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West Virginia 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 “West Virginia State Bar.” Its principal office shall be maintained in the capital 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, to perform the functions expressed in this constitution and bylaws, and to perform such other functions as directed by the Supreme Court of Appeals of West Virginia.

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 they are an active member in good standing of the West Virginia State Bar or are 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 emeritus pro bono 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 administered and managed by a board of governors. There shall be a committee on unlawful practice, and for each state bar district created by the bylaws there shall be a committee on grievances. The board shall select a

president who shall then serve as immediate past president, a president-elect, a vice president, an executive director, and the members of committees. 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 committees shall be selected from the membership of 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 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 a majority of the voting members or, without such recommendation, at an annual meeting by vote of two thirds of the members present.

[CLERK'S 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 previous 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 Rule of Professional Conduct 5.5). In addition, emeritus pro bono 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.]

Definition of the Practice of Law

[Adopted March 28, 1947, effective May 1, 1947. Amended June 27, 1961, effective July 1, 1961. Amended December 30, 2019, effective January 1, 2020.]

It is essential to the administration of justice and the proper protection of society that only qualified persons duly admitted be licensed and permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that they are 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 who undertakes the duties and responsibilities of an attorney-at-law is 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. 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 they furnish 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 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.

[CLERK'S 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).]

West Virginia State Bar Bylaws

Article 1 Definitions and Rules of Construction.

Bylaw 1.01 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 their 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 a Court of Record” or “Judicial Member” means a Family Court Judge, Circuit Court Judge, Supreme Court of Appeals Justice, and federal judges specified in Bylaw 2.07;
- (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 of Appeals in accordance with Bylaw 10.12 that apply to and govern the administration of the West Virginia State Bar;
- (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; and
- (l) “Supreme Court” or “Supreme Court of Appeals” means the Supreme Court of Appeals of West Virginia.

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.

[CLERK’S COMMENTS: The original article was 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 Classes of members

Once admitted to the practice of law in West Virginia by taking the required oath (or affirmation), all attorneys are required to be enrolled as members of the West Virginia State Bar. The members of the West Virginia State Bar shall be divided into the following classes: (a) active members; (b) active non-practicing members; (c) inactive members; (d) judicial members; (e) emeritus pro bono members; (f) suspended members; (g) disbarred members; and (h) resigned members. State Bar membership is separate and distinct from the admission to the practice of law in West Virginia.

[CLERK’S 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 is now defined separately.

Because of the importance of maintaining a complete and transparent membership 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.

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.

Admission to the practice of the law is distinct from State Bar membership and that distinction is made. Members in good standing may receive a Certificate of Good Standing from the Clerk of the Supreme Court of Appeals.]

Bylaw 2.02 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 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) email address of record; (5) principal office address; (6) telephone number of record; (7) fax number of record; and (8) date admitted by the 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.

[CLERK'S 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 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 Active members

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 Appeals 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 Active non-practicing members

(a) 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 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 non-practicing member so long as such member shall each year pay the annual active membership fee to the State Bar. No member of the State Bar who engages in the Practice of Law in this State, or occupies a position in the employ of or rendering any legal service for an active member, or occupies a position wherein they are called upon to or 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, shall be an active non-practicing member.

(b) Any active non-practicing member 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 non-practicing member shall enjoy the same rights and responsibilities as an active member. An active non-practicing member shall not be required to comply with mandatory continuing legal education requirements, or the reporting requirements related to financial responsibility and IOLTA.

Bylaw 2.05 Inactive members

(a) 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 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 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. No member of the State Bar who engages in the Practice of Law in this State, occupies a position in the employ of or renders any legal service for an active member, or occupies a position where they are called upon to or do 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, shall be an inactive member.

(b) An inactive member shall not vote in any meeting, election, or referendum of the State Bar, or hold office in the State Bar. They may attend meetings of the State Bar, participate in the debates of such meetings, and be appointed 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, or the reporting requirements related to financial responsibility and IOLTA. 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 Transfer to active membership

Any active non-practicing member, 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 or disbarred; has fully complied with pertinent mandatory continuing legal education 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 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 their time in office. Every United States Circuit Judge appointed pursuant to Article III of the United States Constitution to serve as a judge of the Fourth Circuit Court of Appeals who is a resident of West Virginia at the time of appointment shall be enrolled as a judicial member. Every United States District Judge appointed pursuant to Article III of the United States Constitution to serve in a West Virginia district court shall be enrolled as a judicial member. Every United States Bankruptcy Judge appointed to serve in a West Virginia bankruptcy court shall be enrolled as a judicial member during the term of their appointment, or, if retired, during any period in which they have been duly recalled for service. Every United States Magistrate Judge appointed to serve in a West Virginia district court shall be enrolled as a judicial member during the term of their appointment, or if retired, during any period in which they have been duly recalled for service.

(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. They 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. They 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. A judicial member shall not be required to comply with mandatory continuing legal education requirements, or the reporting requirements related to financial responsibility and IOLTA.

(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 they are engaged in the active practice of law, and shall abide by all requirements for active membership.

