

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 24, 2021

From: Mark A. Turner, Adjudicator

Re: Proposed Amendments to Bar Rules of Procedure making certain emergency amendments permanent.

Action Requested

Recommend that the Supreme Court make permanent the following emergency amendments to the Bar Rules of Procedure that were implemented by Chief Justice Order 20-009, dated March 27, 2020, specifically rule 1.8 (service); rule 1.10 (filing); adding new rule 1.14 that provides that declarations under penalty of perjury may replace notarized affidavits (except under BR 13.7, Form B Resignation); and rule 2.4(e) (remote participation).

Discussion

These emergency amendments have promoted the efficient operation of the disciplinary system and should be made permanent beyond the interim period requiring responses to the COVID-19 pandemic.

BR 1.8 governs service methods. The amendment allows for electronic service of pleadings. This change promotes efficiency and convenience for participants. It also aligns with current civil practice.

BR 1.10 governs filing of pleadings with the Disciplinary Board Clerk. The amendment allows for electronic filing. This change promotes efficiency and convenience for participants. It also aligns with current civil practice.

Bar rules and practice currently require and/or allow submission of notarized affidavits in various circumstances. An emergency amendment to the Bar Rules allowed submission of declarations under penalty of perjury in lieu of notarized affidavits, except in cases involving Form B Resignations, where it was deemed appropriate to require a notarized signature of the attorney. This change makes practice under the bar rules more convenient for participants and is consistent with civil practice as well where declarations have been accepted in lieu of affidavits for many years. The amendment is implemented by adding a new rule 1.14.

BR 2.4(e) sets forth the duties of the Adjudicator. An emergency amendment allowed for hearings or proceedings to take place by videoconference or other means of remote participation if the Adjudicator determines that remote participation is necessary to comply with local, state, or national public health orders or recommendations. The proposed amendment makes this permanent and also adds a provision allowing for remote participation with the agreement of the parties and the approval of the Adjudicator. Remote participation has proved to be an efficient and effective way to conduct disciplinary proceedings and

extending that option to the parties in circumstances beyond public health emergencies will provide the option in more circumstances where the parties believe it makes sense.

Proposed Amendments to Bar Rules of Procedure

Rule 1.8 Service Methods.

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on a respondent, applicant, or attorney shall be:

(1) Sent to the respondent, applicant, or attorney, or his or her attorney if the respondent, applicant, or attorney is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

~~(2) served on the respondent, applicant, or attorney by personal or office service as provided in ORCP 7 D(2)(a)-(c).~~

(2) Sent to the respondent, applicant, or attorney, or his or her attorney if the respondent, applicant, or attorney is represented, by email addressed to the intended recipient at the recipient's last designated email address on file with the Bar.

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or ~~served by personal or office service as provided in ORCP 7 D(2)(a)-(c)~~ **sent by email addressed to the intended recipient at the recipient's last designated email address on file with the Bar.**

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or ~~served by personal or office service as provided in ORCP 7 D(2)(a)-(c)~~ **sent by email addressed to the intended recipient at the recipient's last designated email address on file with the Bar.**

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

~~(e) The parties may by mutual agreement serve any document other than the formal complaint and answer by email delivery to the email address identified in~~

~~the Bar's membership records for the respondent, applicant, or attorney, or his or her attorney if represented.~~

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Rule 1.10 Filing.

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered by mail to the Disciplinary Board Clerk, Oregon State Bar, P.O. Box 231935, Tigard, Oregon 97281-1935 **or by email to dbclerk@osbar.org**. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563, consistently with the requirements of the Oregon Rules of Appellate Procedure, including Chapter 16 (filing and service by electronic means). Any pleading or document to be filed with the Adjudicator or a regional chair shall be delivered to the intended recipient at his or her last designated business or residence address, **or email address on file with the Bar.**

(b) Filing by mail is complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsections (b) of this rule, the filing is not timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case by first class mail through the United States Postal Service **or by email to the address on file with the Bar.** All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the respondent or applicant, or his or her attorney if represented; Disciplinary Counsel; and Bar Counsel, if any.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledgement of service by the person served or be in the form of a statement of the date of deposit in the mail **or email,** and the

names and addresses of the persons served, certified by the person who has made service.”

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Rule 1.14 Declarations May Replace Affidavits.

With the exception of the requirement contained in BR 13.7, Form B Resignation, all Bar Rules of Procedure that require documents or pleadings be supported by a notarized affidavit are amended to allow parties, as an alternative to notarization, to support the documents or pleadings with a declaration that includes the following language:

“I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.”

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BR 2.4 Disciplinary Board.

(e) Duties of Adjudicator.

(15) Notwithstanding requirements for in-person proceedings contained in BR 3.1, 3.2, 3.4, 3.5, 5.3, and 8.8, the Adjudicator may order that any disciplinary hearings or proceedings take place by videoconference, or such other means that allow for remote participation of all parties, if the Adjudicator determines remote participation is necessary to comply with local, state, or national public health orders or recommendations. Such hearings or proceedings may also take place by remote participation by agreement of the parties with the approval of the Adjudicator.