (1) An emeritus attorney, in association with an approved legal assistance organization and under the supervision of a supervising attorney, may perform the following activities:~~

~~A. The emeritus attorney may appear in any court or before any administrative tribunal in this state on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.~~

~~B. The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleadings also shall be signed by the supervising attorney.~~

~~C. The emeritus attorney may render legal advice and perform other appropriate legal services unless the supervising lawyer directs otherwise, either generally or on an ad hoc basis.~~

~~D. The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.~~

~~(2) The presiding judge or hearing officer may, in his or her discretion, determine the extent of the emeritus attorney's participation in any proceeding.~~

~~(d) Supervision and limitations. (1) An emeritus attorney must perform all activities authorized by this article under the supervision of a supervising attorney.~~

~~2) Emeritus attorneys permitted to perform services under this article are not, and shall not represent themselves to be, active members of the State Bar of West Virginia licensed to practice law in this state.~~

~~The prohibition against compensation for the emeritus attorney contained in paragraph (b)(2)D shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.~~

~~(e) *Certification.* Permission for an emeritus attorney to perform services under this article shall become effective upon filing with and approval by the clerk of the Supreme Court of Appeals of West Virginia and the State Bar of West Virginia of:~~

~~(1) A certificate by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder;~~

~~(2) A certification from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by paragraph (b)(2)B hereof; and~~

~~(3) A sworn statement by the emeritus attorney that he or she:~~

~~A. Has read and is familiar with the Rules of Professional Conduct and the Rules of the Supreme Court of West Virginia and statutes of the State of West Virginia relating to the conduct of lawyers, and will abide by the provisions thereof; and~~

~~B. Submits to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes, as denned by the Rules of Professional Conduct.~~

~~C. Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder.~~

~~(f) *Withdrawal of certification.* (1) Permission to perform services under this article shall cease immediately upon the filing with the Clerk of the Supreme Court of West Virginia and the State Bar of West Virginia of a notice either:~~

~~A. By the approved legal assistance organization stating that:~~

~~i. The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or~~

~~ii. That certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time, and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the~~

~~Clerk of the Supreme Court of West Virginia and with the State Bar of West Virginia and shall be mailed by the organization to the emeritus attorney concerned.~~

~~B. By the Supreme Court of West Virginia, in its discretion, at any time, stating that permission to perform services under this article has been revoked. A copy of such notice shall be delivered by the Clerk of the Supreme Court of West Virginia to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified and to the State Bar of West Virginia.~~

~~(2) If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action before any court or tribunal in which the emeritus attorney was involved.~~

~~(g) *Discipline.* The emeritus attorney shall be bound by the West Virginia Rules of Professional Conduct and subject to discipline under the West Virginia Rules of Lawyer Disciplinary Procedure.~~

~~(h) *Mandatory continuing legal education.* Emeritus attorneys certified under paragraph (e) hereof shall be exempt from the requirements of Mandatory Continuing Legal Education and from the payment of any bar membership dues or fees.~~

## **8.02 Certification**

An eligible attorney who desires to perform services under this Rule as an emeritus/pro bono member shall file a written request with the State Bar containing the following documentation:

(a) written certification from an approved legal assistance organization stating that the eligible attorney will be associated with that organization and that a licensed attorney affiliated with the organization will assume the duties of a supervising a Rule;

(b) written certification from the highest court or agency in the state, territory or district in which the eligible attorney previously was licensed to engage in the practice of law certifying the eligible attorney as a member of the bar in good standing, and not subject to any pending disciplinary proceedings; and

(c) a sworn written statement by the eligible attorney that he or she has read and is familiar with the West Virginia Rules of Professional Conduct, the rules of the Supreme Court of West Virginia and statutes of the State of West Virginia relating to the conduct of lawyers and will abide by the provisions those rules, that he or she will submit to the jurisdiction of the West Virginia Supreme Court of Appeals for disciplinary purposes and will neither ask for nor receive compensation of any kind for the legal services authorized under this Rule.

## **8.03 Activities**

(a) *Practice activities.* An emeritus/pro bono member may appear in any court or before any administrative tribunal in West Virginia on behalf of a client of an approved legal

assistance organization and while under the supervision of a supervising attorney. An emeritus/pro bono member may prepare pleadings and other documents to be filed in a court or before an administrative tribunal or arbitration panel in any matter in which the emeritus/pro bono member is involved. An emeritus/pro bono member may provide legal advice and perform other appropriate legal services as directed by the supervising attorney and may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.

(b) *Limitations and compensation.* Emeritus/pro bono members permitted to perform services under this Rule are not, and shall not represent themselves to be, active members of the State Bar licensed to engage in Practice of Law in this State. The prohibition against compensation for emeritus/pro bono members shall not prevent an approved legal assistance organization from reimbursing emeritus/pro bono members for actual expenses incurred while rendering services in accordance with this Rule; nor shall it prevent the approved legal assistance organization from making such charges for services as it may otherwise properly charge and receive. The approved legal assistance organization shall be entitled to receive any court award of attorney fees for representation provided by the emeritus/pro bono member.

#### **8.04 Withdrawal of certification**

(a) Permission to perform services under this article shall cease immediately upon the filing with the clerk of the West Virginia Supreme Court of Appeals and the State Bar of a notice by the approved legal assistance organization stating the emeritus/pro bono member has ceased to be associated with the organization or that certification of such emeritus/pro bono member is withdrawn. An approved legal assistance organization may withdraw certification at any time, and it is not necessary that the notice state the reason for such withdrawal. A copy of the notice shall be filed with the clerk of the West Virginia Supreme Court of Appeals and the State Bar, and shall be mailed by certified or registered mail to the emeritus/pro bono member at his or her address of record.

(b) The West Virginia Supreme Court of Appeals may revoke certification to perform services under this section at any time. The clerk of the West Virginia Supreme Court of Appeals shall mail a copy of the notice of revocation by certified or registered mail to the emeritus/pro bono member involved, to the approved legal assistance organization, and the State Bar.

#### **8.05 Mandatory continuing legal education and membership fees**

An emeritus/pro bono attorney certified under this Rule is exempt from mandatory continuing legal education requirements and is not required to pay State Bar membership fees.

[DRAFTING COMMENTS: Rule 8 is derived from Article II, § 11 of the former Bylaws. The special classification of pro bono/emeritus members is now defined in Bylaw 2.08. The details of the privileges and obligations of these emeritus members, and the responsibilities of their supervising legal assistance organizations, have been amended for clarification and moved to the Administrative Rules in Rule 8 above.]

## **Rule 9 West Virginia Judicial and Lawyer Assistance Program**

### **9.01 Preamble**

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a ~~lawyer~~ member of the legal profession (“Member”). Members of the legal profession shall hereafter be defined as lawyers, judges as defined by Application I of the West Virginia Code of Judicial Conduct, bar applicants, and law students. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a ~~lawyer~~ member of the legal profession to practice or serve. ~~Lawyer~~ A member’s impairment is detrimental to the interests of clients, litigants, our legal system, the general public, and the health and quality of life of the impaired ~~lawyer~~ member. The vast majority of States have responded to the issue of ~~lawyer~~ member impairment by creating funded Judge and Lawyer Assistance Programs as contemplated by ~~these rules~~ this Rule, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to ~~lawyer~~ a member’s impairment. The Supreme Court finds that the West Virginia Judicial and Lawyer Assistance Program is an appropriate method for addressing the issue of ~~lawyer~~ member impairment and that the program will promote the integrity of the legal profession, thereby directly benefitting the people of West Virginia.

### **9.02 Establishment of the West Virginia Judicial and Lawyer Assistance Program ~~(WVLAP)~~ (WVJLAP)**

(a) *Establishment.* There is hereby established a statewide judicial and lawyer assistance program to be known as the West Virginia Judicial and Lawyer Assistance Program ~~(WVLAP)~~ (WVJLAP), which shall provide immediate and continuing help to ~~lawyers~~ members who suffer from any physical, ~~or~~ mental, ~~and/or~~ emotional health conditions that affect their ability to practice or serve.

(b) *Purpose.* ~~WVLAP~~ WVJLAP has four primary purposes:

- (1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;

(2) To assist impaired members of the legal profession to begin and continue recovery;

(3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and

(4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.