Bylaw 2.08 Emeritus pro bono 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 in that Rule. 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 West Virginia 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 of 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 of Appeals 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. They 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.

[CLERK'S COMMENTS: Bylaws 2.03 through 2.06 were re-ordered and revised for consistency and clarity. Bylaws 2.07 through 2.11 are new. Former sections four and six were 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 clarifying language was added to Bylaw 2.04.

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 all 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 Fees

Bylaw 3.01 Authority to set annual membership fees

The schedule of annual membership fees must be approved by no fewer than two-thirds of the Board and shall be approved by the Supreme Court of Appeals, and take effect upon the approval by the Supreme Court of Appeals.

Bylaw 3.02 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);

(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 Rule 4.0 of the Rules for Admission to the Practice of Law shall pay an annual membership fee equal to the amount set forth in State Bar Administrative Rule 3.02(a)(3).

Bylaw 3.03 Payment of annual membership fee

(a) *Obligation to pay annual membership fee.* Each member shall pay the applicable annual membership fee to the 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.

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

(3) A member who is suspended during the entire fiscal year as a result of disciplinary proceedings 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 fiscal year before reinstatement.

(c) *Refunds prohibited.* No part of any annual 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 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 must be approved by no fewer than two-thirds of the Board and shall be approved by the Supreme Court of Appeals of West Virginia and take effect upon such approval. 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.

[CLERK'S COMMENTS: This article was reorganized into more cohesive sections. 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, subject to the approval by the Supreme Court of Appeals.]

Article 4 Financial Responsibility Disclosure

Bylaw 4.01 Required annual disclosure

Upon admission to the Practice of Law in West Virginia, and with each subsequent annual membership payment, 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.

[CLERK'S 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 Management and duties

The management and duties 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 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 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, 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 recommend salaries and other necessary expenses of the State Bar and provide for the payment thereof. 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 the 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 State Bar may: (1) purchase, acquire, own, lease or otherwise hold such property, real or personal, deemed useful for the operations of the State Bar, upon such terms, conditions and for such price as approved by the Board of Governors; (2) acquire, construct, equip, maintain, and operate buildings, structures, projects, and appurtenant facilities, of any type or types deemed useful for the operations of the State Bar, upon such terms, conditions and for such price as approved by the Board of Governors; and (3) sell, encumber, or dispose of any property, real or personal, held or owned by the 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 Members of the Board of Governors

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

- (a) The president, president-elect, vice-president, and immediate past president;
- (b) One governor from each of the sixteen State Bar districts set forth in Bylaw 5.04;
- (c) Three additional governors from State Bar District Eight;
- (d) One African-American lawyer elected as described in Bylaw 5.06;
- (e) The Chairperson of the Young Lawyer Section; and
- (f) The Dean of the West Virginia University College of Law, as a non-voting member.

Bylaw 5.03 Election and term

(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 2020:

- (1) Year One: State Bar Districts Six through Eight;
- (2) Year Two: State Bar Districts Nine through Twelve and the African-American lawyer;
- (3) Year Three: State Bar Districts Thirteen through Sixteen; and
- (4) Year Four: State Bar Districts One through Five.

(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 meeting of the State Bar next succeeding their election, and they shall hold office until their successor is elected and qualified, including any extended period necessitated by changes in election cycles or terms.

Bylaw 5.04 State Bar districts

For the purpose of election of governors, the State is divided into 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 Qualifications of district governors

A governor shall be an active member with their principal office for the practice of law in the State Bar district they represent, 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 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 is qualified for office, except that where there are fewer than ninety eligible members in 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) In each year in which an African-American lawyer is to be elected as a governor, the Executive Director shall identify African-American 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 members of the State Bar eligible to vote, except that if there are fewer than ninety eligible African American lawyers in the state, the signatures of ten percent of the African-American lawyers shall be sufficient. No African-American lawyer 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 lawyer for governor, the President shall appoint a committee from the Board, and that committee shall nominate at least two eligible African-American lawyers.

Bylaw 5.07 Election of governors

Each district governor shall be elected by 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 addresses of record are in that district. Each governor in the African-American lawyer position shall be elected by an electronic vote of the African-American lawyers so registered who are active members and active non-practicing members of the State Bar. Such elections shall be conducted and canvassed, and any tie votes determined, in accordance with State Bar Administrative Rule 5.05.

Bylaw 5.08 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 their duties as governor, or if any governor be absent from any two consecutive meetings of the board, without cause deemed adequate by the Board, they may be removed by the Board.

Bylaw 5.09. 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 of the State Bar membership. New governors and officers shall begin their terms following the adjournment of the annual meeting. 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 Board meeting by means of conference telephone or 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 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.

[CLERK’S COMMENTS: The former Article was disjointed. The re-write consolidates and simplifies all the provisions where possible. 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.” *See* 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 Officers

Bylaw 6.01 Types of officers

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 Selection of officers and terms

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

(b) *President-elect*. Each year, at its meeting on the day preceding the opening day of the annual meeting, the Board shall select as President-elect of the State Bar, the sitting Vice President, who shall serve for the year beginning with the adjournment of such annual meeting of the State Bar and continuing until the beginning of the term of their successor as President-elect.

