

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 10<sup>th</sup> day of April, 2017, the following order was made and entered:

**RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED REVISIONS TO RULE 8.3 OF THE RULES OF PROFESSIONAL CONDUCT, RULE 6 OF THE RULES OF JUDICIAL DISCIPLINARY PROCEDURE, AND THE RULES OF THE LAWYER AND JUDICIAL ASSISTANCE PROGRAM**

On this day came the Court, on its own motion, and proceeded to consider amendments to various rules in order to combine the functions of the Judicial Committee on Assistance and Intervention with the Lawyer Assistance Program. Upon consideration whereof, the Court is of the opinion that the proposed amendments set forth in this order be subject to a thirty-day period of public comment. Additions are indicated by underlining, deletions are indicated by strikethrough. Comments must be filed in writing with the Clerk of the Court on or before **May 11, 2017**.

### **RULES OF PROFESSIONAL CONDUCT**

#### **Rule 8.3 Reporting Professional Misconduct**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers or judicial assistance program.

(d) This Rule shall not apply to members of the West Virginia Lawyer and Judicial Assistance Program (WVLJAP) or any predecessor or successor organizations to the extent that these persons are acting in their official capacities as members, intervenors, representatives or volunteers in the ~~West Virginia Lawyer Assistance Program (WVLAP)~~ WVLJAP. The Rules of the Lawyer and Judicial Assistance Program shall determine the

procedure for reporting an impaired lawyer who resists all efforts of assistance by the WVLAP WVLJAP to the Office of Disciplinary Counsel and the Lawyer Disciplinary Board.

#### COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

#### **Bar Incapacity Activities**

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The Rules of the West Virginia Lawyer and Judicial Assistance Program shall govern the confidentiality of any information concerning a participant in the program and shall govern the procedure for reporting an impaired lawyer who resists all efforts of assistance by the program to the Office of Disciplinary Counsel. See Rule ~~6(d)~~ 6 of the ~~West Virginia Rules of the~~ West Virginia Lawyer and Judicial Assistance Program.

## **RULES OF JUDICIAL DISCIPLINARY PROCEDURE**

### **Rule 6. Judicial Committee on Assistance and Intervention Referrals to the West Virginia Lawyer and Judicial Assistance Program.**

~~The Supreme Court of Appeals does hereby establish a Judicial Committee on Assistance and Intervention [Committee] to receive and review complaints alleging judicial disability or impairment. The Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board may, at the entity's discretion, provide a referral to the West Virginia Lawyer and Judicial Assistance Program (WVLJAP) of any judge when the Commission, Counsel, or Board has a reasonable belief that the alleged misconduct of a~~

judge is the result of impairment by drugs or alcohol, or by a mental, emotional, or physical condition including the attendant mental or physical incapacity as a result of advancing years.

### **Rule 6.1. Membership Notification.**

The Committee shall consist of three members: one circuit judge, one magistrate, and one family court judge. Whenever the Judicial Investigation Commission, Judicial Disciplinary Counsel and/or the Judicial Hearing Board has made the determination to refer a judge to the WVLJAP, it will provide notification to the Executive Director that assistance and intervention have been recommended and will provide to the WVLJAP a copy of any agreement entered into by the Commission or Counsel and the judge or any recommended decision by the Board which concerns referral and treatment.

### **Rule 6.2. Terms WVLJAP Compliance.**

The members of the Committee shall serve terms of three years. The Executive Director of WVLJAP shall review any referral made pursuant to this Rule. If the Executive Director deems that assistance and intervention is appropriate, the Executive Director will make reasonable efforts to enter into a Monitoring Agreement with the judge and will provide a copy of the duly executed agreement to the Judicial Investigation Commission, Judicial Disciplinary Counsel and/or the Judicial Hearing Board. If the Executive Director determines that assistance and intervention is not appropriate, the Executive Director shall report that determination and the reasons therefore in writing to the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board.

### **Rule 6.3. Appointment**

The circuit judge member shall be appointed by the West Virginia Judicial Association. The magistrate member shall be appointed by the West Virginia Magistrates Association. The family court judge member shall be appointed by the West Virginia family court judges Association.

### **Rule 6.4. Eligibility**

When a circuit judge, magistrate, or family court judge ceases to be a circuit judge, magistrate, or family court judge, or whenever any member becomes otherwise ineligible to hold office, membership on the Committee shall terminate.