(c) *Funding and Administration.*

(1) The salary of the executive director, and staff, if any, their expenses, administrative costs, and the expenses of the ~~members~~ Board of Directors of WV L A P W V J L A P shall be paid from funds provided by The West Virginia State Bar. ~~The total annual salaries, costs, and expenses of the program paid from State Bar member dues shall not exceed \$60,000.~~ Each year, WV L A P W V J L A P shall submit a proposed annual budget for the next fiscal year to the Board of Governors detailing the projected revenues and expenses ~~subject to the \$60,000 limitation.~~

~~(2)~~ WV L A P W V J L A P shall seek to establish additional private and public sources of funding that may include gifts or bequests from any source and earnings on investments of the WV L A P W V J L A P fund, which may be used to supplement the annual salaries, costs, and expenses of the program.

### 9.03 Board of Directors

(a) *Management.* The West Virginia Judicial and Lawyer Assistance Program shall be administered by a Board of Directors appointed by the Board of Governors of the West Virginia State Bar. The WV L A P W V J L A P Board officers may make recommendations and nominations to the Board of Governors for appropriate persons to be appointed to the Board of Directors which shall be given due consideration by the Board of Governors. Officers of the Board of Directors shall consist of a chair, a vice-chair and a secretary. The officers shall be annually elected by the Board of Directors.

(b) *Composition.* The Board of Directors shall consist of fifteen ~~(15)~~ members, which shall include three members of the judiciary; one ~~(1)~~ Circuit Court Judge, one ~~(1)~~ Family Court Judge and one ~~(1)~~ Magistrate. Board members shall be selected from the membership of the West Virginia State Bar and the judiciary, except that the Board may include up to four ~~(4)~~ persons who are not members of the West Virginia State Bar or the judiciary. The members shall have diverse experience, knowledge, and demonstrated competence in the problems of chemical dependency, or physical, mental, or emotional health conditions that affect members of the legal profession. Geographic location of the Board membership shall be

taken into consideration, and the membership shall be geographically diverse.

(c) *Terms.*

(1) The Board of Governors shall appoint Board members for initial terms as follows: five members for one-year terms; five members for two-year terms; and five members for three-year terms.

(2) Subsequent appointments shall be for a term of three years.

(3) No member may serve more than two successive three-year terms, provided, however, that this limitation may be waived as to any member upon the affirmative vote of two-thirds of the Board of Directors and approval of the Board of Governors.

(d) *Duties of the Board.* The members of the Board of Directors shall have the following powers and duties:

(1) ~~To establish WVJLAP's by laws, policies and procedures,~~ To establish WVJLAP's by laws, policies and procedures, consistent with the intent and purpose of these rules, that shall be established after reasonable notice to the Board of Governors and opportunity for comment;

(2) To operate the program to achieve its purpose and goals;

(3) ~~To hire and fire~~ select, retain and supervise the WVJLAP executive director and staff;

(4) To prepare, approve, and present an annual budget to the Board of Governors;

and

(5) To make annual reports to the Supreme Court and Board of Governors.

(e) *Meetings.* The Board of Directors shall meet quarterly. It shall also meet upon call of the chair, vice chair, or upon the request of ~~(5)~~ five or more members upon reasonable notice to all members. A quorum for any meeting shall be a majority of the Board then existing.

#### 9.04 Executive Director of the program

~~(a) *Appointment/Hire.* — The Board shall recruit, hire, retain, and supervise, and the Board may terminate the WVJLAP executive director.~~

(a) *Qualifications.* The executive director shall have sufficient experience and training to identify and assist impaired members of the legal profession and to work well with the volunteers, plus any additional qualifications deemed necessary by the Board.

~~(b)~~ (b) *Duties and Responsibilities.* The executive director's duties and

responsibilities shall include but not be limited to the following:

(1) ~~To~~ Work with the Board of Directors to develop a vision and plan to ensure that the ~~WVLAP~~ WVJLAP becomes a vital and credible resource for the West Virginia legal community;

(2) ~~To~~ Act as the initial contact point for all referrals to the ~~WVLAP~~ WVJLAP, whether voluntary or involuntary. The executive director should always remain accessible to current members ~~or to any attorney~~ seeking help, and should never be insulated from the telephone or ~~from~~ personal contact. The position will require that the executive director be ready, either alone or together with a program volunteer, to travel within the State to meet with ~~an attorney~~ any member in need of assistance;

(3) ~~To~~ Help members of the legal profession and the judiciary and their families to secure evaluation, counseling, and treatment for chemical dependency, ~~and physical, mental, and emotional health~~ conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard, the executive director will be responsible for evaluating referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for ~~lawyers~~ members and others using the services of ~~WVLAP~~ WVJLAP;

(4) Establish and maintain regular contact with other bar associations, agencies, and committees that serve either as sources of referral or resources in providing help;

(5) ~~To~~ Help lawyers, judges, law firms, courts, law schools, and others with the advice and assistance of a health care professional, identify and intervene with impaired members of the legal profession;

(6) ~~To~~ Recruit, select, train, and coordinate the activities of volunteer lawyers and judges who will provide assistance, and to maintain a current contact list of those volunteers. In furtherance of this duty, the executive director should assist in coordinating volunteer support meetings for members and attend the meetings on a periodic basis to address questions or concerns of the volunteers;

(7) Recruit, select, train, and coordinate the activities of volunteer judges (“Judicial Assistance Groups”) who will provide assistance, maintain a current contact list of those judicial volunteers, assist in coordinating volunteer support meetings for judges, and attend the meetings on a periodic basis to address questions or concerns of the judicial volunteers;

~~(7)~~ (8) ~~To~~ Work to establish and maintain a policy that ensures confidentiality, as required by this Rule, as an essential component of the ~~WVLAP~~ WVJLAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of ~~WVLAP~~ WVJLAP volunteers;

~~(8)~~ (9) ~~To~~ Plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, and civic and educational organizations of the ~~advocacy~~ benefits of early intervention and prevention, and the assistance that is available to those in need;

~~(9)~~ (10) ~~To~~ Be responsible for the day-to-day administration of the ~~WVLAP~~ WVJLAP, including the development of job descriptions for ~~WVLAP~~ WVJLAP staff, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The executive director will also be responsible, with the oversight of the Board, for development of the ~~WVLAP's~~ WVJLAP annual budget and oversight of its fiscal management;

~~(10)~~ (11) ~~To~~ Act as the ~~WVLAP's~~ WVJLAP's liaison with the American Bar Association Commission on Lawyer Assistance Programs and with judge and lawyer assistance programs throughout the country;

~~(11)~~ (12) ~~To~~ Network with other professional assistance organizations located in West Virginia;

~~(12)~~ (13) ~~To~~ Establish private and public sources of funding for ~~WVLAP~~ WVJLAP; and

~~(13)~~ (14) ~~To~~ Perform such other duties and responsibilities as may be established by the Board.

## 9.05 Volunteers

(a) The program shall enlist volunteer lawyers and judges whose responsibilities may include:

~~(a)~~(1) Assisting in interventions planned by ~~WVLAP~~ WVJLAP;

~~(b)~~(2) Serving as twelve-step program sponsors and/or recovery mentors;

~~(c)~~(3) Acting as a local contact for members(3) of the legal profession seeking help from the ~~WVLAP~~ WVJLAP;

~~(d)~~(4) Acting as a contact between ~~WVLAP~~ WVJLAP and the courts, ~~the~~ Lawyer Disciplinary Board, ~~the~~ Office of the Lawyer Disciplinary Counsel,

Board of Law Examiners, Judicial Investigation Commission, and other State Bar organizations, committees, and law schools;

~~(e)~~(5) Providing compliance monitoring as may be appropriate; ~~and~~

~~(f)~~(6) Performing any other function deemed appropriate and necessary by the Board to fulfill its purposes; and

~~(g)~~(b) Any lawyer volunteers who may be providing assistance to a judge shall not regularly appear in front of the judge and any judicial volunteers who may be providing assistance to a lawyer shall not regularly be presiding over cases involving the lawyer.

~~(h)~~(c) Volunteers shall act on behalf of ~~WVLAP~~ WVJLAP only in accordance with ~~these rules~~ this Rule and the ~~by laws,~~ policies and procedures of ~~WVLAP~~ WVJLAP, and shall be bound by the confidentiality provisions of ~~these rules~~ this Rule.

## **9.06 Services**

~~WVLAP~~ WVJLAP may provide the following services as the Board determines feasible based upon the available financial, volunteer, and other resources:

(a) Immediate and continuing assistance to members of the legal profession who suffer from the effects of chemical dependency, physical, or mental, and/or emotional health conditions that result from disease, disorder, trauma, or other infirmity and that affects their ability to practice or serve;

(b) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and to convey an understanding of appropriate ways of interacting with affected individuals;

(c) Investigation, planning, and participation in interventions, assessments, and ~~or~~ evaluations with members of the legal profession in need of assistance;

(d) Sponsoring and maintaining substance abuse and ~~or~~ mental health support meetings for members of the legal profession;

(e) Aftercare services upon request, by order, or under contract that may include, but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

(f) Monitoring services that may include, but are not limited to, the following: alcohol and/or drug screening programs; tracking aftercare, peer support, and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

## 9.07 Referrals

(a) *Self-referral.* Any ~~lawyer admitted to practice in West Virginia~~ member may voluntarily contact ~~the WVLP WVJLAP~~ seeking assistance.