(c) *Vice president.* Each year, at its meeting on the day preceding the opening day of the annual meeting 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 meeting of the State Bar immediately following their election and continuing until the beginning of the term of their successor as Vice President.

(d) *Executive director.* The Board shall from time to time select an Executive Director, who shall hold office as determined by the Board, and be approved by the Supreme Court of Appeals.

Bylaw 6.03 Qualifications of officers

All officers shall be active or active non-practicing members in good standing of the State Bar. The Executive Director may or may not be a member of the State Bar, as the Board may prescribe. When State Bar membership in good standing is required of any officer, loss of that status in any manner shall automatically terminate their term of office.

Bylaw 6.04 Nomination of officers

Each year the Board shall select a committee on nominations, consisting of such number of its own members as it may then determine. The committee on nominations shall report to the Board at its final quarterly meeting of the fiscal year. Such report shall name a nominee or nominees for the office of 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.

Bylaw 6.05 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 duties as such officer, they may be removed by the Board.

Bylaw 6.06 President; duties and authority

(a) The President shall be the chief executive officer of the State Bar and 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. The President shall further perform those duties which are usually committed to a chief 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 the 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 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.

(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.

(c) 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 Bylaw 6.02(a).

Bylaw 6.08 Immediate past president

The President, for the year following 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 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 arrange for the recording of the proceedings of all such meetings. The Executive Director of the State Bar shall take charge of all funds of the State Bar and deposit

them in depositories selected by the Board. The Executive Director of the State Bar 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, any Governor, or any authorized committee of the State Bar. At each annual meeting of the State Bar the Executive Director shall report upon the activities of the State Bar during the past year and make such recommendations as the Executive Director shall deem proper. At each meeting of the Board, the Executive Director shall make such financial and other reports as the Board may require. The Executive Director shall prepare a financial report, which shall be filed with the Supreme Court of Appeals 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. The Executive Director 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 the 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.

Bylaw 6.10 Compensation; expenses

No governor 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.

[CLERK'S 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, and 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.]

Article 7 Executive Committee

Bylaw 7.01 Executive Committee

(a) The Executive Committee shall consist of the President, the President-elect, 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 other communications equipment permitting two-way communications by all persons in attendance. Four members of the Executive Committee shall constitute a quorum thereof.

[CLERK'S 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 Unlawful Practice Committee

Bylaw 8.01 Jurisdiction

The 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 Powers

(a) The Unlawful Practice Committee shall investigate on its own initiative or upon request of any court or judge, or the written complaint of any person, any matter involving the alleged unlawful practice of law. The Committee is empowered to dismiss any complaint. The Unlawful Practice Committee is authorized to present to the Supreme Court of Appeals

for approval 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 the Unlawful Practice Committee, for the purpose of securing appropriate relief.

(b) The Committee may act as a 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 Members; terms; vacancies; removals

The Unlawful Practice Committee shall consist of 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. 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 previously selected. Vacancies occurring for other reasons shall be filled by the Board for the unexpired terms. If a member of the Committee is determined by the Board to have become incapacitated from performing their duties as a member or is absent from any two consecutive meetings of the Committee without cause deemed adequate by the Board, they may be removed by the Board. The term of office of each member shall commence at the conclusion of the final quarterly meeting of the Board in the fiscal year of the appointment. Vacancy appointments for unexpired terms shall commence immediately.

Bylaw 8.04 Officers; subcommittees

A chairperson and vice chairperson shall be designated annually by the Board from the members of the Unlawful Practice Committee. 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 Meetings; quorum

(a) 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 the Committee. Attendance at and participation in any such Committee 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 Committee member wishing to attend a scheduled meeting remotely shall provide notice to the chairperson at least 5 days in advance of the meeting.

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

Bylaw 8.06 Reports to Executive Director

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

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 to the proceeding, 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 their 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.

[CLERK’S COMMENTS: The updated and revised Unauthorized Practice of Law (“UPL”) procedures articulated in Article 8 of the Bylaws and Administrative Rule 7 are intended to modernize the process by which the public is protected through enforcement of the definition of the practice of law promulgated by the W. Va. Supreme Court. Article 8 of the Bylaws set out the broad authority, while Administrative Rule 7 contains many of the specific procedures. The revised process requires the Court to conduct an actual review of the substance of a decision by the UPL Committee, including the power to veto or modify decisions of the UPL Committee.]

Article 9 Grievance Committees

Bylaw 9.01 Duties

The grievance committee in each State Bar district shall perform such functions and duties in its district as the Board may prescribe from time to time.

Bylaw 9.02 Members

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

[CLERK’S COMMENTS: Article 9 was simplified in order to give the State Bar flexibility with regard to grievance committees, which are used occasionally as a mechanism to handle non-disciplinary grievances.]

Article 10 Miscellaneous Provisions

Bylaw 10.01 Seal

The State Bar shall have a seal having the words and figures “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 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 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 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 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 acts done while in the performance of their official duties.