### **Rule 6.5. Vacancies**

Whenever a vacancy occurs on the Committee the Chairperson or Vice Chairperson shall promptly notify the appropriate appointing authority which shall fill such vacancy within thirty days of the date of the written notice of vacancy. If the appropriate appointing authority does not fill a vacancy within thirty days of the date of the written notice of vacancy, it shall be filled by the Supreme Court of Appeals. A vacancy on the Committee shall be filled for the unexpired portion of the term for which the original appointment was

~~made. All persons appointed shall continue to serve until their successors are appointed and qualified.~~

### **Rule 6.6 — Reappointment**

~~A member of the Committee who has completed one full term of service shall be eligible for a single reappointment after completion of the member's term. Any member appointed to fill a vacancy who has served less than one year shall be eligible for two reappointments.~~

### **Rule 6.7 — Election of Officers**

~~The members of the Committee shall annually elect a Chairperson and a Vice-Chairperson. The Chairperson, and in the Chairperson's absence the Vice Chairperson, shall perform the duties normally associated with that office and shall preside over all meetings of the full Committee, ruling on all motions, objections, and evidence.~~

### **Rule 6.8. — Quorum**

~~Two members of the Committee shall constitute a quorum. The Committee shall act only with the concurrence of a majority of those present and voting.~~

### **Rule 6.9 — Compensation and Expenses**

~~Members of the Committee shall not receive a per diem, but shall be eligible for reimbursement for travel and other expenses incidental to the performance of their duties. All expenses for members of the Committee shall be paid by the State from funds appropriated to the Judiciary.~~

### **Rule 6.10 — Disqualification**

~~A member of the Committee may not participate as such in any proceeding involving a charge against such member, such member's spouse, or a person within the third degree of relationship to either the member or the member's spouse. The appropriate appointing authority may make temporary appointments to fill a disqualified member's position in a given proceeding. Committee members shall disqualify themselves in any proceeding in which a judge, similarly situated, would be required to disqualify himself or herself.~~

### **Rule ~~6.11~~ 6.3 Authority**

The ~~Committee~~ WVLJAP shall have the authority to (1) receive information concerning any judge pursuant to ~~Canon 3D(3)~~ Rule 2.14 of the Code of Judicial Conduct; (2) refer information not deemed by the ~~Committee~~ WVLJAP as being subject to ~~Canon 3D(3)~~ Rule 2.14 of the Code of Judicial Conduct to the Office of Judicial Disciplinary Counsel to conduct ~~a full~~ further investigation; (3) interview the complainant concerning the information filed; (4) interview the judge concerning the information filed; (5) recommend a psychological and/or medical evaluation of the judge if determined by the ~~Committee~~ WVLJAP that such examination is warranted by the information received; (6) recommend a program of

rehabilitation based on information received from a psychological and/or medical evaluation; (7) recommend retirement in case of a judge's advancing years and attendant physical or mental incapacity to the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board; (8) conduct a post-rehabilitation review if deemed necessary; or (9) ~~dismiss~~ recommend the dismissal of the information as having no basis.

#### **Rule ~~6.12~~ 6.4. Confidentiality.**

All information received pursuant to Rule 2.14 of the Code of Judicial Conduct shall be filed with the Clerk of the Supreme Court of Appeals and kept confidential. The Clerk shall serve notice upon the ~~Chairperson of the Committee~~ Executive Director of the WVLJAP upon receipt of information concerning a judge and may provide any necessary information to WVLJAP. In the event a judge has not been referred by the Judicial Investigation Commission, Judicial Disciplinary Counsel, or the Judicial Hearing Board, and the judge complies with the recommendations of the ~~Committee~~ WVLJAP and rehabilitative intervention is successful, the ~~Committee~~ WVLJAP shall take no further action and all records shall be sealed and kept confidential. Except as pursuant to Rules ~~6.13~~ 6.5 and ~~6.14~~ 6.6, the ~~Committee~~ WVLJAP shall not release any information regarding its activities.