(b) *Referrals from Third-Parties.* ~~WVLP WVJLAP~~ shall receive referrals concerning any member of the legal profession from any source. The identity of the referring third-party shall be held in confidence by ~~WVLP WVJLAP~~ unless the third-party consents to disclosure.

(c) *Disciplinary Authority Referrals.* ~~WVLP WVJLAP~~ shall receive referrals from the West Virginia Supreme Court, the Lawyer Disciplinary Board, the Office of Lawyer Disciplinary Counsel, the Judicial Investigation Commission, Judicial Disciplinary Counsel, the Judicial Hearing Board, or the Board of Law Examiners (individually referred to hereafter as a "referring authority") of any ~~lawyer~~ member whom the referring authority determines or believes should be contacted by ~~WVLP WVJLAP~~.

(d) *Member Resistance.* In the event an impaired ~~lawyer~~ member resists all efforts of assistance by ~~WVLP WVJLAP~~, the executive director or the Board may notify the initial referral source of the ~~lawyer's~~ member's resistance for the sole purpose of allowing the referral source to pursue other recourse or ~~resources~~ reporting obligations. ~~Moreover, the executive director may refer an impaired lawyer who resists all efforts of assistance by WVLP to the Office of Disciplinary Counsel for an investigation, but such referral shall only be made with the approval of the Board.~~

## 9.08 Confidentiality

(a) Except as required by law, or to prevent the commission of a crime, or to prevent a person from committing serious harm to self or others, all information provided to or gathered by ~~WVLP WVJLAP~~, and actions taken by ~~WVLP WVJLAP~~, shall be privileged and held in strictest confidence and shall not be disclosed, subject to discovery, subpoena, or required to be disclosed to any person or entity outside of WVLP WVJLAP, unless such disclosure is authorized by ~~WVLP~~ both WVJLAP and the lawyer-member to whom it relates, or as provided in Rule 9.06 incident to providing services.

(b) The executive director, board members, employees, and agents, including volunteers recruited and covered under Rule 9.05, shall be deemed to be agents of ~~WVLAP~~ WVJLAP for purposes of the privilege and confidentiality provisions of this Rule.

### **9.09 Privilege and immunity**

Except as otherwise provided in ~~these rules~~ this Rule, all information provided with respect to any referral, investigation, monitoring, or follow-up ~~under these rules~~ shall be privileged. The executive director, board members, employees and agents, including, but not limited to, referring third-parties under Rule 9.07 and volunteers acting on behalf of ~~WVLAP~~ WVJLAP under Rule 9.05, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct undertaken on behalf of ~~WVLAP~~ WVJLAP.

### **9.10 Costs**

Payment for all services provided under ~~these rules~~ this Rule shall be the responsibility of the ~~lawyer member~~ receiving such services and ~~WVLAP~~ WVJLAP shall not be liable for the costs of any services provided under ~~these rules~~ this Rule; provided, however, that ~~WVLAP~~ WVJLAP shall have discretion to financially or otherwise assist ~~lawyers members~~, on a case by case basis, to obtain services anticipated under ~~these rules~~ this Rule.

### **9.11 Miscellaneous**

(a) At any time it deems reasonable and feasible, and without the necessity of amending ~~these rules~~ this Rule, the Board of Directors may, through its ~~by laws~~ policies and procedures approved pursuant to Rule 9.03(d)(1), expand the assistance contemplated herein to encompass ~~law students or~~ others in the legal profession.

(b) Any diversion or other program which requires involvement of ~~WVLAP~~ WVJLAP in rehabilitative efforts on the part of the ~~lawyer member~~ that is a result of an agreement with the Office of Lawyer Disciplinary Counsel, Lawyer Disciplinary Board, Board of Law Examiners, Judicial Investigation Commission, Judicial Disciplinary Counsel, Judicial Hearing Board, or otherwise imposed by order of the Supreme Court of Appeals, shall govern the extent and scope of confidentiality which may be asserted by the ~~lawyer member~~. To the extent such agreement ~~and/or~~ order may require ~~WVLAP~~ WVJLAP to violate a confidentiality protection granted under ~~these rules~~ this Rule, the order or agreement shall control and any disclosure made pursuant thereto shall not be deemed a breach of confidentiality otherwise imposed by ~~these rules~~ this Rule.

(c) At any time it deems reasonable and feasible, and without the necessity of amending ~~these rules~~ this Rule, WVLP-WVJLAP and the Office of Lawyer Disciplinary Counsel, Board of Law Examiners, or Judicial Investigation Commission may, through written agreement between them, establish a program of monitoring and diversion from discipline, and subsequent entry into rehabilitation for those ~~lawyers~~ members deemed candidates for such a ~~diversion~~ program.

(d) ~~It is hereby acknowledged that a~~ An impaired lawyer's member's successful completion of rehabilitation in conjunction with WVLP-WVJLAP may be considered as a mitigating factor with respect to any disciplinary action arising out of the impairment for which rehabilitation was completed.

[DRAFTING COMMENTS: Proposed amendments to the former stand-alone rule for the Lawyer Assistance Program were published for public comment by order entered on April 10, 2017, along with proposed amendments to Rule 8.3 of the Rules of Professional Conduct and Rule 6 the Rules of Judicial Disciplinary Procedure. The purpose of the proposed amendments of these various rules was to merge the functions and operations of the Judicial Committee on Assistance and Intervention with the Lawyer Assistance Program. After the public comment period closed, the Court adopted the proposed rule amendments, with minor modifications. By order entered September 20, 2017, the amended rules were made effective immediately. The above-stated Administrative Rule 9 is the stand-alone rule (as amended in the September 20, 2017 order). The only changes are the rule numbering to be consistent with the numbering format of the State Bar Administrative Rules and minor stylistic revisions consistent with the Administrative Rules.]

## **Rule 10 Client trust accounts; IOLTA Program**

### **10.01 Obligation to maintain client trust account**

In accordance with Rule 1.15 of the Rules of Professional Conduct, a lawyer or law firm that receives client funds must keep those funds in a separate account. Client trust accounts must conform with the requirements in R.P.C. 1.15 and be maintained at an eligible financial institution as set forth in Rule 10.04.

### **10.02 Obligation to maintain separate IOLTA trust account, reporting**

In accordance with Rule 1.15(f) of the Rules of Professional Conduct, a lawyer or law firm that receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds, at an eligible financial institution. The separate IOLTA trust account must comply with this rule and participate in the Interest on Lawyers Trust Accounts

(IOLTA) Program administered by the West Virginia State Bar. On a yearly basis, each lawyer must provide an IOLTA report to the West Virginia State Bar, disclosing: (1) whether the lawyer is exempt under Rule 10.07; (2) whether the lawyer is a member of a law firm that maintains an IOLTA trust account; and, if applicable (3) the name of the financial institution, the routing number and the account number of the IOLTA trust account. The West Virginia State Bar is authorized to assess an administrative penalty of two hundred dollars (\$200) to any lawyer who does not comply with the yearly reporting requirement.

### **10.03 Determining what funds to deposit in an IOLTA trust account**

The IOLTA trust account shall include only such client funds that are so nominal in amount or are expected to be held for such a brief period of time such that the funds cannot earn income for the client in excess of the costs of securing that income. The lawyer shall review the account at reasonable intervals to determine whether circumstances warrant further action with respect to the funds of any client. In determining whether a client's funds can earn income in excess of costs, the lawyer or law firm shall consider the following factors:

- (a) the amount of the funds to be deposited;
- (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
- (d) the cost of establishing and administering non-IOLTA accounts for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;
- (e) the capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients;
- (f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

A lawyer may not be charged with any breach of the Rules of Professional Conduct or other ethical violation with regard to a good faith determination of whether client funds are nominal in amount, are expected to be held for a brief period, or in applying the factors (a) through (f) in this rule.

### **10.04 Eligible financial institutions**

Lawyers may only establish and maintain a Client Trust Account or an IOLTA Trust Account at an eligible financial institution. To qualify as eligible, the financial institution must:

- (a) be certified by the West Virginia State Bar to be in compliance with this Rule; and
- (b) be a federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West Virginia, or an open-end investment

company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in West Virginia.; and

(c) agree to provide overdraft notification as provided in Rule 10.08; and

(d) with respect to IOLTA accounts, offers such accounts within the requirements of Rule 10.05.