Bylaw 10.04 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 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 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 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 Parliamentary rules

Unless otherwise specifically resolved, the rules contained in the latest edition of *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 policies and procedures adopted by the Board.

Bylaw 10.09 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 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 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 of Appeals 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 of Appeals. 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.

[CLERK'S 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 are 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. Amendments and Referenda

Bylaw 11.01 Amendments at annual meeting

(a) Subject to the final approval by 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 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 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 Referenda

For the purpose of ascertaining the opinion of the membership, the Board may at any time 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.

[CLERK'S 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) The annual meeting of the State Bar provides the membership of the State Bar with an opportunity to address issues of concern.

(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 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 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.

[CLERK'S 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, 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.

[CLERK'S 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.

[CLERK'S COMMENTS: This new article 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

Every lawyer has a mandatory obligation to continue legal education throughout their period of 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) The Mandatory Continuing Legal Education Commission ("Commission") administers the program of mandatory continuing legal education. 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. 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. 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. 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. 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. Participation in meetings may be by conference telephone or similar two-way remote communications equipment.

(c) The members of the Commission shall have immunity from civil liability 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. Members of the Commission shall serve without compensation, but each member is entitled to reimbursement for their actual and necessary expenses in the performance of Commission duties.

Bylaw 15.03 Powers and Duties of the Commission

The Commission shall administer the program of mandatory continuing legal education and shall have the following powers and duties:

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

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

(c) 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) 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.

(f) To meet, conduct hearings, and make determinations as required to administer the program of mandatory continuing legal education.

(g) 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 after having been suspended from active status for noncompliance.

(h) To submit biennially 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 any recommendations for changes to this Bylaw or State Bar Administrative Rule 6.

(i) 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.

(j) 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.

[CLERK’S 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 specific details set forth in the administrative rule. In addition to the Rules and Regulations in Chapter VII, the Commission had 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.

[CLERK’S 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.

WEST VIRGINIA STATE BAR ADMINISTRATIVE RULES

Rule 1 Preamble

Pursuant to the Supreme Court of Appeal'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

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.

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.

[CLERK'S 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 Penalty for nonpayment of membership fees

(a) *Active and active non-practicing members.* After the first day of September of each year, a penalty in an amount set by the Board, not less than \$200, shall be assessed to any active or active non-practicing member who is delinquent in their membership fees. The Executive Director shall notify all members in default in the payment of membership fees of their delinquency, 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 certified or registered mail, addressed to such member at their 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 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 Rule 3.02, they shall be automatically suspended from active membership in the State Bar and shall not further engage in the Practice of Law until they have been reinstated. The Executive Director shall give notice of such suspension to the Judges of Courts of Record 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. Notice of the suspension shall be given to the delinquent member by certified or registered mail, addressed to such member at their mailing address of record. It is the duty of every member of the State Bar to keep informed relative to the payment of 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, they will be automatically suspended from membership in the State Bar and shall not be entitled to any rights or privileges of membership until they have been reinstated.

3.04 Reinstatement of members administratively suspended for nonpayment of membership fees.

(a) *Active members.* Whenever an active member suspended solely for nonpayment of membership fees has paid all accrued fees and penalties, and has shown that the member is in compliance with the pertinent mandatory continuing legal education requirements, they 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 penalty authorized by 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 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, they 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 inactive member is suspended for nonpayment of membership fees has paid all accrued fees and penalties, they 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.

[CLERK'S 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 Financial responsibility disclosure; suspension

4.01 Required disclosure

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

(a) whether the 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 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 member is so engaged and not covered by professional liability insurance in the above minimum amounts, whether the 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 member arising from acts or omissions by the member or other persons employed or otherwise retained by the 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 are any unsatisfied final judgments against either the member, or any firm or any professional corporation in which the 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 member, including the date, amount, and court where each judgment was rendered.

4.02 Duty to update

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

4.03 Manner of reporting; availability to the public

The required disclosure in Rule 4.01 shall be certified by each active 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 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 Penalty for nondisclosure

After the first day of September of each year, a penalty in an amount set by the Board, not less than \$200, shall be assessed to any active member who has not complied with the financial responsibility disclosure requirement. The Executive Director shall notify all 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 after the mailing date of the notice. Such notice shall be given by certified or registered mail, addressed to such member at their mailing address of record.

4.05 Administrative suspension for nondisclosure

If an active member fails to comply with the disclosure requirement within sixty days after the mailing date of the notice provided in Rule 4.04, they shall be automatically suspended from active membership in the State Bar and shall not further engage in Practice of Law until they have been reinstated. The Executive Director shall give notice of such suspension to the Judges of the Courts of Record 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. Notice of the suspension shall be given to the non-compliant member by certified or registered mail, addressed to the member at their mailing address of record.

4.06 Reinstatement of members administratively suspended for noncompliance with disclosure

Whenever a member suspended solely for noncompliance with disclosure has paid all accrued penalties and fees and has shown that the member is in compliance with the disclosure requirements and pertinent mandatory continuing legal education requirements, that member 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 penalty authorized by Rule 4.04, a reinstatement fee 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 non-compliance with the financial responsibility disclosure requirements.