#### **Rule ~~6.13~~ 6.5. Refusal to comply.**

Refusal by a judge to execute a waiver to grant the ~~Committee~~ WVLJAP access to psychological/medical records shall constitute refusal to comply with ~~the Committee's recommendations~~. the WVLJAP and the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board. In the event a judge otherwise refuses to comply with recommendations of the ~~Committee~~ WVLJAP, it shall be the duty of the ~~Committee~~ WVLJAP to refer the original information received to the Office of Judicial Disciplinary Counsel to conduct a full investigation.

#### **Rule ~~6.14~~ 6.6. Failure of rehabilitation.**

If, after a period of rehabilitation and re-evaluation, the ~~Committee~~ WVLJAP finds that rehabilitative measures have not been effective, the ~~Committee~~ WVLJAP shall forthwith file all information received with the ~~Office of~~ Judicial Investigation Commission and/or Judicial Disciplinary Counsel ~~to~~ who shall conduct ~~a full~~ further investigation.

#### **Rule ~~6.15~~ 6.7. Evaluation expenses.**

All expenses incurred by the judge for psychological and/or medical evaluations not covered by the judge's health care plan shall be the responsibility of the judge.

#### **Rule ~~6.16~~ 6.8. Proceedings and process.**

All proceedings before the ~~Committee~~ WVLJAP shall be nonadversarial. A form for the filing of information pursuant to ~~Canon 3D(3)~~ Rule 2.14 of the Code of Judicial Conduct may be obtained from the Administrative Office of the Courts or Judicial Disciplinary Counsel.

The evidence to be considered by the ~~Committee~~ WVLJAP shall include the information filed, interview of complainant, interview of the judge, and psychological and/or medical evaluations. All proceedings shall be ~~formal and~~ confidential. The ~~rulings~~ observations of the ~~Committee~~ WVLJAP shall be in the form of a recommendation only. A judge shall be given ~~thirty~~ ten days within which to accept or reject the ~~Committee's~~ WVLJAP's recommendation. It shall be the responsibility of the judge to notify the ~~Chairperson of the Committee~~ Executive Director of the WVLJAP in the event of acceptance or rejection of the recommendation.

### **Rule 6.9. Information provided to Disciplinary Authorities by the WVLJAP.**

The WVLJAP will immediately provide to the Judicial Investigation Commission the following information:

- (a) A referred judge's failure to establish contact with WVLJAP or to enter into a recommended Monitoring Agreement;
- (b) A referred judge's failure to substantially comply with the terms of the Monitoring Agreement entered into by the judge and the WVLJAP; and
- (c) Regular written status updates concerning the judge's compliance with the Monitoring Agreement, and at the successful completion of the Monitoring Agreement, a written recommendation for the WVLJAP concerning the judge's overall compliance.

### **Rule ~~6.17~~ 6.10 Period of limitation for filing information.**

Any information filed more than ~~six months~~ two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of an impairment or incapacity of a judge shall not be considered unless it is determined by the ~~Committee~~ WVLJAP that an impairment or incapacity exists at the time of filing.

## **RULES OF THE WEST VIRGINIA LAWYER AND JUDICIAL ASSISTANCE PROGRAM**

### **Preamble**

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a ~~lawyer~~ Member of the Legal Profession ("Member"). Members of the legal profession shall hereafter be defined as lawyers, judges as defined by Application I of the West Virginia Code of Judicial Conduct, bar applicants and law students. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a ~~lawyer~~ Member of the legal profession to practice or serve. ~~Lawyer~~ A Member's impairment is detrimental to the interests of clients, litigants, our legal system, the general public, and the health and quality of

life of the impaired ~~lawyer~~ Member. The vast majority of States have responded to the issue of ~~lawyer~~ Member impairment by creating funded Lawyer and Judges Assistance Programs as contemplated by these rules, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to ~~lawyer~~ a Member's impairment. The Supreme Court finds that the West Virginia Lawyer and Judicial Assistance Program is an appropriate method for addressing the issue of ~~lawyer~~ Member impairment and that the program will promote the integrity of the legal profession, thereby directly benefitting the people of West Virginia.

**Rule 1. Establishment of the West Virginia Lawyer and Judicial Assistance Program (~~WVLAP~~) (WVLJAP)**

(a) *Establishment.* — There is hereby established a statewide lawyer and judicial assistance program to be known as the West Virginia Lawyer and Judicial Assistance Program (~~WVLAP~~) (WVLJAP), which shall provide immediate and continuing help to ~~lawyers~~ Members who suffer from any physical, or mental and/or emotional health conditions that affect their ability to practice or serve.