### **10.05 IOLTA account requirements**

Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible financial institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(a) The eligible financial institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts. Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and services charges on an IOLTA account.

(b) An eligible institution may choose to pay the highest interest or dividend rate in Rule 10.05(a), less allowable reasonable fees as set forth in Rule 10.05(d), if any, on an IOLTA account in lieu of establishing it as a higher rate product.

(c) The IOLTA Trust Account shall be an interest or dividend-bearing account. Interest- or dividend-bearing account means: (1) an interest-bearing checking account; (2) a checking account paying preferred interest rates, such as money market or indexed rates; (3) a government interest-bearing checking account such as accounts used for municipal deposits; (4) a business checking account with an automated investment sweep feature which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund; or (5) any other suitable interest or dividend-bearing account offered by the institution to its non-IOLTA customers. A daily financial institution repurchase agreement must be fully collateralized by or invested in Securities and may be established only with an eligible institution that is well-capitalized or adequately capitalized as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested in U.S. Government Securities and must hold itself out as a money-market fund as that term is defined by federal statutes and regulations under the Investment Company Act of

1940, and, at the time of the investment, must have total assets of at least \$250,000,000. United States Government Securities are defined to include debt securities of Government Sponsored Enterprises, such as, but not limited to, debt securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(d) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest or dividends earned on an IOLTA account. Allowable reasonable fees are defined as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administrative fee. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges shall be collected from the principal balance deposited in an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account, including bank overdraft fees and fees for check returns for insufficient funds. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(e) As an alternative to the rates required under Rule 10.05(a), an eligible institution may choose to pay on IOLTA accounts an amount equal to 65% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month. The amount is net of all allowable reasonable fees under Rule 10.05(d). This initial benchmark rate of 65% of the Federal Funds Target Rate may be adjusted once a year by the West Virginia State Bar, upon 90 days' written notice to financial institutions participating in the IOLTA program at which time financial institutions may elect to pay the new benchmark amount or may choose among the other options at Rule 10.05(a).

(f) The name of the IOLTA trust account shall be in the following format: "(Attorney or Firm Name), IOLTA Trust Account".

#### **10.06 Lawyer instructions to IOLTA account institution**

The lawyer shall direct the eligible financial institution as follows with regard to an IOLTA account:

(a) To remit interest or dividends, on at least a quarterly basis, net of allowable reasonable service charges or fees, if any, to the West Virginia State Bar; and

(b) To transmit with each remittance to the West Virginia State Bar, a statement in any form and through any manner of transmission approved by the State Bar showing the name of the lawyer or law firm on whose account the remittance is sent and the amount of the remittance attributable to each, the account number for each account, the rate and type of

interest or dividend, the amount and type of allowable reasonable service charges or fees; and the average account balance for the reporting period; and

(c) To transmit to the depositing lawyer or law firm a report in accordance with the institution's normal procedures for reporting to depositors.

### **10.07 Exemptions from the IOLTA Program**

An attorney or the law firm with which the attorney is associated may be exempt from the requirement to maintain an IOLTA Trust Account in accordance with this Rule if:

(a) the nature of the attorney's or law firm's practice is such that the attorney or law firm never receives client funds that would require an IOLTA Trust Account;

(b) the attorney is a full-time judge, government attorney, military attorney, active non-practicing attorney, or inactive attorney; or

(c) the ~~West Virginia State Bar's~~ Board of Governors, having received a petition requesting an exemption, may exempt the attorney or law firm from participation in the program for a period of no more than two years when service charges on the attorney's or law firm's Trust Account equal or exceed any interest generated or when compliance with the Rule would create an undue hardship on the lawyer and would be extremely impractical.

### **10.08 Overdraft notification**

(a) In the event any properly payable instrument is presented against a Client Trust Account or an IOLTA Trust Account containing insufficient funds, irrespective of whether or not the instrument is honored, the eligible financial institution must provide a report to the West Virginia State Bar. Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(b) The eligible financial institution shall file an overdraft notification agreement with the State Bar. The agreement shall apply to all branches of the financial institution and cannot be canceled except upon 30-day notice in writing to the West Virginia State Bar. The West Virginia State Bar shall annually publish a list of financial institutions that have agreed to comply with this Rule and may establish operational guidelines governing amendments to the list of eligible financial institutions.

(c) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors; and

(2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law

firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

(d) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule. Fees charged for the reasonable cost of producing the reports and records required by this Rule are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as defined in Rule 10.05(d).

#### **10.09 Disposition of IOLTA funds whose owners cannot be located or cannot be identified**

(a) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure holds funds in an IOLTA account for a client or third party, and cannot locate that client or third party after four or more months of reasonable efforts to do so, it shall pay the funds to the West Virginia State Bar, while at the same time notifying the Executive Director, under oath, of the efforts made to locate the owner, whether client or third party.

(b) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure cannot identify the owner or owners of funds in an IOLTA account, whether client or third party, after four or more months of reasonable efforts to do so, the lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall petition the Supreme Court of Appeals for leave to pay the funds to the West Virginia State Bar, together with a statement, under oath, of the efforts made to identify and locate the owner or owners.

(c) The executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall have a continuing responsibility for returning the funds to the owner or owners. If the owner of such funds remitted to the West Virginia State Bar is identified and located within two years after the funds have been remitted to the West Virginia State Bar, then the lawyer, law firm, or trustee shall notify the West Virginia State Bar IOLTA Advisory Committee; and request, pursuant to procedures adopted by the West Virginia State Bar IOLTA Advisory Committee for that purpose, a refund of the amounts paid. The lawyer, law firm, or trustee shall be responsible for proper distribution of any funds that are refunded.

(d) The procedures in Rule 10.09(a) and (b) shall apply in cases where the amount of the funds is \$500 or more. In cases where the amount of the funds is \$500 or less, the executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or the lawyer, law firm or trustee

appointed under the Rules of Lawyer Disciplinary Procedure, shall remit the funds directly to the West Virginia State Bar.

#### **~~10.11~~ 10.10 IOLTA Advisory Committee**

(a) The State Bar Board of Governors shall appoint an IOLTA Advisory Committee (“Committee”) to assist in the administration of the IOLTA Program.

(b) The Committee shall meet at least quarterly and shall advise the Board of Governors, the Executive Director, and the Supreme Court on issues related to the administration of the IOLTA Program, including, but not limited to: providing proposed distributions of IOLTA funds to the Board of Governors for approval; the amount of the annual administrative fee; the procedures related to the annual audit; receipts and requests for refunds under Rule 10.09; and other matters as requested by the Board, the Executive Director, or the Supreme Court.

(c) The Committee shall provide an annual summary of its activities to the Board of Governors.

#### **10.11 IOLTA Advisory Committee Financial Assistance Protocol**

(a) A legal services organization operating within the state for the purpose of providing legal services to the indigent, or otherwise underserved population, may apply for financial assistance from the IOLTA Advisory Committee through funds generated and collected by the procedures established by this Rule to be used for the following three-year period.

(b) An application for financial assistance must be submitted to the office of the State Bar no later than September 1 of the calendar year preceding the first calendar year for which three years of financial assistance is requested.

(1) Upon formal request, the Committee may grant a grace period during which an organization may submit its application after the September 1 deadline.

(2) The decision to grant or deny such a grace period lies with the sole discretion of the Committee and its decision shall be final.

(c) An application submitted under this Rule shall include:

(1) Evidence that clearly shows the applicant is incorporated in this state as a nonprofit organization. Such evidence shall include: official documentation indicating the applicant is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and official documentation indicating the applicant is properly registered and currently compliant with the West Virginia Secretary of State’s rules for charitable organizations.

(2) The general contact information of the organization, such as the address

and phone number of the central office, as well as the organization's website.

- (3) A list containing the names of the officers and board members, as well as contact information for the same;
- (4) The proposed budget of the applicant for the following year;
- (5) A general financial disclosure consisting of the previous year's costs associated with operations and services provided; and if applicable, where an applicant conducted or was subject to an audit of its previous year's activities, the audit shall be included with the application;
- (6) A description of the services to be provided and to whom such services are expected to be provided;
- (7) A detailed description of the region(s) and counties to which the applicant's services will be made available;
- (8) A projection of the number of people to be served by the applicant throughout the following year;
- (9) A summary of other sources of the applicant's funding; and
- (10) A specific description of any services, programs, training, and legal technical assistance to be rendered by the applicant or by another person pursuant to a contract with the applicant, including, but not limited to, by private attorneys or through reduced fee plans, pro bono programs, and mediation programs.

