

DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY



**Issued**  
**May 20, 2024**

ADMINISTRATIVE ORDER 2024-1

PLEASE TAKE NOTICE THAT the Board is considering amendments to the Board's Rules. The proposed amendments (shown in redline), and a brief statement of the reasons therefor, are attached hereto.

Interested parties may submit written comments concerning the proposed amendments. Comments must be submitted electronically to [DCBoard@dcbpr.org](mailto:DCBoard@dcbpr.org) by June 10, 2024. All comments submitted pursuant to this notice will be available to the public.

It is so ORDERED.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: *Bernadette C. Sargeant*  
Bernadette C. Sargeant, Chair

## A. Electronic Filing and Paper Copies

### **Rule 3.11** Transmission of Deposition Transcripts

After the ~~original~~ deposition transcript has been signed or certified, it shall, ~~together with two copies,~~ be forwarded by the reporter who took the deposition to the Executive Attorney. Following receipt thereof, the Executive Attorney shall file the original deposition transcript and forward a copy to each appropriate party.

### **Rule 7.14** Submission of Motions in Proceedings Before a Hearing Committee

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#### ~~(b) Number of Copies.~~

~~Four copies of all papers relating to motions shall be filed with the Office of the Executive Attorney, unless otherwise ordered by the Chair of the Hearing Committee. A copy shall be served on each party separately represented.~~

### **Rule 12.1** Briefs, Proposed Findings and Recommendations and Additional Evidence Before the Hearing Committee

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~~(b) Number of Copies. Four copies of each submission shall be filed with the Office of the Executive Attorney, unless otherwise ordered by the Chair of the Hearing Committee. A copy shall be served on each party separately represented.~~

### **Rule 13.1** Submission of Motions

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~~(b) Number of Copies. Two copies of all papers relating to motions shall be filed with the Office of the Executive Attorney, unless otherwise ordered by the Chair of the Board. A copy shall be served on each party separately represented.~~

### **Rule 13.4 Proceedings Where Exceptions to Hearing Committee Report Filed**

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~~(c) Number of Copies. Ten copies of each brief shall be filed with the Board, unless otherwise ordered by the Board. A copy shall be served on each party separately represented.~~

### **Rule 19.8 Format of Submissions to Board, Committees and Disciplinary Counsel**

~~(a) Typewritten Electronic Filing. Documents filed in formal proceedings, other than correspondence, if not printed, shall be typewritten on paper cut or folded to letter size, 8 to 8 1/2 inches wide by 11 inches long, with left handed margin not less than 1 1/2 inches wide and other margins not less than 1 inch. The impression shall be on only one side of the paper and shall be double spaced, except that quotations in excess of a few lines may be single spaced and indented. Reproduced copies shall be accepted as typewritten, provided all copies are legible. In order to file any document with the Board on Professional Responsibility, or any Hearing Committee, the filing party shall convert the document to PDF format and file it electronically pursuant to instructions provided by the Office of the Executive Attorney. The document shall be signed with an image of the filer's signature or an "/s" on the signature line.~~

~~Documents received at or before 11:59 p.m. shall be lodged for filing on the day received. Once a document has been accepted for filing, a stamped copy of the document will be emailed to the parties.~~

~~(b) Printed Material. Printed documents shall not be less than 12-point type on unglazed paper cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with inside margin not less than 1 inch wide, and with double spaced text and single spaced, indented quotations. Documents, other than correspondence, shall be bound by staples or otherwise appropriately assembled.~~

(c) Length of Briefs. Except by special order of the Chair of the Hearing Committee or the Chair of the Board, or as provided herein, the brief for Disciplinary Counsel or respondent shall not exceed 14,000 words, including headings, footnotes, and quotations. A reply brief, if any, shall not exceed 7,000 words. Requests to exceed these limits will be granted only in extraordinary circumstances. Briefs must be filed ~~on-in PDF format with page dimensions of~~ 8½ by 11-inch ~~es paper page size, with~~ one-inch margins, and ~~use~~ 14-point font text that is double-spaced (aside from headings, footnotes, and block quotations). Any party filing a brief must include the following certificate of compliance:

This document complies with the length and format requirements of Board Rule 19.8(c) because it contains \_\_\_ words, double-spaced, with one-inch margins, on 8½ by 11-inch ~~paper pages~~. I am relying on the word-count function in [insert name of software (e.g. Microsoft Word, WordPerfect, etc.)] in making this representation.