(b) *Purpose.* — ~~WVLAP~~ WVLJAP has four primary purposes:

(1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;

(2) To assist impaired members of the legal profession to begin and continue recovery;

(3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and

(4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.

(c) *Funding and Administration.* —

(1) The salary of the executive director, and staff, if any, their expenses, administrative costs, and the expenses of the members of ~~WVLAP~~ WVLJAP shall be paid from funds provided by The West Virginia State Bar. ~~The total annual salaries, costs, and expenses of the program paid from State Bar member dues shall not exceed \$60,000.~~ Each year ~~WVLAP~~ WVLJAP shall submit a proposed annual budget for the next fiscal year to the Board of Governors detailing the projected revenues and expenses ~~subject to the \$60,000 limitation.~~

(2) ~~WVLAP~~ WVLJAP shall seek to establish additional private and public sources of funding that may include gifts or bequests from any source and earnings on investments of the ~~WVLAP~~ WVLJAP fund, which may be used to supplement the annual salaries, costs, and expenses of the program.

**Rule 2. Board of Directors**

(a) *Management.* — The West Virginia Lawyer and Judicial Assistance Program shall be administered by a board of directors appointed by the Board of Governors of the West

Virginia State Bar. The ~~WVLAP~~ WVLJAP officers may make recommendations and nominations to the Board of Governors for appropriate persons to be appointed to the Board of Directors which shall be given due consideration by the Board of Governors. Officers of the Board of Directors shall consist of a chair, a vice-chair and a secretary. The officers shall be annually elected by the Board of Directors.

(b) *Composition.* — The Board shall consist of fifteen (15) members, which shall include three (3) members of the judiciary; one (1) Circuit Court Judge, one (1) Family Court Judge and one (1) Magistrate. Board members shall be selected from the membership of the West Virginia State Bar and/or the judiciary, except that the Board may include up to four (4) persons who are not members of the West Virginia State Bar and/or the judiciary. The members shall have diverse experience, knowledge and demonstrated competence in the problems of chemical dependency, or physical, mental and/or emotional health conditions that affect members of the legal profession. Geographic location of the Board membership shall be taken into consideration, and the membership shall be geographically diverse.

(c) *Terms.* —

(1) The Board of Governors shall appoint Board members for initial terms as follows: five members for one-year terms; five members for two-year terms; and five members for three-year terms.

(2) Subsequent appointments shall be for a term of three years.

(3) No member may serve more than two successive three-year terms, provided, however, that this limitation may be waived as to any member upon the affirmative vote of two-thirds of the Board and approval of the Board of Governors.

(d) *Duties of the Board.* — The members of the Board shall have the following powers and duties:

(1) To establish ~~WVLAP~~ WVLJAP's ~~by laws,~~ policies and procedures, consistent with the intent and purpose of these rules, that shall be established after reasonable notice to the Board of Governors and opportunity for comment;

(2) To operate the program to achieve its purpose and goals;

(3) To ~~hire and fire~~ select, retain and supervise the ~~WVLAP~~ WVLJAP executive director and staff;

(4) To prepare, approve and present an annual budget to the Board of Governors; and

(5) To make annual reports to the Supreme Court and Board of Governors.

(e) *Meetings.* — The Board shall meet quarterly. It shall also meet upon call of the chair, vice chair or upon the request of five (5) or more members upon reasonable notice to all members. A quorum for any meeting shall be a majority of the Board then existing.

### **Rule 3. Executive Director of the Program**

(a) ~~*Appointment/Hire.*~~ — ~~The Board shall recruit, hire, retain, and supervise, and the Board may terminate the~~ ~~WVLAP~~ ~~executive director.~~

~~(b)~~ (a) Qualifications. — The executive director shall have sufficient experience and training to identify and assist impaired members of the legal profession and to work well with the volunteers, plus any additional qualifications deemed necessary by the Board.