(d) The Committee shall review submitted applications during its third quarter (September) meeting to determine which applicants are eligible for financial assistance. From the pool of qualified applicants, the Committee shall determine which of the applicants, if any, are to receive funds, and in what amount.

(e) An organization that receives financial assistance under this Rule shall:

- (1) Submit quarterly reports to the Committee that provide general information as to the operations and financial status of that organization. These reports may be submitted in writing or orally (via telephone or video conference).
- (2) File an annual written report with the Committee detailing the number and types of cases handled, the amount and types of legal training provided, and other legal services provided by way of that financial assistance. Where it deems appropriate, the Committee may implore an organization's director to provide a formal presentation in conjunction with the annual report.
- (3) Quarterly and annual reports shall not contain any information that identifies or enables the identification of any person to whom the organization provided legal services.

(f) An organization that receives financial assistance under this Rule shall ensure:

- (1) That all legal services provided are of a quality value and up to professional

standards;

(2) That any attorney funded entirely or in part under this Rule is able to carry out professional responsibilities to clients free from interference from other persons, entities, or groups;

(3) That the expenditure of the funds granted are limited to the services prescribed in the approved application, and those costs reasonably associated therewith; and

(4) The preservation of client confidentiality.

(g) The Committee has the right, upon learning a grantee organization has failed, or may be failing, to uphold professional standards in its operations, to:

(1) Require the organization's director, officers, and board members to come before the Committee;

(2) Reduce the organization's funding under this Rule;

(3) Remove the organization as a grantee and bar further financial assistance under this Rule;

(4) Bar the organization from reapplying for future financial assistance under this Rule (whether temporary or permanently); and

(5) Pursue other corrective actions that are reasonable based on the conduct of the organization.

(6) Factors to be examined by the Committee in making its decision include, but are not limited to the: level of culpability involved in the misconduct; length of time; organization's own corrective measures; organization's monitoring process; and organization's self-reporting of the misconduct.

(h) At the end of the three-year period, an organization that received financial assistance during that period may reapply for assistance for the next period. The merits of any and all applications received, whether from new or re-applying organizations, will be reviewed anew by the Committee, utilizing the same standards for each application.

#### **~~10.10~~ 10.12 Distribution of IOLTA funds by the West Virginia State Bar**

All IOLTA funds remitted to the West Virginia State Bar shall be distributed by that entity as follows:

(a) an annual fee not to exceed thirty thousand dollars shall be retained by the West Virginia State Bar, for administration of the fund, with a detailed annual accounting of services performed in consideration for such fee to be filed for public inspection with the Supreme Court of Appeals; and

~~(b) special grants not to exceed fifteen percent of the fund's annual receipts to WV CASA Network, coordinating agency for court-appointed special advocate programs, in the amount of 43.5 percent of special grant funds available; to the West Virginia Fund for Law in the Public Interest, Inc., in the amount of 19.3 percent of special grant funds available; to the~~

~~Appalachian Center for Law and Public Service, in the amount of 7.72 percent of special grant funds available; to West Virginia Senior Legal Aid, Inc., in the amount of 24.125 percent of special grant funds available; and to ChildLaw Services of Mercer County 5.355 percent of special grant funds available; and~~

~~(c) Seventy five percent (75%) of the remaining funds to Legal Aid of West Virginia and twenty five percent (25%) of the remaining funds to Mountain State Justice or such other method of distribution as may hereinafter be adopted by order of the Supreme Court of Appeals. Any funds distributed by the West Virginia State Bar pursuant to this subdivision shall not be used by the recipient organization to support any lobbying activities.~~

(b) to grantees determined by the IOLTA Advisory Committee under Rule 10.11, in such amounts determined by the Committee, apportioned over the grant period and paid by the State Bar on a quarterly basis.

[DRAFTING COMMENTS: Rule 1.15 of the Rules of Professional Conduct requires that lawyers keep client funds in separate accounts conforming to that Rule. R.P.C. 1.15 further provides that lawyers who receive client funds that are nominal in amount or are expected to be held for a brief period must establish and maintain an IOLTA account for such funds. In conjunction with the most recent revisions to R.P.C. 1.15, the detailed IOLTA provisions in that Rule pertaining to the administration of those accounts and distribution of IOLTA-generated funds by the State Bar were removed from the ethics code and more appropriately incorporated into the State Bar Administrative Rules. By Administrative Order entered September 29, 2014, the Supreme Court approved and put into effect State Bar Administrative Rule 10. Other than stylistic changes, minor revision to Rule 10.07 clarifies that active non-practicing attorneys fall within the exemptions from the IOLTA program. More substantial amendments are contained in Rules 10.11 and 10.12 above that relate to how funds generated by IOLTA accounts are awarded and distributed to eligible nonprofit legal services organizations. These proposed amendments were submitted by the State Bar IOLTA Advisory Committee.]

## **Rule 11 Legal Corporations**

### **11.01 Prior approval**

Any one or more persons wishing to practice law in the State of West Virginia through a legal corporation shall file an application for approval with the West Virginia State Bar. Professional services shall not be provided through any legal corporation until such time as the corporation's application has been approved by the State Bar, and a certificate of incorporation has been issued by the West Virginia Secretary of State.

## **11.02 Application**

(a) An application for approval to provide legal services through a legal corporation shall be submitted to the West Virginia State Bar. Each application shall be submitted in the form required by the State Bar and accompanied by a \$50 application fee. Each application shall be signed by an incorporator of the proposed legal corporation, and shall also contain the office address, email address, telephone number, and facsimile transmission number for the person designated by the applicant as the contact person with regard to any questions concerning the application.

(b) In the case of a legal corporation with any shareholder or other lawyer associated with the entity who is not licensed to practice law in West Virginia, the application must include: (1) a designation of one or more licensed West Virginia lawyers associated with the corporation who shall be responsible for compliance by the corporation and its lawyers with the unauthorized practice of law provisions of the West Virginia Rules of Professional Conduct; and (2) a certification by such licensed West Virginia lawyer or lawyers that the corporation has sufficient policies and procedures in the place to prevent the unauthorized practice of law in West Virginia by any person associated with the corporation.

## **11.03 Review**

Upon receipt of a completed application, the West Virginia State Bar shall approve or disapprove the application within 30 days; provided however, that, should the applicant fail to respond satisfactorily to any request for additional information, or any request for clarification of the information submitted, the State Bar may decline to act upon such application until a reasonable time after the applicant has complied satisfactorily with any such request.

## **11.04 Requirements**

(a) Prior to approval of an application to operate as a legal corporation, or any renewal application, the West Virginia State Bar must be satisfied that:

(1) Those persons listed in the application who will engage in the practice of law in West Virginia are admitted to practice law in this State and are active members in good standing;

(2) The proposed corporate name contains the last name or names of one or more of its shareholders, or of lawyers who were associated with a predecessor partnership or other legal organization, and contains the words "legal corporation" or the abbreviation "L.C." at the conclusion of the name; and

(3) Any trade name to be used by the corporation complies with the applicable requirements of the Rules of Professional Conduct.

(b) The legal corporation must provide, by written disclosure in the form required by the State Bar, information as to whether the legal corporation has professional liability insurance or a designated and segregated fund for the satisfaction of judgments against the legal corporation, and its shareholders and employees, for acts, errors, and omissions occurring in the practice of law.

### **11.05 Notification**

If the West Virginia State Bar determines that the application is proper, it shall so notify the applicant in writing and shall notify the West Virginia Secretary of State that the applicant has satisfactorily registered with the State Bar. In the event that the State Bar denies an application, it shall so notify the applicant in writing stating the reason or reasons for the denial. Within 14 days following such denial, the applicant may submit a written request for reconsideration, accompanied by any additional or revised information pertinent to such reconsideration. Following the expiration of the 14-day period or a decision by the State Bar upon a timely request for reconsideration, the application shall be deemed a completed and closed matter.

### **11.06 Annual renewal**

Each year, by no later than November 1, in a manner prescribed by the West Virginia State Bar, any legal corporation approved under this rule to provide professional services in West Virginia shall file a renewal application with the State Bar. The renewal application shall disclose all changes in the legal corporation and its shareholders since the prior application or prior renewal application. The same fee shall accompany each renewal application as is required for an original application. If any renewal application discloses a basis upon which the West Virginia State Bar determines that the authority to render professional services in West Virginia by such legal corporation should not be renewed, the State Bar shall so notify the renewal applicant in writing. If the basis for denial of the renewal application is not resolved to the satisfaction of the State Bar with 30 days following receipt of the notice, the applicant shall cease rendering professional services in West Virginia; and the State Bar shall notify the West Virginia Secretary of State that the renewal application has been denied.