[CLERK'S 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 Elections and Referenda

5.01 Committee on elections

(a) The President shall annually appoint a committee on elections, consisting of 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 the committee for the office of governor shall automatically vacate their membership. Any vacancy in the committee shall be filled by the President.

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

(c) 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 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 transmit 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 their 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 their right to vote in any election, may appeal therefrom to the Board of Governors. 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 transmittal of the decision as provided in Rule 5.01(d).

5.02 Nominations for governor

(a) 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 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 not later than the 10th day of February of the respective election year.

(b) On or before January 20th of each year in which a African-American 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 an African-American 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 10th day of February of the election year.

5.03 Preparation and distribution of ballots.

(a) The Executive Director shall 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, 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.

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

5.04 Voting of ballots

No ballot shall be accepted or counted by the committee on elections unless it is received by midnight of March 20th of the election year, unless the deadline is extended for good cause by order of the Supreme Court of Appeals.

5.05 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, the committee shall meet and review the electronic ballot results.

(b) The nominee who receives the plurality of the votes cast in their 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, the committee shall, 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.

(c) The committee shall certify to the Executive Director of the State Bar the results of the election.

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

5.06 Other elections and referenda.

Unless otherwise provided by order of the Supreme Court of Appeals, the applicable provisions 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 11 of the Bylaws.

[CLERK'S 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.]

Rule 6 Mandatory continuing legal education

6.01 Definitions

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

(b) "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 Continuing Legal Education Commission (“Commission”).

(c) “Commission” — The Mandatory Continuing Legal Education (“MCLE”) Commission established in Bylaw 15.02.

(d) “Credit hour” — Each period of fifty minutes of instruction actually attended in an approved activity.

(e) “Inactive lawyers” — An inactive member of the West Virginia State Bar as defined in Bylaw 2.05.

(f) “In-house activity” — Activities 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.

(g) “Lawyer” or “active member” — An active member of the West Virginia State Bar as defined in Bylaw 2.03.

(h) “Reporting period” — A time period during which a certain number of credit hours must be obtained.

(i) “Provider” — An entity that offers a continuing legal education program.

(j) “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.

6.02 Minimum continuing legal education requirements; required reporting; carry-over credits

(a) *Obligation.* As a condition of maintaining a license to practice law in the State of West Virginia, every active member shall satisfy the minimum continuing legal education and reporting requirements in this Rule.

(b) *MCLE requirements.* Each active member shall complete a minimum of twenty-four hours of continuing legal education, as approved by 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, attorney well-being, or elimination of bias in the legal profession.

(c) *Reporting.* On or before the first day of July of every even year, each active member must file a report of completion of continuing legal education activities. 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.* Members who exceed the minimum 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, attorney well-being, or elimination of bias in the legal profession.

6.03 Bridge-the-Gap Program

(a) *Obligation.* Newly admitted members are required to complete a mandatory Bridge-the-Gap Program sponsored by the State Bar within twenty-four months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap Program shall be provided by the State Bar at least twice per year at locations within West Virginia. The Bridge-the-Gap Program will be provided free of charge to newly admitted members. Continuing legal education credit shall be available for completing the mandatory Bridge-the-Gap Program.

(b) *Suspension.* Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap Program within six months after written notice of noncompliance from the Commission shall have their license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with 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 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 comparable 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 well-being, 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 Commission, be extended. Written applications for an extension must be received by the Commission 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) 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 twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney well-being, 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 well-being, 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) 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) Active non-practicing and inactive members, judicial members as specified in Bylaw 2.07(d), the Clerk of the Supreme Court of Appeals, Deputy Clerks 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 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 as follows:

(a) One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course.

(b) One hour of credit may be obtained for each period of fifty minutes of digital or electronically presented instruction provided that such digital or electronic presentation is accredited by the Commission.

(c) No more than half of the total required mandatory continuing legal education requirements may be satisfied by pre-recorded presentations that do not offer an interactive component.

(d) A maximum of six hours of mandatory continuing legal education credit may be obtained for the teaching of 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) The Commission may give credit for 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. The Commission has authority to allocate the amount of credits to be given for publication.

(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. Credits obtained under this subsection are subject to the limitation set forth in Rule 6.05(c) and are not credited as live instruction under Rule 6.05(a). 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.

6.06 Noncompliance and sanctions

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

(b) 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 this Rule of the specific manner in which such member has failed, or appears to have failed, to comply with 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 this Rule. A delinquency fee of \$200.00 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.

(c) An additional fee of \$200.00 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, will not be entered until all outstanding fees have been paid.

(d) As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the mailing address of record with the State Bar, to any active member who has still not established that they are in compliance with 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 they have complied with the requirements of this Rule for the preceding two-year reporting period.

(e) 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) that they are in fact in compliance with the requirements of this Rule or (2) that they are 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 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, they shall be assessed the costs thereof.

(f) 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 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 the lawyer has complied with such requirements.

