

“8. Any attorney admitted to practice before this court shall, upon voluntarily or involuntarily being transferred to disability inactive status or its equivalent by any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or any foreign country, or having alleged during the course of any disciplinary or other proceeding an inability to assist in the defense due to mental or physical incapacity, promptly inform the clerk of this court of such action. Upon receipt of such notice, the court shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order of the court.”

It is further

ORDERED that Supreme Court Rule 203(h)(6) be **AMENDED** by inserting at the end of the existing language the sentence “Where alcohol or other drug abuse was a causative factor in the petitioner’s misconduct, the court may require, as a condition of reinstatement, proof that the petitioner has pursued appropriate rehabilitative treatment, abstained from the use of alcohol or other drugs, and is likely to continue to abstain from alcohol or other drugs.”

ORDERED that Supreme Court Rule 203(h) be **AMENDED** by inserting the following language to be designated as Supreme Court Rule 203(h)(8):

“8. **Criteria for Reinstatement from Disability Inactive Status.** An attorney voluntarily or involuntarily transferred to disability inactive status may be reinstated only after a showing, by clear and convincing evidence, that the disability or infirmity has been removed. With the filing of a petition for reinstatement to active status, the petitioner shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the petitioner has been examined or treated since the transfer to disability inactive status. The petitioner shall furnish to this court written consent to the release of information and records relating to the disability if requested by the court or court appointed medical experts. But, if a petitioner transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the court may dispense with further evidence that the disability has been removed and may immediately direct the petitioner’s reinstatement to active status upon terms as are deemed proper and advisable.”

It is further

ORDERED that Supreme Court Rule 203(n)(4) be **AMENDED** by striking the phrase “National Discipline Data Bank” and replacing it with the phrase “National Lawyer Regulatory Bank” and inserting at the end of the existing language the sentence “The clerk of this court shall also transmit to the National Lawyer Regulatory Bank notice of all reinstatements and transfers to or from disability inactive status.” It is further

ORDERED that Supreme Court Rules 203(p) be **AMENDED** by adding, at the end of the existing language, the sentence “Members of the Committee of Bar Examiners and the Ethics and Grievance Committee shall be exempt from indigent appointments.” It is further

ORDERED that Supreme Court Rules 207.1 through 207.9.3 be **AMENDED** by striking the phrases “Executive Director of the Virgin Islands Bar Association (the Executive Director),” “Executive Director of the Virgin Islands Bar Association,” and “Executive Director” everywhere they appear and replacing them with the phrase “Disciplinary Counsel.” It is further

ORDERED that Supreme Court Rules 207.1 through 207.9.3 be **AMENDED** by striking the phrases “Case Investigator,” “Case Investigator of the Panel,” and “Case Investigator for the Panel” everywhere they appear and replacing them with the phrase “Disciplinary Counsel.” It is further

ORDERED that Supreme Court Rules 207.1.1(a) and 207.1.14 be **AMENDED** by striking the phrases “Virgin Islands Bar Association” and “V.I. Bar Association” wherever they appear and replacing them with the phrase “Disciplinary Counsel.” It is further

ORDERED that Supreme Court Rule 207.1.2 be **AMENDED** by inserting the phrase “; and the Disciplinary Counsel” after the word “Respondent” in the title of the rule, and inserting the following language to be designated as Supreme Court Rule 207.1.2(c):

“(c) The Disciplinary Counsel under these rules is the attorney employed by the Supreme Court charged with investigating and prosecuting grievances filed with

the Committee in accordance with these Rules, and for performing various ministerial duties under these Rules, such as docketing grievances and maintaining the Committee's records.