...

(f) Execution. ~~Except as may be otherwise ordered or requested by the Chair of the Hearing Committee concerned or the Board, a~~ All original pleadings shall be signed ~~in ink~~ by the party in interest, or by counsel, and shall show the email address, office address, and telephone number of such party or counsel. ~~All other copies filed shall be fully conformed.~~ Petitions and other pleadings need not be under oath except as provided in D.C. Code Section 11-2503(b). However, the signature of the person subscribing any such document filed in a proceeding constitutes a certificate by the subscriber that the individual has read the document being subscribed and filed and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, the subscribers believes them to be true.

Renumbering:

Due to the deletions of subsections set forth above, the following Rules will be renumbered:

Rule 12.1(c) will be 12.1(b).

Rules 19.8(c)-(g) will be 19.8(b)-(f). The cross-references in current Rules 7.17, 19.8(c), and 19.8(g)(iv) will also be updated.

Reason for proposed Rule changes:

The Board has not accepted paper filings since the beginning of the COVID-19 pandemic and has instead required electronic copies of all pleadings. The current requirements are set forth in [Administrative Order 2023-1](#). Furthermore, the recent amendment to Rule 19.8(e), effective January 2023, provides for electronic filing of exhibits. Because electronic filing has proved successful, the Board proposes to make it permanent and remove references to paper copies throughout the Rules.

Currently, pursuant to Administrative Order 2023-1, parties are required to file pleadings by emailing them to [casemanagers@dcbpr.org](mailto:casemanagers@dcbpr.org). The Office of the Executive Attorney is in the process of creating an electronic filing system, which will replace filing by email. The Board proposed the language “pursuant to instructions provided by the Board” in order to avoid the need to amend the Rule again when electronic filing procedures change in the future.

## **B. Motions for Deferral**

### **Rule 4.2 Requests for Deferral After a Petition Has Been Filed**

After a petition has been filed, either Disciplinary Counsel or respondent may request deferral of a disciplinary case based upon the pendency of either a related ongoing criminal investigation or related pending criminal or civil litigation. Such a request shall be filed with the Office of the Executive Attorney and shall be served on the opposing party by the party making the request. A party may file an opposition to such a request within five days of the filing of the request with the Office of the Executive Attorney. The Executive Attorney shall submit the request and any opposition thereto to the Chair of the Hearing Committee to which the case is assigned. The Chair of the Hearing Committee shall transmit the request for deferral, with any opposition thereto, to the Chair of the Board with a recommendation as to the action the Chair of the Hearing Committee considers appropriate within ~~five~~ten days of receipt of any opposition to an application for deferral or ~~five~~ten days after the date such opposition was due. The Board Chair shall rule on the motion after evaluating the pleadings and recommendation under the standards in Rule 4.1.

Reason for proposed Rule change: In situations in which motions for deferral present complex issues, it can be difficult for Hearing Committee Chairs to meet a five-day deadline for a recommendation. A ten-day deadline would provide more flexibility in such situations.

## C. Evidence of Unadjudicated Acts in Reinstatement Proceedings

### Rule 9.8 Evidence of Unadjudicated Acts of Misconduct

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#### (b) Admissibility of Unadjudicated Acts

Unadjudicated acts of misconduct are admissible if supported by a preponderance of the evidence. Disciplinary Counsel shall be required to make a written proffer of the evidence to support admissibility of unadjudicated acts to the Chair of the Hearing Committee considering the petition for reinstatement, and to serve a copy of the proffer upon the petitioner. Such proffer shall be made separately from the notice provided in the Answer to the Petition for Reinstatement required in Rule 9.8(a) and shall describe with specificity the evidence it would present at a hearing to establish the unadjudicated acts. Except for good cause shown, this proffer shall be filed no later than ten days before the date of the prehearing conference, conducted pursuant to Rule 9.7(c). The attorney seeking reinstatement ~~may~~shall file a response within five days of the filing of Disciplinary Counsel's proffer. Unless the attorney indicates in writing that he or she does not contest Disciplinary Counsel's proffer, the Chair shall determine whether Disciplinary Counsel has met ~~his~~its burden of establishing the unadjudicated acts of misconduct or ~~may require whether the submission of proofs~~Disciplinary Counsel must present its evidence during the reinstatement hearing, after the attorney has presented his or her primary evidence in support of reinstatement. The Chair's decision as to whether to require the presentation of evidence of unadjudicated acts shall be announced in the Chair's order setting hearing dates and deadlines, following the prehearing conference. The Chair, in his or her discretion, may also refer the matter to the full Hearing Committee for a determination.