(g) 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) No lawyer shall be permitted to make use of a transfer from active to inactive or active non-practicing membership in the State Bar as a means to circumvent the mandatory continuing legal education requirements.

6.07 Change to active status

(a) Any person previously enrolled as an active member of the State Bar who is an active non-practicing or an inactive member of the State Bar, administratively suspended by the State Bar, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that they have complied with a minimum of twelve hours of continuing legal education, as approved by this Rule or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession within twelve months immediately preceding the application to change to active status. Any person previously enrolled as an active member of the State Bar who has served as a Justice of the Supreme Court of Appeals, 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) Any lawyer who was administratively suspended 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 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 Accreditation of providers and approval of courses, generally

(a) The Commission 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) 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) Courses offered by organizations that are not on the list described in Rule 6.08(b) may be approved by the Commission upon the request of an individual lawyer or organization on a case-by-case basis in accordance with this Rule.

(d) To be 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 must include the distribution of 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) One hour of continuing legal education credit shall be given for each period of fifty minutes of instruction in an accredited course. Based upon this standard, providers of approved activities given in West Virginia shall include with their course materials a statement that, “This course or program has been approved for ____ hours of continuing legal education credit in West Virginia.”

(f) The Commission may refuse to accredit a course change or may revoke the accredited status of any provider that misrepresents the extent to which any information relating to course approval under this Rule.

(g) In cases where 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.

(h) All decisions of the Commission concerning accreditation of providers and approval of courses shall be final.

6.09 Standards for approval of continuing legal education activities

(a) A continuing legal education activity qualifies for approval if the Commission determines that: (1) it is an organized program of learning (including a workshop, symposium or lecture) which contributes directly to the professional competency of a lawyer; (2) 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 that involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting tax law seminar; (3) each activity is taught by a person qualified by practical or academic experience to teach the activity the person covers; (4) high quality, readable, carefully prepared written materials 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) 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.

(c) 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 6.05(d). A lawyer may receive credit for teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity by submitting an application to the Commission that furnishes 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.

(d) 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 in Rule 6.05(e).

(e) An in-house activity may be approved for continuing legal education credit under the rules applicable to any other provider, plus the following additional requirements: (1) the courses shall be submitted through electronic format for approval on a course-by-course basis, rather than an accredited-provider basis; (2) the courses shall be submitted for approval at least thirty days in advance; (3) an outline or written materials must be presented to the 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) 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, and members or staff of the Commission;

(5) 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; (6) 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) an in-house activity on legal ethics may not be taught by a member of the firm or entity offering such activity.

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

(g) The total credit for digital or electronic training courses and in-house instruction shall not exceed half of the mandatory continuing legal education requirements.

(h) A lawyer attending a digital or electronic presentation or training course is entitled to credit hours under the following circumstances: (1) if a course is an approved activity, digital or electronic distribution of that course is also an approved activity; (2) Any digital or electronically distributed presentation produced by a provider that is not presumptively accredited must meet the requirements for approval set forth in Rules 6.08(c) and 6.09(a); (3) Unless the entire digital or electronically distributed presentation has been produced by a presumptively accredited provider, the person or organization offering the program or the attorney seeking credit must receive advance approval from the Commission by submitting 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) The Commission may permit an active member to meet the full mandatory continuing legal education requirements by attending or participating in a seminar that includes a digital or electronic presentation as part of a live program.

(j) Simultaneous electronic synchronous broadcasts will be approved for the full 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 is merely a distribution of a live program with the same qualified speakers which would address a seminar with live attendees; and (3) attendees are able to have questions answered through synchronous or asynchronous digital media.

(k) 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) A lawyer may receive credit for authorship and publication of legal materials by submitting an application to the Commission 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) a copy of the work and a statement by the applicant that the material is an original work; and (2) 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) a statement that the authored material has been published in a publication having distribution to at least 300 attorneys; and (4) the name and address of the publisher. Credit hours shall be allocated for the authorship and publication of the material in the year in which the publication actually occurs. The Commission will determine the number of credits to be allocated to the authorship and publication of the work. Credits will be awarded for scholarly pieces involving legal research as indicated by citation to authority. A lawyer may not receive more than half of their credit hours for authorship and publication of any materials in any two-year reporting period except as set forth in Rule 6.04(a).

(m) An attorney may not earn double credit for either (1) attending the same seminar held in different locations or (2) attending a seminar and completing a digital or electronically distributed presentation of the same seminar.

(n) To earn continuing legal education credit for attendance at any Bar Committee meeting, the Committee must submit an approved agenda at least 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 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 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 three credits.

(o) 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) Digital or electronic training courses may be approved for continuing legal education credit under the rules applicable to any other course or program, plus the following additional requirements: (1) the digital or electronic training course must be part of a structured course of study; (2) a written outline or written materials fully describing the course must be presented to the Commission at the time of submission for approval; (3) in awarding credit for 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 provider; (4) The 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 provider.