### **11.07 Transition requirements**

Any legal corporation providing legal services in West Virginia prior to the effective date of this rule shall be deemed temporarily approved under this rule. Temporary approval

under this rule shall expire on October 31, 2019. Any legal corporation deemed temporarily approved under this rule shall, prior to the expiration of this transition period, file an application for approval under this rule.

[DRAFTING COMMENTS: The provisions of this Rule are new, and originated from the final draft of the former Rules Committee. The organizational scheme has been re-ordered and provisions have been revised and added. The specific requirements in Rule 11.04(a) are drawn from the statute on legal corporations (W. Va. Code § 30-2-5a), and the Rules of Professional Conduct (principally Rules 5.4 and 7.5). However, this statute requires that all shareholders in a West Virginia legal corporation be lawyers admitted to practice in this state. (See W. Va. Code § 30-2-5a (a) and (h)). The requirement in the legal corporation statute that all shareholders be licensed West Virginia lawyers does not present a strong argument for a constitutional violation of the privileges and immunities clause, since it is not a restriction based upon residency in a particular state. But under commerce clause and equal protection considerations, it appears to be an arbitrary classification, with no similar statutory limitation to licensed West Virginia lawyers when authorizing the operation of a law firm as a LLP or PLLC. In those types of organizations, by statute and court rule, ownership is not restricted to West Virginia licensed lawyers. See W. Va. Code Chapter 31B, Article 10 (PLLCs) and Chapter 47B, Article 10 (LLPs); and Rule 5.8, West Virginia Rules of Professional Conduct. Of course, in any domestic or foreign legal entity operating a law firm in West Virginia, those practicing in this state must be licensed West Virginia lawyers. With these considerations in mind, this Rule does not restrict shareholders of a legal corporation to West Virginia licensed attorneys. This brings uniformity to the rules regarding legal corporations and the rules regarding LLPs and PLLCs. To the extent that the Rule is viewed as contrary to the legal corporation statute, it is nevertheless within the Supreme Court's exclusive authority to regulate the practice of law in this State. The portions of this statute in direct conflict are of no effect. *State ex rel. Askin v. Dostert*, 170 W. Va. 562, 295 S.E.2d 271 (1982).

Unlike the statutory financial responsibility requirements applicable to law firms operating as limited liability partnerships and professional limited liability companies, there is no statutorily imposed financial responsibility requirement for legal corporations in this State. Rule 11.04(b) was added to require disclosure by legal corporations as to whether these entities have professional liability insurance or a designated fund to satisfy professional liability claims. This disclosure requirement is parallel to the financial responsibility disclosure provisions for individual members in private practice covered by Administrative Rule 4.

There are timeframes added into Rule 11.05 (regarding initial applications) and Rule 11.06 (regarding renewal applications) to allow opportunity for corrective action by an applicant and reconsideration by the State Bar in the event of a denial of an application by the State Bar. This appears to be a better course than creating some sort of formal appeal process. Ultimately, if an

applicant believes the State Bar has improperly denied an application, relief can be sought through extraordinary writ proceedings.

Consideration was given to combining all legal entities under one rule. Although there are similar provisions in the separate rules, there are enough distinctions that it provides more clarity to have one rule for legal corporations, and a separate rule for LLPs and PLLCs.]

## **Rule 12 Limited Liability Partnerships and Professional Limited Liability Companies**

### **12.01 Prior Approval**

Professional legal services shall not be provided in this State through any limited liability partnership or professional limited liability company (collectively, "limited liability organizations") until such time as the West Virginia State Bar has approved the application for State Bar registration and all applicable registration or filing requirements of the West Virginia Secretary of State have been satisfied.

### **12.02 Application**

(a) *Limited Liability Partnerships.* Any two or more partners wishing to become registered as a limited liability partnership (LLP) governed under the laws of West Virginia to provide professional legal services, or any foreign LLP wishing to provide such services in West Virginia, shall file an application for registration with the West Virginia State Bar in the form required for this purpose, accompanied by a fee of \$100. The application shall be signed by a partner, and shall include the name, office address, email address, telephone number, and facsimile transmission number for the person designated by the applicant as the contact person with regard to any questions concerning the application.

(b) *Professional Limited Liability Companies.* One or more persons wishing to provide professional legal services in the State of West Virginia in the form of a professional limited liability company (PLLC) organized under the laws of the State of West Virginia shall file an application for registration with the West Virginia State Bar. A foreign professional limited liability company wishing to provide such services in West Virginia must also file an application for registration with the West Virginia State Bar. An application for registration as a professional limited liability company shall be submitted to the State Bar in the form required for this purpose, accompanied by a fee of \$100. Each application shall be signed by a member or manager of the proposed professional limited liability company or, in the case of a foreign PLLC, a member or manager having signature authority for such professional limited liability company. The application shall also contain the name, office address, email address,

telephone number, and facsimile transmission number for the person designated by the applicant as the contact person with regard to any questions concerning the application.

(c) *Multijurisdiction organizations.* In the case of a limited liability organization with any partner, member, or other lawyer associated with the organization who is not licensed to practice law in West Virginia, the application must include: (1) a designation of one or more licensed West Virginia lawyers associated with the limited liability organization who shall be responsible for compliance by the organization and its lawyers with the unauthorized practice of law provisions of the West Virginia Rules of Professional Conduct; and (2) a certification by such licensed West Virginia lawyer or lawyers that the limited liability organization has sufficient policies and procedures in the place to prevent the unauthorized practice of law in West Virginia by any person associated with the limited liability organization.

### **12.03 Review**

Upon receipt of a completed application, the West Virginia State Bar shall approve or disapprove the application within 30 days; provided however, that, should the applicant fail to respond satisfactorily to any request for additional information, or any request for clarification of the information submitted, the State Bar may decline to act upon such application until a reasonable time after the applicant has complied satisfactorily with the request.

### **12.04 Requirements**

Prior to the approval of an application to operate as a limited liability organization, or any renewal application, the West Virginia State Bar shall be satisfied that:

(a) Those persons listed in the application who will engage in the practice of law in West Virginia are admitted to practice law in this State and are active members in good standing;

(b) Written documentation establishes that the limited liability organization has obtained at least \$1,000,000 of professional liability insurance as statutorily required or has a designated fund in compliance with the statutory requirements for satisfaction of judgments against the limited liability organization and its partners or members; and

(c) The ownership, management, and name (including any trade name) of the limited liability organization comply with the ethical requirements of the Rules of Professional Conduct.

### **12.05 Notification**

If the West Virginia State Bar determines that the application is proper, it shall so notify the applicant in writing and shall notify the West Virginia Secretary of State that the

applicant has satisfactorily registered with the State Bar. In the event that the State Bar denies an application, it shall so notify the applicant in writing stating the reason or reasons for the denial. Within 14 days following such denial, the applicant may submit a written request for reconsideration, accompanied by any additional or revised information pertinent to such reconsideration. Following the expiration of the 14-day period or a decision by the State Bar upon a timely request for reconsideration, the application shall be deemed a completed and closed matter.

### **12.06 Annual Renewal**

Each year, by no later than November 1, in a manner prescribed by the West Virginia State Bar, any limited liability organization that has been approved under this rule to provide professional legal services in West Virginia shall file a renewal application with the State Bar. The renewal application shall disclose all changes in the limited liability organization since the prior application or prior renewal application, and shall provide confirmation of continued compliance with the statutory requirements for liability insurance or a designated fund for satisfaction of judgments. The same fee shall accompany each renewal application as is required for an original application. If any renewal application discloses a basis upon which the State Bar determines that the authority to render professional legal services in West Virginia by such limited liability organization should not be renewed, the State Bar shall so notify the renewal applicant in writing. If the basis for denial of the renewal application is not resolved to the satisfaction of the State Bar within 30 days following receipt of the written notice, the applicant shall cease rendering legal services in West Virginia; and the State Bar shall notify the West Virginia Secretary of State that the renewal application has been denied.

### **12.07 Amendments**

If any limited liability organization seeks to amend its professional liability insurance coverage or designated fund for satisfaction of judgments, an application for amendment shall be filed in advance with the West Virginia State Bar, in the form required by the State Bar and accompanied by a fee of \$25. The application for amendment must include documentation that substantiates whether the limited liability organization's changes regarding its financial responsibility for professional liability claims will be in compliance with all applicable statutory requirements, with the West Virginia Rules of Professional Conduct, and with this rule.

### **12.08 Transition requirements**

Any limited liability organization providing legal services in West Virginia prior to the effective date of this rule shall be deemed temporarily approved under this rule. Temporary

approval under this rule shall expire on October 31, 2019. Any limited liability organization deemed temporarily approved under this rule shall, prior to the expiration of this transition period, file an application for approval under this rule.

