

Rule 20. Confidentiality; Expunction

(a) General rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

- (1) As between the Committees, Board and Director in furtherance of their duties;
- (2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;
- (3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;
- (4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall a member of the District Ethics Committee or the Board, the Director, or the Director's staff be subject to deposition or compelled testimony, except upon a showing to the Court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and Director's staff shall remain protected;
- (5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege, portions may be deleted;
- (6) Where permitted by this Court; or
- (7) Where required or permitted by these Rules.
- (8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.
- (9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.
- (10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.
- (11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

(b) Special matters. The following may be disclosed by the Director:

- (1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;
- (2) With the affected lawyers consent, the fact that the Director has determined that discipline is not warranted;
- (3) The fact that the Director has issued an admonition;

- (4) The Panel's disposition under these Rules;
- (5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e);
- (6) The fact that the terms of a conditional admission have been modified or extended under Rule 8(d)(5);
- (7) Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this rule, the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after determination of probable cause or commencement of referee or Court proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

(d) Referee or Court proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(e) Expunction of records. The Director shall expunge records relating to dismissed complaints as follows:

(1) *Destruction schedule.* All records or other evidence of the existence of a dismissed complaint shall be destroyed three years after the dismissal;

(2) *Retention of records.* Upon application by the Director to a Panel Chair chosen in rotation, for good cause shown and with notice to the respondent and opportunity to be heard, records which should otherwise be expunged under this Rule may be retained for such additional time not exceeding three years as the Panel Chair deems appropriate.

(f) Advisory opinions, overdraft notification program files, and probation files. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

(1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, or probation; or

(2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification or probation.

(Amended April 26, 1983; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective March 30, 1999; amended effective September 1, 2005; amended effective July 1, 2009.)

Advisory Committee Comment - 1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R. L. Prof. Resp. 20(a)(10). Both the Board on Judicial Standards

and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R. Bd. Jud. Std. 2(b); R. L. Prof. Resp. 6Z.