6.10 Procedures for accreditation of providers, activities

(a) *Presumptive accreditation of providers.* A provider not presumptively accredited by the Commission may apply for presumptive accreditation by submitting an application in the form required by the Commission. 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. 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. 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. Failure to comply with MCLE rules shall result in the revocation of presumptively accredited status.

(b) *Prior approval of individual activities of providers who are not presumptively accredited.* A provider desiring prior approval of an activity shall apply for approval by submitting an application in the form required by the Commission at least 30 days in advance of the commencement of the activity. A lawyer desiring prior approval of an activity shall apply for approval 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. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(c) *Post-approval of activities of providers that are not presumptively accredited.* A lawyer seeking approval of an activity 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 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.* Courses offered by more than one provider are presumptively accredited if at least one of the providers is presumptively accredited.

6.11 Ethics in reporting continuing legal education activities

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 Time limits

For good cause shown, any time limitations or requirements imposed by this Rule may be modified by the Commission.

6.13 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 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.

[CLERK'S 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 is a stand-alone document that was 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 sets forth the specifics 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. The changes set forth in Rule 6 are not effective until the July 1, 2020 – June 30, 2022 reporting period, with two exceptions: changes to the Bridge-the-Gap Program set forth in Rule 6.03 are effective July 1, 2019, and Rule 6.05(f), which allows lawyers to obtain MCLE credits for pro bono service in certain circumstances, is also effective July 1, 2019.]

Rule 7 Procedure for Unlawful Practice Committee matters

7.01 Origin of cases

A case before the Unlawful Practice Committee may originate upon a request for investigation from the Unlawful Practice Committee, upon a request from a grievance committee, upon the request of the Board, the president, the president-elect or vice president,

upon the request of any court of record or judge thereof, or upon the complaint of any member of the State Bar or any other person.

7.02 Form of complaint

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

7.03 Filing complaints

(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 the Committee, the Executive Director shall promptly acknowledge its receipt, give it a case number, and enter it in the 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.

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 of Appeals

(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 of Appeals, 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 of Appeals 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 Clerk of the Supreme Court of Appeals, 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 Payment of expenses

Duly authorized expenses incurred in connection with the investigation of unlawful practice activities, and any proceedings arising therefrom, shall be paid or reimbursed by the Executive Director upon vouchers reviewed and approved by the chairperson of the Committee.

[CLERK'S COMMENTS: 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 have become outdated and fallen into disuse. Additionally, these revised rules substantially re-design the procedures to be used by the UPL Committee in accordance with modern practice and applicable case law.

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 Emeritus attorneys' pro bono participation program

8.01 Definitions

(a) An "eligible attorney" may be an 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.

(b) An “approved legal assistance organization” is a not-for-profit organization offering legal services to lower income individuals in West Virginia.

(c) A “supervising attorney” is an attorney admitted to 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.

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 attorney;

(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 Appeals 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 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 they are 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 admitted 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 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 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 Supreme Court of Appeals may revoke certification to perform services under this section at any time. The Clerk of the 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.

[CLERK'S COMMENTS: Rule 8 is derived from Article II, § 11 of the former Bylaws. The special classification of emeritus pro bono 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 member of the legal profession. Members of the legal profession shall for this Rule 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 member of the legal profession to practice or serve. 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 member. The vast majority of States have responded to the issue of member impairment by creating funded Judge and Lawyer Assistance Programs as contemplated by this Rule, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to 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 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 (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 (WVJLAP), which shall provide immediate and continuing help to members who suffer from any physical, mental, or emotional health conditions that affect their ability to practice or serve.

(b) *Purpose.* 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 WVJLAP executive director, and staff, if any, their expenses, administrative costs, and the expenses of the Board of Directors of WVJLAP shall be paid from funds provided by The West Virginia State Bar. Each year, WVJLAP shall submit a proposed annual budget for the next fiscal year to the Board of Governors detailing the projected revenues and expenses.

(2) WVJLAP 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 WVJLAP 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 officers of the WVJLAP Board of Directors may make recommendations and nominations to the Board of Governors for appropriate persons to be appointed to the WVJLAP Board of Directors which shall be given due consideration by the Board of Governors. Officers of the WVJLAP Board of Directors shall consist of a chair, a vice-chair and a secretary. The officers shall be annually elected by the WVJLAP Board of Directors.

(b) Composition. The WVJLAP Board of Directors shall consist of fifteen members, which shall include three members of the judiciary; one Circuit Court Judge, one Family Court Judge and one Magistrate. Board of director 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 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 WVJLAP Board of director 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 WVJLAP Board of Directors and approval of the Board of

Governors.

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

(1) To establish WVJLAP's 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 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 of Appeals and the Board of Governors.