Reason for proposed Rule change: Rule 9.8(b) is intended to make sure a petitioner has notice that Disciplinary Counsel intends to introduce evidence of unadjudicated acts of misconduct at a reinstatement hearing. But the Rule does not make clear whether that notice must be made in a separate filing or whether Disciplinary Counsel may simply refer to the unadjudicated acts in its answer to the petition for reinstatement. The Board believes that it would be most helpful to petitioners and avoid confusion if Disciplinary Counsel files a separate pleading describing the evidence it would introduce at a hearing.

## D. Remote Testimony

### Rule 11.4 Remote Testimony

(a) Notice of Remote Testimony. ~~In every hearing~~ Unless otherwise provided by these Rules, the testimony of witnesses shall be taken in person in open court, ~~unless otherwise provided by these Rules~~. If a witness resides outside of subpoena range and thus cannot be compelled to testify in person, either party may present that witness's testimony via remote video transmission, subject to the safeguards set forth in subsection (d), only if the party gives notice ~~at least twenty-one days before the hearing and certifies that the party has contacted the Office of the Executive Attorney to schedule a time to test the means of remote transmission in their witness list~~. The Hearing Committee Chair shall administer the oath to any witness testifying remotely. A party that fails to ~~meet the twenty-one day deadline~~ include such notice in their witness list must file a motion for permission to present remote testimony pursuant to subsection (b)(ii).

### (b) Submission of Motions

(i) A written motion requesting permission to present remote testimony (1) by any means other than contemporaneous video transmission; or (2) from a witness who can be compelled to testify but is unable to do so for other reasons, such as disability, must be filed at least ~~twenty-one~~ fourteen days prior to the first day of the hearing, unless otherwise approved or ordered by the Hearing Committee Chair, and will be granted for good cause ~~in compelling circumstances~~, subject to the safeguards set forth in subsection (d). The motion shall include a proffer of the expected testimony ~~and shall certify that the party has contacted the Office of the Executive Attorney to schedule a time to test the means of remote transmission~~. The provisions of Board Rule 7.14 shall apply.

(ii) A motion requesting permission to present remote testimony by any means other than contemporaneous video transmission or for permission to present video testimony less than ~~twenty-one~~ fourteen days before the hearing will be granted for good cause shown in compelling circumstances. In determining whether the moving party has established good cause in compelling circumstances ~~under subsection (a)(i) of this Rule~~, the Hearing Committee Chair may consider any or all of the following factors:

(a) whether the motion is unopposed;

(b) ~~the seriousness of the alleged violation about which the witness will testify;~~



~~(e) the materiality of that witness' testimony to the merits (compelling circumstances are more easily established if the testimony is expected to be routine or ministerial);~~

~~(d) the quality of the proposed transmission technology;~~

~~(e) the ability to comply with the safeguards set forth in subsection (d), including uninterrupted contemporaneous transmission of high-quality audio and video and the ability to transmit documents to the witness during the testimony;~~

~~(f) the location from which the witness will testify (e.g., the Office of Disciplinary Counsel in the jurisdiction where the witness is located, commercial conference facilities, or the witness' home or work location);~~

~~(cg) the reason that the witness is not available to testify in person (e.g., age, infirmity, illness, undue hardship, incarceration);~~

~~(dh) whether the moving party has been unable to secure the witness' attendance by process or other reasonable means;~~

~~(ei) whether in-person observation of the witness is likely to be critical to evaluate that witness' credibility and demeanor;~~

~~(j) whether the issue about which the witness will testify is likely to be so determinative of the outcome that face-to-face cross-examination is necessary;~~

~~(k) whether the volume of exhibits or documents about which the witness will testify makes remote testimony impractical;~~

~~(l) whether an accurate record can be made of the testimony by the court reporter present at the hearing;~~

~~(m) whether the failure of the witness to appear in person will result in substantial prejudice to a party to the proceeding;~~

~~(fn) whether the witness is subject to the perjury laws of the United States; or~~

~~(gø) any other relevant circumstance.~~

(c) Testimony by Respondent. Unless the hearing is held remotely pursuant to subsection (f), ~~T~~he testimony of respondent shall not be taken by remote transmission absent the most compelling of extenuating circumstances.