[DRAFTING COMMENTS: This Rule is new, and is based on provisions in the final draft of the former Rules Committee, with a number of revisions and added provisions. This Rule covers both limited liability partnerships and professional limited liability companies. Although these two forms of legal entities are covered by different statutes (LLPs - W. Va. Code Ch. 48B, art. 10) and (PLLCs - W. Va. Code Ch. 31B, art. 13) there are enough similarities to combine both under one rule. Any requirements distinct for one legal entity form are set out separately. Rule 5.8 (Limited Liability Legal Practice) of the Rules of Professional Conduct takes a similar approach.

Review of the various statutory requirements for the transaction of business in West Virginia by domestic and foreign LLPs and PLLCs present some conflicts with particular ethical obligations in the legal profession. For example, nothing in Chapter 48B, article 10 would limit partners in a law firm operating as an LLP to members of the legal profession; and under Chapter 31B, article 13, members of different professions are expressly allowed to be members and managers of the same PLLC. These statutory provisions are in conflict with the ethical requirement that lawyers may not practice law in any professional corporation or limited liability organization wherein a nonlawyer has any ownership interest or management control. Rule 5.4(d), W. Va. Rules of Prof. Conduct. Rule 15.04 provides that any LLP or PLLC show compliance with this ethical requirement before being approved to provide legal services in this state. This Rule also clarifies that the statutory provisions for meeting the \$1,000,000 financial responsibility requirements apply to all limited liability organizations providing legal services. Both West Virginia and foreign LLPs must satisfy this statutory condition. W. Va. Code § 47B-10-5. With PLLCs, those organized under West Virginia law are also clearly required to meet this condition (W. Va. Code § 31B-13-1305), but the applicable statutes do not expressly impose this requirement with respect to foreign PLLCs. See W. Va. Code §§ 31B-13-1306 and 31B-10-1001.

While statutory amendments specific to legal services through a limited liability organization would provide some clarity, the rules applicable to the practice of law are not dependent upon such legislative changes. The West Virginia Supreme Court has the inherent and exclusive authority, under the State constitution and by statute, to regulate the practice of law in this State. These rules of the State Bar and the ethical rules applicable to lawyers are promulgated by the Supreme Court under this regulatory authority and, as such, supersede any conflicting statutory provisions.

There are timeframes added into Rule 12.05 (regarding initial applications) and Rule 12.06 (regarding renewal applications) to allow opportunity for corrective action by an applicant in the event of a denial of an application by the State Bar. This appears to be a better course than

creating some sort of formal appeal process. Ultimately, if an applicant believes the State Bar has improperly denied an application, relief can be sought through extraordinary writ proceedings.]

## **Rule 13 Young Lawyer Section**

### **13.01 Membership and mission**

The Young Lawyer Section of the West Virginia State Bar shall consist of all those lawyers who meet the following requirements: (a) admitted to practice before the Supreme Court of Appeals of West Virginia; (b) active members in good standing of the West Virginia State Bar; and (c) who are either 35 years of age or under, or who have been admitted to practice ten years or less prior to the annual meeting of the West Virginia State Bar. The Young Lawyer Section of the West Virginia State Bar aims to assist new lawyers in making the transition between law school and the practice of law by providing a means for personal and professional growth and encouraging participation in the activities of the Bar. The Young Lawyer Section implements and contributes to programs that promote education, leadership, and public service, and assists the Bar in its mission to improve the administration of justice and increase the legal services provided to the citizens of West Virginia.

### **13.02 Young Lawyer Board—powers and duties**

The Young Lawyer Board shall have general charge of the administration of the affairs of the Young Lawyer Section of the West Virginia State Bar. The Young Lawyer Board shall diligently formulate such policies and do such things as may be necessary and proper for the accomplishment of the objectives, aims, and purposes of the Young Lawyer Section of the State Bar.

The Young Lawyer Board, by a majority vote, may establish, combine, and terminate standing, administrative, and special committees as it may deem advisable and may delegate to appropriate committees such of its jurisdiction, functions, powers, and authority as it may deem proper. Such committees may be composed of Young Lawyer Board members or members of the Young Lawyer Section, or both. The members of such committees shall hold office at the pleasure of the Young Lawyer Board.

### **13.03 Young Lawyer Board—membership**

The Young Lawyer Board shall consist of the following twenty-one voting members and one non-voting member:

- (a) The chair, who is chosen and serves as provided in Rule 13.11;
- (b) The chair-elect, who is chosen and serves as provided in Rule 13.11;
- (c) The secretary, who is chosen and serves as provided Rule 13.11;

(d) One elected representative from each of the districts established in State Bar Bylaw 5.04 and one additional representative from District 8;

(e) One minority lawyer representative, elected by the method described in Rule 13.08; and

(f) A law student at West Virginia University College of Law, as a non-voting member, designated by the dean of the law school.

### **13.04 Qualifications of Young Lawyer Board district representatives**

Each Young Lawyer Board member serving as a district representative shall have his or her principal office for the practice of law in the State Bar district which the member represents, and the removal of the member's principal office from such district shall result in the automatic termination of board membership. Each Young Lawyer Board officer and district representative shall be an active member of the State Bar in good standing, and the loss of that status in any manner shall result in the automatic termination of that membership.

### **13.05 Nomination of Young Lawyer Board district representatives**

Nomination for membership on the Young Lawyer Board as a district representative shall be by written petition signed by not less than ten members of the Young Lawyer Section in the district where such nominee's principal office is located; except that where there are fewer than ninety members in such district, the signatures of ten percent of Young Lawyer Section members shall be sufficient. No member shall sign more than one nominating petition in any year. If in any election year no nominating petition is received from any State Bar district, within the time fixed by the board, a vacancy shall be declared in the office and it shall be filled pursuant to Rule 13.10.

### **13.06 Election and term**

Each year an election shall be conducted for Young Lawyer Board representatives. The yearly elections shall be staggered in the following four-year cycle beginning in the year 2019:

(a) Year One: State Bar Districts One through Five;

(b) Year Two: State Bar Districts Six through Eight;

(c) Year Three: State Bar Districts Nine through Twelve and the minority lawyer representative; and

(d) Year Four: State Bar Districts Thirteen through Sixteen.

Young Lawyer Board representatives shall be elected, each for four-year terms, from the State Bar districts in which vacancies occur in that year by reason of the expiration of the term of office of a Young Lawyer Board representative previously elected in that district. An elected representative is eligible to be elected to succeed himself or herself for one

consecutive term. Any appointment to serve the remainder of a vacated term prior to being elected does not disqualify a representative from consecutive election to two full terms.

Each year, the election shall be held at least one month before the West Virginia State Bar annual conference. In any year in which there is more than one position to fill in the same district, those voting shall be entitled to vote for as many candidates as the number of positions to be filled. All candidates in a multi-member district shall run at large.

The term of office of each representative shall commence at the conclusion of the State Bar annual conference next succeeding the representative's election. Representatives shall hold office until a successor is elected and qualified, including any extended period necessitated by changes in election cycles or terms.

### **13.07 Election procedure**

Each Young Lawyer Board representative shall be elected by an electronic vote of the members of the Young Lawyer Section having their principal offices for the practice of law in the State Bar district in which the nominee is seeking office. Elections shall be conducted and canvassed, and any tie votes determined by lot, by the chair of the Young Lawyer Board in the presence of no less than three members of the Young Lawyer Board.

### **13.08 Election of a minority lawyer to the Young Lawyer Board**

A minority lawyer representative shall be elected by the minority lawyers in the Young Lawyer Section to serve a four-year term on the Young Lawyer Board. Nominating and voting procedures shall be timed, to the extent possible, to coincide with the nomination and election of district representatives on the Young Lawyer Board.

The Young Lawyer Board chair or secretary shall email all minority lawyers in the Young Lawyer Section who so registered with the State Bar, soliciting nominations for the minority lawyer representative position, noting the eligibility requirements for such representative. A ballot will be prepared listing all nominees, and distributed to all minority lawyers in the Young Lawyer Section who have so registered, each of whom shall have one vote. Ballots will be counted and verified in the same manner as ballots for Young Lawyer Board district representatives. The candidate receiving the highest number of votes shall be elected for a four-year term, commencing at the conclusion of the following State Bar annual conference. An elected minority lawyer representative is eligible to be elected to succeed himself or herself for one consecutive term. Any appointment to serve the remainder of a vacated term prior to being elected does not disqualify a representative from consecutive election to two full terms.