(e) *Meetings.* The WVJLAP Board of Directors shall meet quarterly. It shall also meet upon call of the chair, vice chair, or upon the request of 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) *Qualifications.* The WVJLAP 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) *Duties and Responsibilities.* The WVJLAP 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 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 WVJLAP, whether voluntary or involuntary. The WVJLAP executive director should always remain accessible to current members seeking help and should never be insulated from the telephone or from personal contact. The position will require that the WVJLAP executive director be ready, either alone or together with a program volunteer, to travel within the State to meet with 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, 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 WVJLAP 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 members and others using the services of 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 WVJLAP 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) To 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;

(8) To work to establish and maintain a policy that ensures confidentiality, as required by this Rule, as an essential component of the 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 WVJLAP volunteers;

(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 benefits of early intervention and prevention, and the assistance that is available to those in need;

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

(11) To act as the WVJLAP’s liaison with the American Bar Association Commission on Lawyer Assistance Programs and with judge and lawyer assistance programs throughout the country;

(12) To network with other professional assistance organizations located in West Virginia;

- (13) To establish private and public sources of funding for WVJLAP; and
- (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:

- (1) Assisting in interventions planned by WVJLAP;
- (2) Serving as twelve-step program sponsors or recovery mentors;
- (3) Acting as a local contact for members of the legal profession seeking help from the WVJLAP;
- (4) Acting as a contact between WVJLAP and the courts, Lawyer Disciplinary Board, Office of the Lawyer Disciplinary Counsel, Board of Law Examiners, Judicial Investigation Commission, and other State Bar organizations, committees, and law schools;
- (5) Providing compliance monitoring as may be appropriate; and
- (6) Performing any other function deemed appropriate and necessary by the Board to fulfill its purposes.

(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.

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

9.06 Services

WVJLAP may provide the following services as the Board of directors 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, mental, 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 evaluations with members of the legal profession in need of assistance;

(d) Sponsoring and maintaining substance abuse and 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 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 member may voluntarily contact the WVJLAP seeking assistance.

(b) *Referrals from Third-Parties*. 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 WVJLAP unless the third-party consents to disclosure.

(c) *Disciplinary Authority Referrals*. WVJLAP shall receive referrals from the 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 member whom the referring authority determines or believes should be contacted by WVJLAP.

(d) *Member Resistance*. In the event an impaired member resists all efforts of assistance by WVJLAP, the WVJLAP executive director or the Board may notify the initial referral source of the member’s resistance for the sole purpose of allowing the referral source to pursue other recourse or reporting obligations.

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 WVJLAP, and actions taken by 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 WVJLAP, unless such disclosure is authorized

by both WVJLAP and the member to whom it relates, or as provided in Rule 9.06 incident to providing services.

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

9.09 Privilege and immunity

Except as otherwise provided in this Rule, all information provided with respect to any referral, investigation, monitoring, or follow-up under these rules shall be privileged. The WVJLAP executive director, board of directors, employees and agents, including, but not limited to, referring third-parties under Rule 9.07 and volunteers acting on behalf of 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 WVJLAP.

9.10 Costs

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

9.11 Miscellaneous

(a) At any time it deems reasonable and feasible, and without the necessity of amending this Rule, the Board of Directors may, through its 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 WVJLAP in rehabilitative efforts on the part of the 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 member. To the extent such agreement or order may require WVJLAP to violate a confidentiality protection granted under 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 this Rule.

(c) At any time it deems reasonable and feasible, and without the necessity of amending this Rule, 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 members deemed candidates for such a program.

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

[CLERK'S 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 to 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 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.

10.10 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 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 Child Law 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.

[CLERK'S 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.]

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 admitted 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, 2020. 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.

[CLERK'S COMMENTS: This Rule is new. 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).

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.]

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) *Multijurisdictional organizations.* In the case of a limited liability organization with any partner, member, or other lawyer associated with the organization who is not admitted 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, 2020. 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.

[CLERK'S COMMENTS: This new 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. 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.]

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) The immediate past chair;
- (e) One elected representative from each of the districts established in State Bar Bylaw 5.04 and one additional representative from District 8;
- (f) One African-American representative, elected by the method described in Rule 13.08; and
- (g) 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 their 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 2020:

- (a) Year One: State Bar Districts Six through Eight;

(b) Year Two: State Bar Districts Nine through Twelve and the African-American representative;

(c) Year Three: State Bar Districts Thirteen through Sixteen; and

(d) Year Four: State Bar Districts One through Five.

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 district 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 in accordance with State Bar Administrative Rule 5.05.

13.08 Election of an African-American representative to the Young Lawyer Board

An African-American representative shall be elected by the African-American 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 State Bar Executive Director shall email all African-American lawyers in the Young Lawyer Section who so registered with the State Bar, soliciting nominations for the African-American representative position, noting the eligibility requirements for such representative. A ballot will be prepared listing all nominees and distributed to all African-American 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 meeting. An elected African-American 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 any 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. Following one year as chair, the chair shall serve one year as immediate past chair.

(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.

[CLERK'S COMMENTS]: Rule 13 is a new rule that describes the functions and activities of the Young Lawyer Section ("YLS") and its governing board. Article 17 was 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 their 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.

[CLERK'S COMMENTS]: Rule 14 is a new rule to address a recurring circumstance that gives rise to problems that could largely be avoided with advance planning. 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. Rule 3.29 of the Rules of Lawyer Disciplinary Procedure was amended by the Court to accomplish the cost-shifting result, but that 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.]