

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RODERICK L. IRELAND
Chief Justice

1. Court Submitting Rules for Approval:

Board of Bar Overseers

2. Date Rules Submitted for Approval:

September 27, 2010

3. Date Approved and Promulgated by the Supreme Judicial Court:

June 22, 2011

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Board of Bar Overseers Rules - By striking out Board Rule

Section 3.54 in its entirety, striking out the second

sentence of Section 3.50(g), and inserting in lieu thereof

the attached new Subchapter G. Recusal.

The Board of Bar Overseers Rules are further amended by adding

the attached new Section 4.5B.

Effective date - September 1, 2011

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

Recusal Rule

At its meeting on September 13, 2010, the Board of Bar Overseers voted to recommend that the Supreme Judicial Court strike from the Board's Rules Section 3.54 in its entirety, to strike the second sentence of Section 3.50(g), and to add the following Subchapter G under Chapter 4 (Miscellaneous Matters), and to submit the proposed amendments to the Supreme Judicial Court for its approval pursuant to S.J.C. Rule 4:01, § 3(h), as follows:

SUBCHAPTER G. RECUSAL

SECTION 4.21. GENERAL RULE

(a) A Board member, hearing committee member, or special hearing officer shall disqualify himself or herself in any matter in which his or her impartiality might reasonably be questioned.

(b) "Impartiality" denotes absence of bias or prejudice in favor of, or against, any party, as well as maintaining an open mind in considering issues involved in the matter.

(c) A Board member, hearing committee member, or special hearing officer is disqualified where he or she has personal knowledge of disputed evidentiary facts involved in the matter or has previously expressed a view concerning its outcome or has a financial interest in its outcome.

SECTION 4.22. RECUSAL

The Chair shall not be disqualified from subsequent consideration or decision of a matter solely on the ground that he or she ruled on a motion or an appeal in his or her capacity as Chair.

SECTION 4.23. RECUSAL OF BOARD MEMBER

(a) A Board member who has participated as a reviewing Board member in the decision to institute formal proceedings pursuant to Section 2.8 of these Rules, or as a member of a hearing committee or hearing panel or as a special hearing officer in an evidentiary hearing resulting in findings of fact and recommendations, shall be disqualified from participation in subsequent deliberations and voting of the Board in such matter.

(b) A Board member who has been a member of an Appeal Panel shall not be disqualified from participation in subsequent deliberations and voting of the Board.

Out-of-State Depositions and Subpoenas

At its meeting on September 13, 2010, the Board of Bar Overseers unanimously voted to recommend that the Supreme Judicial Court add a new Section 4.5B to the Board's rules and to submit the proposed amendment to the Supreme Judicial Court for approval pursuant to S.J.C. Rule 4:01, § 3(c):

SECTION 4.5B. TAKING OUT-OF-STATE DEPOSITIONS PURSUANT TO SUBPOENA

(a) Implementing the provisions of Subchapter E regarding the taking of depositions pursuant to Sections 4.9 and 4.10 out of state, Bar Counsel and/or the respondent may request that the hearing committee, hearing panel, special hearing officer, or the Chair approve the taking of out-of-state depositions pursuant to subpoena requiring the attendance of a witness and/or the production of any evidence, including books, records, correspondence, or documents, relating to any matter in question in the proceeding.

(b) Upon such approval having been given, the Board shall issue a request, addressed to the disciplinary board or entity in the jurisdiction in which the deposition is to be taken, that the latter issue a subpoena requiring the attendance and testimony of the witness in the out-of-state jurisdiction and the production of any evidence, including books, records, correspondence, or documents, relating to the matter in question. The request shall state that the Board has approved the taking of such deposition and shall specify the date, time, and place for the taking of the deposition.

(c) In the event that the disciplinary board in the out-of-state jurisdiction in which the deposition is to be taken either cannot issue, or declines to issue, a subpoena for the taking of such deposition, Bar counsel and/or the respondent may apply to the Supreme Judicial Court for Suffolk County, citing such approval, for leave to take such deposition pursuant to the provisions of G.L. c. 223A, § 10 (Letters Rogatory). For purposes of such application, a disciplinary matter before the Board shall be considered "an action pending in this Commonwealth" within the meaning of G.L. c. 223A, § 10.

(d) Depositions in an out-of-state jurisdiction shall be taken before an officer, not being counsel for any of the parties, authorized to administer oaths by the laws of the United States or of the place where the examination is held.