### **13.09 Removal from the Young Lawyer Board**

If any representative is determined by the Young Lawyer Board to be incapacitated from continuing to perform duties as a board member, or if representative is absent from

any two consecutive meetings of the Young Lawyer Board, without cause deemed adequate by the Young Lawyer Board, the representative may be removed by a majority vote of the Young Lawyer Board.

### **13.10 Young Lawyer Board vacancies**

A vacancy on the Young Lawyer Board shall be filled for the unexpired term. The vacancy shall be announced by the State Bar in an email to eligible members, therein seeking applications for appointment to the vacant office. The applications submitted shall be distributed to the Young Lawyer Board, which shall fill the vacancy by appointment from the applications submitted. Any member so appointed to the Young Lawyer Board shall continue to serve in that capacity for the remainder of the term vacated.

### **13.11 Officers**

(a) *Chair.* The chair shall be the chief executive officer of the Young Lawyer Section and shall faithfully endeavor to accomplish a successful achievement of its objectives, aims, and purposes. The chair shall preside at all meetings of the Young Lawyer Section and of its Young Lawyer Board, or in lieu thereof, the chair or the Young Lawyer Board may designate a presiding officer. The chair shall further perform those duties which usually devolve upon a chief officer, and such duties as may be prescribed from time to time by the Young Lawyer Board. The chair shall have previously served as chair-elect during the immediately preceding year, unless a vacancy requires otherwise.

(b) *Chair-Elect.* The chair-elect shall perform such duties and have such authority as may be prescribed from time to time by the Young Lawyer Board. The chair-elect shall have previously served as secretary during the immediately preceding year, unless a vacancy requires otherwise. Following one year as chair-elect, the chair-elect shall serve one year as chair.

(c) *Nomination of Secretary.* Each year the Young Lawyer Board, at its meeting during the annual conference of the State Bar, shall accept a nominee or nominees for the office of secretary. Those persons eligible to be nominated must be serving on the Young Lawyer Board at the time of the nomination and be a qualified member of the Young Lawyer Section under Rule 13.01.

(d) *Selection of secretary; term.* Each year, at its meeting during the annual conference of the State Bar, the Young Lawyer Board of the Young Lawyer Section shall, by secret ballot of those members present, elect a secretary from the nominations submitted. If there are more than two nominees, then the nominee with the least number of votes shall be eliminated from the ballot and the Young Lawyer Board shall recast their votes for the remaining nominees. This voting procedure shall continue until such time as one nominee receives at least fifty percent plus one of the votes cast and a winner can be declared. The secretary shall

serve one full year until the adjournment of next annual conference of the State Bar, at which time the secretary shall become the chair-elect of the Young Lawyer Section.

(e) *Commencement and duration of terms.* The term of each officer shall commence at the conclusion of each State Bar annual conference and shall continue until the conclusion of the next succeeding State Bar annual conference and the qualification of a successor.

(f) *Removals; Vacancies.* If any officer is determined by the Young Lawyer Board to be incapacitated from continuing to perform the duties of such office, that officer may be removed by a majority vote of the Young Lawyer Board and a vacancy shall be deemed to have been created. In the event that the chair-elect is unable or unwilling to serve as chair, then a vacancy will be deemed to have been created in the office of chair. If the secretary is unable or unwilling to become the chair-elect, then a vacancy will be deemed to have been created in the office of chair-elect.

(g) *Filling vacancies.* Vacancies in any office shall be filled by the Young Lawyer Board with the nominee(s) being chosen from the Young Lawyer Board membership and elected to serve for the remainder of the unexpired term.

### **13.12 Compensation; expenses**

A Young Lawyer Board member or officer shall not receive compensation for services. But any such person may be reimbursed for necessary and actual traveling and subsistence expenses when authorized by the Young Lawyer Board.

[DRAFTING COMMENTS: Rule 13 is based upon a document entitled “Bylaws of the Young Lawyer Section of the West Virginia State Bar” received in February 2014 from a member of the YLS. This document proposed certain amendments to the bylaws document, which was apparently last revised in March 1993. The YLS bylaws do not appear to have ever been presented to the Court for approval. This Rule has been further revised in many subject areas, with most revisions in the membership and election sections. Also, revisions were made to conform with the existing numbering and heading style of the rules, and to add appropriate cross-references. A proposed Article 17 has been added to the Bylaws authorizing the continuing operations and functions of the YLS under the provisions of this Rule.]

## **Rule 14 Succession planning**

### **14.01 Successor designations**

The duty of diligence may require that an active member of the West Virginia State Bar who is operating as a sole practitioner prepare a written succession plan specifying what steps must be taken in the event that the member is unable to continue his or her law practice due to death or disability. See West Virginia Rules of Professional Conduct, Rule 1.3, Comment 5. As part of any succession plan, a lawyer should arrange for one or more

successor lawyers to protect the interests of the lawyer's clients in the event of death or any disability that precludes practicing law. Such designation may set out a fee-sharing arrangement with the successor lawyer or lawyers. Nothing in this rule or the lawyer's designation shall prevent a client from seeking and retaining a different lawyer or law firm. Any lawyer to be designated as a successor must consent to the designation.

#### **14.02 Registry of successor designations**

The West Virginia State Bar shall maintain a registry of successor designations, and identify the existence of a member's succession plan as part of the Bar membership information. Active members who are operating as sole practitioners shall disclose to the State Bar whether they have a designated successor and a succession plan. Such disclosure shall be made annually on or before July 1, and submitted in the form required by the State Bar.

#### **14.03 Responsibility for costs if court-appointed trustee is required**

If a trustee is appointed for a deceased or disabled lawyer under Rule 3.29 of the Rules of Lawyer Disciplinary Procedure, and no successor designation is on record for that lawyer as part of the State Bar membership registry, then the lawyer, or the lawyer's estate, shall be adjudged responsible for payment of the reasonable and necessary fees and costs of the trustee that are assessed by the appointing court pursuant to Rule 3.29. To the extent that the trustee's fees, costs, and expenses are paid by the Office of Disciplinary Counsel or other third party, the lawyer or the estate shall be liable to make reimbursement for such payment or payments.

[DRAFTING COMMENTS: Rule 14 is a new rule to address a recurring circumstance that gives rise to problems that could largely be avoided with a little advance planning. There is a comprehensive succession planning guide, with forms, on the State Bar website. Thus, much of the work has already been done. Section 14.01 is modeled loosely after a South Carolina rule. It makes reference to the new comment in the Rules of Professional Conduct which states that "the duty of diligence may require" sole practitioners, in the event of death or incapacity, to designate another lawyer to protect client interests. Although the designation is voluntary, Section 14.03 incorporates a provision regarding liability for payment of the costs of a trustee if one has to be appointed following a lawyer's death or disability. This is a big expense for the ODC, and therefore, for the Bar. At the request of the ODC, Rule 3.29 of the Rules of Lawyer Disciplinary Procedure was recently amended by the Court to accomplish the cost-shifting result, but this rule leaves it in the discretion of the appointing court as to whether to enter a judgment against the attorney or attorney's estate. Rule 14.03 adds further incentive by making entry of judgment non-discretionary when there was no successor designation. Rule 14.02 also encourages succession planning by incorporating a disclosure requirement.]

## DEFINITION OF THE PRACTICE OF LAW

[Adopted March 28, 1947, effective May 1, 1947. Amended June 27, 1961, effective July 1, 1961.]

It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that he or she is qualified to perform legal services.

Unlicensed persons are excluded from the practice of law to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control.

The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any definition of the practice of law must be derived.

The relation of attorney and client is direct and personal, and a person, ~~natural or artificial~~, who undertakes the duties and responsibilities of an attorney-at-law is ~~none the less~~ nonetheless practicing law though such person may employ or select others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others in matters connected with the law shall be properly trained and educated, and be subject to a peculiar discipline. ~~The~~ That fact, and the protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

In general, one is deemed to be practicing law whenever he or she ~~or it~~ furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill.

More specifically but without purporting to formulate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with

or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. Nothing in this paragraph shall be deemed to prohibit a lay person from appearing as agent before a ~~justice of the peace~~ magistrate or to prohibit a bona fide full-time lay employee from performing legal services for his regular employer (other than in connection with representation of his employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others.

[DRAFTING COMMENTS: Minimal changes were made to eliminate references to artificial persons who could practice law and to add gender-neutral references. The outdated reference to justices of the peace was also eliminated, but the ability to appear as a lay agent in magistrate court on a casual, non-recurring and non-pay basis is retained in accordance with syllabus point 4 of *State ex rel. Frieson v. Isner*, 168 W.Va. 758, 285 S.E.2d 641 (1981).]