- (1) Full-time Disciplinary Counsel shall not otherwise engage in the practice of law or serve in a judicial capacity.
- (2) In the event an attorney hired by the Supreme Court to serve as Disciplinary Counsel ceases to be employed by the Supreme Court, the attorney may continue to serve as Disciplinary Counsel in all pending cases unless both the Supreme Court and the Committee authorize or require Disciplinary Counsel to withdraw.
- (3) In the event a grievance is filed while the position of Disciplinary Counsel is vacant, all ministerial duties shall be performed by the Administrative Director of the Supreme Court or his or her designee, while all investigative and prosecutorial duties shall be performed by the Chairman of the Subcommittee to which the grievance is assigned or another Subcommittee member selected by the Chairman. A Chairman or designee who has performed the duties of Disciplinary Counsel with respect to any particular proceeding may not serve on the panel for that grievance.
- (4) Upon the hiring of the first Disciplinary Counsel by the Supreme Court and after the effective date of the amendments to this Rule 207,
 - (i) the Executive Director of the Virgin Islands Bar Association, who performed ministerial duties on behalf of the Committee under the prior version of this Rule 207, shall immediately transfer all files, records, and other documents relating to the Committee, both in open and closed cases, to Disciplinary Counsel, who, upon receipt, shall assume the ministerial duties provided for in this Rule 207 with respect to those materials. In the event a new grievance or a document relating to a pending grievance is erroneously filed with the Executive Director, the Executive Director shall promptly forward those materials to Disciplinary Counsel.
 - (ii) the Case Investigators in all open cases, who performed investigative and prosecutorial duties on behalf of the Committee under the prior version of this Rule 207, shall immediately transfer all files, records, and other documents relating to those grievances, to Disciplinary Counsel, who, upon receipt, shall assume the investigative and prosecutorial duties provided for in this Rule 207 with respect to those grievances.
- (5) Notwithstanding section (c)(4) of this Rule 207.1.2,
 - (i) a Case Investigator may assist Disciplinary Counsel with respect to the investigation or prosecution of a pending open case, and—with the permission of both Disciplinary Counsel and the Chair of the appropriate Subcommittee—may continue to perform all of the investigative and prosecutorial duties of Disciplinary Counsel with respect to that case; and
 - (ii) a Case Investigator shall solely perform all of the investigative and prosecutorial duties of Disciplinary Counsel with respect to a particular case if circumstances exist which require Disciplinary Counsel's recusal. For purposes of this Rule 207.1.2(c)(5)(ii), Disciplinary Counsel is required to recuse from handling a particular case if the same circumstances would

warrant the recusal of an individual prosecutor in a criminal case. In the event a Case Investigator had not already been appointed on or before the date of Disciplinary Counsel's recusal, the Chair of the appropriate Subcommittee shall promptly appoint a Case Investigator from among the members of the Committee. If Disciplinary Counsel has recused from a particular case, all subsequent ministerial functions with respect to that case shall be performed by the Administrative Director of the Supreme Court or his or her designee."

It is further

ORDERED that Supreme Court Rule 207.1.5 be **AMENDED** by inserting the word "Ministerial" before the word "Duties" in the title of the rule. It is further

ORDERED that Supreme Court Rule 207.1.9.8 be **AMENDED** by inserting the phrase "by the Disciplinary Counsel" after the word "investigated." It is further

ORDERED that Supreme Court Rule 207.1.10(b) be **AMENDED** by inserting the phrase "the Disciplinary Counsel and" after the phrase "by the Chairman to" and striking the second sentence in its entirety. It is further

ORDERED that Supreme Court Rule 207.2 be **AMENDED** by striking all existing language in its entirety and replacing it with the phrase "Duties of the Panel and the Disciplinary Counsel." It is further

ORDERED that Supreme Court Rule 207.2.1 be **AMENDED** by striking the word "four" in the first sentence, placing it with the word "three," and striking the second sentence in its entirety. It is further

ORDERED that Supreme Court Rule 207.2.3 be **AMENDED** by striking the text designated as Supreme Court Rule 207.2.3(b) in its entirety, re-designating the remaining text as Supreme Court Rule 207.2.3, and striking the phrase "and of Case Investigator" from the title. It is further

ORDERED that Supreme Court Rule 207.2.4 be **AMENDED** by striking the phrase “his appointment” in Supreme Court Rule 207.2.4(a) and replacing it with the phrase “receipt of a grievance.” It is further

ORDERED that Supreme Court Rule 207.2.5 be **AMENDED** by striking the word “other” from the first sentence, as well as by striking the phrase “his appointment” and replacing it with the phrase “receipt of a grievance.” It is further

ORDERED that Supreme Court Rule 207.3.19 be **AMENDED** by inserting the phrase “as well as the Disciplinary Counsel” after the phrase “members of the Committee” in Supreme Court Rules 207.3.19(a) and 207.3.19(b). It is further

ORDERED that Supreme Court Rule 207.5.6 be **AMENDED** by striking all existing language and replacing it with the following language:

“(a) If a lawyer has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 207.5.5, and no partner, executor or other responsible party capable of conducting the lawyer’s affairs is known to exist, the court, upon proper proof of the fact, shall appoint Disciplinary Counsel or a private attorney to serve as an attorney-trustee to inventory the files of the lawyer, and to take such action as seems indicated to protect the interests of the lawyer and his or her clients.

(b) A private attorney appointed as an attorney-trustee under this rule or any predecessor rule may be compensated at the same hourly rate as court-appointed counsel and may be reimbursed for all necessary expenses, but all compensation and reimbursements shall be paid by the lawyer or the lawyer’s estate. To the extent not inconsistent with this Rule 207.5.6 or the order appointing the attorney-trustee, the procedure set forth in Supreme Court Rule 210.4 shall govern requests for compensation by private attorneys appointed as attorney-trustees, except that all claims shall be reviewed by the Chief Justice.”