(d) Safeguards for All Remote Testimony. The party presenting remote testimony pursuant to subsections (a) or (b) shall (1) bear all expenses associated with the remote testimony and shall be responsible for coordinating all technical and logistical aspects of it, (2) ensure that the transmission allows for uninterrupted contemporaneous transmission of high-quality audio and video, (3) make such accommodations as may be necessary to permit relevant exhibits ~~other than those submitted in advance of the testimony~~ to be available to the witness so that either party can provide the witness with such exhibits as needed, and (4) instruct the witness that the testimony may not be recorded or broadcast outside of the hearing. If the transmission lacks sufficient clarity or adequate safeguards to make it reliable, to permit adequate cross-examination, or to allow the Hearing Committee to make necessary credibility findings, the Hearing Committee has the discretion to exclude the testimony. Otherwise, the Hearing Committee shall receive the evidence and shall determine the weight and significance it should be accorded, pursuant to Board Rule 11.3. If remote testimony is excluded pursuant to this subsection, there shall be a presumption that the excluded testimony will not be retaken, but in extraordinary circumstances the Hearing Committee Chair, after consultation with the other members of the Hearing Committee, may fashion an appropriate remedy, including permitting the witness to re-testify in person or remotely by more reliable means.

(e) Objections to Remote Testimony. Any objections to the subject or means of remote testimony must be made within five (5) days of the presenting party's notice or motion. Objections based on quality of the transmission must be made during the testimony in question. Post-hearing objections will not be considered.

(f) Remote Hearings. ~~In extraordinary circumstances, including but not limited to a public health emergency,~~ ~~†~~The Hearing Committee or Board Chair may issue an order providing that an entire hearing will be conducted by remote video transmission and requiring that all parties and witnesses appear and testify remotely, subject to the safeguards set forth in subsection (d).

Reason for proposed Rule change: As the use of remote testimony has become more common, it no longer appears necessary for parties to file the separate "notice" required by Rule 11.4(a). Rather, it would be simpler for the parties to simply note on their exhibit lists which parties will be testifying remotely. When motions are required, the Board believes that it is no longer necessary to apply a strict standard and that fourteen days' notice will be sufficient.

## **E. Appointment of Counsel for Disability Suspension Proceedings**

### **Rule 15.2 Appointment of Counsel**

In any disability matter wherein Disciplinary Counsel contends that respondent should be suspended from the practice of law, subjected to probationary conditions, or required to submit to a medical examination, or wherein respondent asserts a mental disability, the Board shall appoint counsel to represent respondent whose alleged disability or addiction is under consideration if it appears to the Board's satisfaction, based on respondent's motion or notice from Disciplinary Counsel or the Executive Attorney, that otherwise such respondent will appear pro se and may therefore be without adequate representation.

Reason for proposed Rule change: Rule 15.2 does not state whether it applies to consent motions for disability suspension. There may be a question whether a respondent is competent to consent, as many disability cases involve respondents with cognitive decline. This amendment would align with the current practice, which is to appoint counsel whenever there is a question as to a respondent's capacity, regardless of whether the respondent consents to the suspension.

## F. Negotiated Discipline Status Reports

### Rule 17.7 Rejection of the Petition for Negotiated Discipline

If the decision of the Hearing Committee is to reject the petition for negotiated discipline, it shall issue a written order within 14 days of receipt of the transcript, rejecting the proposed discipline. The Hearing Committee may not modify the proposed disposition on its own initiative. Disciplinary Counsel and respondent shall have the opportunity to revise and re-submit the petition. Disciplinary Counsel shall submit to the Office of the Executive Attorney a status report sixty days following the rejection of a petition for negotiated discipline, and every sixty days thereafter, until the parties have decided whether to revise and re-submit the petition. The same Hearing Committee, to the extent possible, shall review any revised petition submitted by Disciplinary Counsel and respondent. Any resubmitted petition shall be reviewed using the criteria set forth in Rule 17.5. There is no review by the Board or the Court of a rejection of a petition for negotiated discipline by a Hearing Committee.

Reason for proposed Rule change: Many petitions for negotiated discipline are submitted after charges have been filed via a specification of charges. When that petition for negotiated discipline is rejected, it is not immediately clear whether the Office of the Executive Attorney should assign the matter to a new hearing committee to proceed with the existing specification of charges or whether the parties intend to submit an amended petition for negotiated discipline. A status report requirement would make clear whether the Office of the Executive Attorney should assign a new hearing committee or keep the matter on hold until a new petition is filed.