It is further

ORDERED that Supreme Court Rule 207.6.10 be **AMENDED** by striking the sentence “The Case Investigator shall not be from the same Subcommittee as the Panel Chair.” in Supreme Court Rule 207.6.10(a) in its entirety. It is further

ORDERED that Supreme Court Rule 207.6 be **AMENDED** by designating the following language as Supreme Court Rule 207.6.24:

“Rule 207.6.24. Cases Involving Allegations of Mental or Physical Incapacity.

- (a) *Initiation of Incapacity Proceeding.* An incapacity proceeding can be initiated by a grievance, a claim of inability to defend in a disciplinary proceeding, or any other information that warrants initiation of formal proceedings to determine whether a lawyer possesses a physical or mental condition that adversely affects the lawyer’s ability to practice law.
- (b) *Proceedings to Determine Incapacity Generally.* All incapacity proceedings shall be conducted in accordance with the procedures for disciplinary proceedings, except that:
 - (1) the purpose of the incapacity proceedings shall be to determine whether the lawyer suffers from a physical or mental condition that adversely affects the lawyer’s ability to practice law;
 - (2) all of the proceedings before the Committee and the court shall be confidential, except for a notice of transfer to disability inactive status, which the Chairman shall cause to be published in a newspaper of general circulation in the judicial district in which the lawyer maintained an office for the practice of law;
 - (3) the Committee may appoint counsel to represent the lawyer if the lawyer is without representation; and
 - (4) if the court concludes that the judge is incapacitated to hold judicial office, it may transfer the lawyer to disability inactive status or take any other action the court deems appropriate under the circumstances.
- (c) *Inability to Properly Defend in a Disciplinary Proceeding.* If a respondent alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the Committee shall promptly notify the court, which shall immediately transfer the respondent to disability inactive status pending a determination of the incapacity by the Committee.
 - (1) If the Committee determines that the claim of inability to defend is valid, the disciplinary proceeding shall be deferred, although any investigation of the grievance may continue. The respondent shall remain on disability inactive status until such time as the court grants a petition for reinstatement. If the court, in considering the petition for reinstatement, determines that the petition shall be granted, the court shall also determine whether the interrupted disciplinary proceedings may resume.
 - (2) If the Committee determines that the claim of inability to defend is invalid but that the respondent suffers from a mental or physical condition that adversely affects the respondent’s ability to practice law, the disciplinary proceeding shall automatically resume and the respondent shall remain on disability inactive status until such time as the court grants a petition for reinstatement.
 - (3) If the Committee determines that a claim of inability to defend is invalid and that the respondent does not suffer from a mental or physical condition that adversely affects the respondent’s ability to practice law, the disciplinary proceeding shall

automatically resume and the court, if it agrees with the Committee's determination that the respondent does not suffer from such a mental or physical condition, shall immediately reinstate the respondent from disability inactive status.

- (4) A determination by the Committee that a lawyer is able to assist in his or her own defense is interlocutory and is not appealable prior to entry of a final order in the proceeding.
- (5) The raising of mental or physical condition as a defense to, or in mitigation of, a grievance constitutes a waiver of medical privilege."

It is further

ORDERED that Supreme Court Rule 207.8.7 be **AMENDED** by inserting the phrase "or earlier, if an earlier effective date will not prejudice the grievant or respondent in any pending case" to the end of the second sentence. It is further

ORDERED that, pursuant to Supreme Court Rule 37, the public as well as members of the local Bench and bar **MAY SUBMIT WRITTEN COMMENTS** on these proposed amendments to the Clerk of the Court within thirty (30) days of entry of this order. It is further

ORDERED that, because the proposed amendments are not substantive and, if adopted, will not prejudice the grievant or respondent in any pending case, notwithstanding Supreme Court Rule 207.8.7, the amendments to Supreme Court Rule 203(p), Supreme Court Rules 207.1 through 207.9.3, excluding the amendment to Supreme Court Rule 207.5.6 and the addition of Supreme Court Rule 207.6.24, **WILL TAKE EFFECT** on the date of entry of this Order, and **SHALL REMAIN IN EFFECT** unless modified as a result of comments from the public and the local Bench and bar. It is further

ORDERED that all other amendments **WILL TAKE EFFECT** thirty (30) days from the date of entry of this Order, and **SHALL REMAIN IN EFFECT** unless modified as a result of comments from the public and the local Bench and bar. It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 1st day of July, 2011.

_____/s/_____
IVE ARLINGTON SWAN
Associate Justice

_____/s/_____
MARIA M. CABRET
Associate Justice

_____/s/_____
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court