## G. Pro Se Respondents with Co-Counsel

### Rule 19.5 Representation of Respondents and Petitioners By Counsel

(a) Right to Counsel. Respondents may be represented by counsel at all stages of the disciplinary process from investigation through argument before the District of Columbia Court of Appeals. Petitioners may be represented by counsel at all stages of a reinstatement proceeding from the filing of a petition for reinstatement through argument before the District of Columbia Court of Appeals. Respondents and petitioners who elect to appear pro se may also be represented by co-counsel in proceedings before Hearing Committees and the Board, but they are advised to consult with the District of Columbia Court of Appeals to verify whether it permits such an arrangement in proceedings before the Court. Counsel may enter an appearance by signing any document filed with the Board or a Hearing Committee, or by filing a written notice of appearance, which shall state counsel's name, address, telephone number and email address, the name and address of respondent or petitioner on whose behalf counsel appears, and the caption and docket number of the subject proceeding. A copy of the written notice shall be served on the Office of Disciplinary Counsel. Any notice or other written communication required to be served on or furnished to respondent or petitioner may be sent to the counsel of record for respondent or petitioner at the stated address of the counsel in lieu of transmission to respondent or petitioner. If respondent or petitioner is represented by more than one counsel or is proceeding pro se along with co-counsel, notice to one counsel shall be sufficient. Counsel may not withdraw an appearance without leave of the Board or the Hearing Committee, as applicable.

Reason for proposed Rule change: On a few recent occasions, respondents have hired counsel to serve as co-counsel while they continue to represent themselves *pro se*. Absent any contrary Rule or challenge from Disciplinary Counsel, that arrangement has been permitted. Though the arrangement may be unorthodox, the Board believes that it is better for a respondent to be represented by counsel, even to a limited extent, than to appear entirely *pro se*. It recently came to the Board's attention that the Court of Appeals may not permit that practice. The Board therefore felt it was appropriate to explicitly permit it.

## **H. Volunteers' Participation as Counsel in Disciplinary Proceedings**

### **Rule 19.6 Restrictions on Employment of Certain Attorneys as Counsel**

Members of the Board, its professional staff, and members of Hearing Committees shall not represent respondents, complainants, or witnesses in disciplinary proceedings in the District of Columbia during their tenure and for one year thereafter. In addition, participation as counsel for respondents by such individuals shall be governed by the provisions of Rule 1.11 of the Rules of Professional Conduct pertaining to public officers or employees.

Reason for proposed Rule change: Rule 19.6 does not specify whether volunteers and Board staff are prohibited from serving as counsel in disciplinary proceedings in the District of Columbia or whether the prohibition extends nationwide. The Board does not believe that there are compelling reasons for a nationwide prohibition.

## I. Redacting Names of Minors and Non-Complainant Clients

### Rule 19.8(g) Privacy Requirements

(i) Unless ordered otherwise, a party must redact, in any filing with a Hearing Committee or the Board, an individual's social-security number, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of an individual known to be a minor at the time of the conduct at issue; the name of a non-complainant client who has not consented to being identified by name; and a financial-account number, except that a party making the filing may include the following

(a) the acronym "SS#" where the individual's social-security number would have been included;

(b) the acronym "TID#" where the individual's taxpayer-identification number would have been included;

(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;

(d) the year of the individual's birth;

(e) the minor's initials;

(f) the non-complainant client's initials; and

~~(g)~~ the last four digits of the financial-account number.

#### Reason for proposed Rule change:

Rule 19.8(g) does not specify whether it requires redaction of the names of individuals who are currently minors or whether the Rule also extends to adults who were minors at the time of the underlying events. The Board believes that any references to minors, regardless of their current age, should remain confidential.

Additionally, the Board Chair recently issued an order granting a respondent's motion to redact the names of clients who were not complainants on the basis that the fact of a representation may be considered a "secret" under D.C. Rule of Professional Conduct 1.6 and because the discipline system exists in large part to protect clients. This amendment would be consistent with that ruling.

## J. Technical Amendments

The following amendments are intended to conform the Rules to current practices and correct minor errors.

### **Rule 7.1** Petitions

Formal contested disciplinary proceedings shall be instituted by Disciplinary Counsel by the filing of a petition instituting formal disciplinary charges under oath with the Office of the Executive Attorney (with a copy to the Clerk of the Court) which shall include respondent's name and bar number and shall be sufficiently clear and specific to inform respondent of the alleged misconduct and the disciplinary rule or rules alleged to have been violated. Petitions shall be based on probable cause to believe that respondent has committed a crime, breached the Attorney's Oath of Office, or violated the rules of professional conduct.

### **Rule 7.6** Notice of Intent to Raise Disability in Mitigation

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(e) Violations of Conditions of Practice. Should a monitor report that respondent has violated a term or condition under which respondent is continuing to practice, Disciplinary Counsel may ~~ask the Executive Attorney~~ file a motion with the Board requesting to schedule-assign the matter ~~before to~~ a Hearing Committee for a hearing and recommendation to the Board on the issue of whether the monitoring shall be lifted, and respondent suspended, pending final disposition of the disciplinary proceedings. The Hearing Committee shall file its report ~~with to~~ the Board on an expedited basis. The Board shall consider whether to order the suspension of respondent until final disposition of the disciplinary proceeding.

...



**Rule 7.12 Quorums for Hearings and Pro Hac Vice Service**

A Hearing Committee may conduct a formal hearing in the presence of a quorum of two members. However, if a Hearing Committee member cannot be present, and that fact is known in advance of the hearing, an alternate member shall ordinarily be appointed pro hac vice by the ~~Board-Executive Attorney~~ to complete the Hearing Committee for the originally scheduled date. If during a formal hearing before a three-member Hearing Committee a committee member is unable to attend the entire hearing, the Hearing Committee may proceed with a quorum of two members or, upon the consent of the parties, the Hearing Committee member who is unable to attend the entire hearing may participate in the decision.

**Rule 9.7 Contested Petitions for Reinstatement**

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(d) Conduct of Hearings; Post-Evidentiary Proceedings. Hearings shall conform to Rules 11.1 through 11.10 and Rule 11.12, and post-hearing procedures shall conform to Rule 12.1. Proceedings under this chapter shall be open to the public, except that the Board, acting through its Chair, may, upon application and good cause shown and upon notice to the ~~respondent-petitioner~~ and Disciplinary Counsel and an opportunity to be heard, issue a protective order prohibiting the disclosure of confidential or privileged information concerning the complainant or any other person.

...

**Rule 9.8 Evidence of Unadjudicated Acts of Misconduct**

(a) Notice to attorney. Evidence of unadjudicated acts of misconduct occurring prior to the Court’s order of disbarment or suspension with fitness (“unadjudicated acts”) may be introduced by Disciplinary Counsel at a hearing on reinstatement only if: (i) Disciplinary Counsel demonstrates that the attorney seeking reinstatement received notice, in Disciplinary Counsel’s letter dismissing the complaint alleging the unadjudicated acts or its motion to accept respondent’s consent to disbarment, that Disciplinary Counsel reserved the right to present the facts and circumstances of the unadjudicated acts at a reinstatement hearing; and (ii) Disciplinary Counsel gives notice in the Answer to the petition for reinstatement that he intends to raise the unadjudicated acts at reinstatement. If ~~respondent~~the petitioner demonstrates that notice was not given in the dismissal letter or motion to accept consent to disbarment, the evidence of unadjudicated acts may be admissible if Disciplinary Counsel demonstrates by a preponderance of the evidence that ~~respondent~~the petitioner would not be prejudiced and it would be in the interest of the discipline system to permit consideration of such evidence.

...

**Rule 11.1 Hearing Committee Proceedings**

Proceedings under this chapter shall be open to the public except that the Board, ~~acting through its Chair~~, may, upon application and good cause shown and upon notice to the respondent and Disciplinary Counsel and an opportunity to be heard, issue a protective order prohibiting the disclosure of confidential or privileged information concerning the complainant or any other person and directing that any proceedings be so conducted as to implement the order.

**Rule 11.2** Actions by Hearing Committee

At the outset of a hearing, the Chair shall administer the oath or affirmation to the reporter.

The Chair shall administer the oath or affirmation, as the case may be, to the witnesses called by Disciplinary Counsel and respondent. Following a witness' testimony, the Chair may permit the witnesses to remain present at the hearing. If the witness is a possible rebuttal witness, then the witness shall be excused from the hearing room during the subsequent testimony. The Chair and the other Hearing Committee members may question the participants for the purpose of clarifying matters raised at the hearing.

After consultation with the other members of the Hearing Committee, the Chair shall rule on ~~all~~-evidentiary and procedural objections in accordance with Rule 7.16. Formal exceptions are unnecessary.