~~(e)~~ (b) Duties and Responsibilities. — The executive director's duties and responsibilities shall include but not be limited to the following:

(1) To work with the Board to develop a vision and plan to ensure that the ~~WVLAP~~ WVLJAP becomes a vital and credible resource for the West Virginia legal community;

(2) To act as the initial contact point for all referrals to the ~~WVLAP~~ WVLJAP, whether voluntary or involuntary. The executive director should always remain accessible to current members ~~or to any attorney~~ seeking help, and should never be insulated from the telephone or from personal contact. The position will require that the director be ready, either alone or together with a program volunteer, to travel within the State to meet with ~~an attorney~~ any Member in need of assistance;

(3) To help members of the legal profession and the judiciary and their families to secure evaluation, counseling and/or treatment for chemical dependency, ~~and~~ physical, mental and/or emotional health conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard the executive director will be responsible for evaluating referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for ~~lawyers~~ Members and others using the services of ~~WVLAP~~ WVLJAP;

(4) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help;

(5) To help lawyers, judges, law firms, courts, law schools and others, with the advice and assistance of a health care professional, identify and intervene with impaired members of the legal profession;

(6) To recruit, select, train and coordinate the activities of volunteer lawyers and judges who will provide assistance, and to maintain a current contact list of those volunteers. In furtherance of this duty the executive director should assist in coordinating volunteer support meetings for Members and attend the meetings on a periodic basis to address questions or concerns of the volunteers;

(7) To recruit, select, train and coordinate the activities of volunteer judges (“Judicial Assistance Groups”) who will provide assistance, and to maintain a current contact list of those judicial volunteers and assist in coordinating volunteer support meetings for Judges and attend the meetings on a periodic basis to address questions or concerns of the judicial volunteers;

~~(7)~~ (8) To work to establish and maintain a policy that ensures confidentiality, as required by these rules, as an essential component of the ~~WVLAP~~ WVLJAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of ~~WVLAP~~ WVLJAP volunteers;

~~(8)~~ (9) To plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, civic and educational organizations of the advocacy benefits of early intervention and prevention and the assistance that is available to those in need;

~~(9)~~ (10) To be responsible for the day-to-day administration of the ~~WVLAP~~ WVLJAP, including the development of job descriptions for ~~WVLAP~~ WVLJAP staff personnel, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The executive director will also be responsible, with the oversight of the Board, for development of the ~~WVLAP's~~ WVLJAP annual budget and oversight of its fiscal management;

~~(10)~~ (11) To act as the ~~WVLAP's~~ WVLJAP's liaison with the American Bar Association Commission on Lawyer Assistance Programs and with lawyer and judges assistance programs throughout the country;

~~(11)~~ (12) To network with other professional assistance organizations located in West Virginia;

~~(12)~~ (13) To establish private and public sources of funding for ~~WVLAP~~ WVLJAP; and

~~(13)~~ (14) To perform such other duties and responsibilities as may be established by the Board.

#### **Rule 4. Volunteers**

The program shall enlist volunteer lawyers and judges whose responsibilities may include:

(a) Assisting in interventions planned by ~~WVLAP~~ WVLJAP;

(b) Serving as twelve-step program sponsors and/or recovery mentors;

(c) Acting as a local contact for members of the legal profession seeking help from the ~~WVLAP~~ WVLJAP;

(d) Acting as a contact between ~~WVLAP~~ WVLJAP and the courts, the Lawyer Disciplinary Board, the Office of Lawyer Disciplinary Counsel, Board of Law Examiners, Judicial Investigation Commission, and other State bar organizations, committees, and law schools;

(e) Providing compliance monitoring as may be appropriate; ~~and~~

(f) Performing any other function deemed appropriate and necessary by the Board to fulfill its purposes; and

(g) Any lawyer volunteers who may be providing assistance to a judge shall not regularly appear in front of the judge and any judicial volunteers who may be providing assistance to a lawyer shall not regularly be presiding over cases involving the lawyer.

Volunteers shall act on behalf of ~~WVLAP~~ WVLJAP only in accordance with these rules and the ~~by laws~~, policies, and procedures of the ~~WVLAP~~ WVLJAP, and shall be bound by the confidentiality provisions of these rules.

## **Rule 5. Services**

~~WVLAP~~ WVLJAP may provide the following services as the Board determines feasible based upon the available financial, volunteer, and other resources:

- (a) Immediate and continuing assistance to members of the legal profession who suffer from the effects of chemical dependency, physical, or mental and/or emotional health conditions that result from disease, disorder, trauma or other infirmity and that affects their ability to practice or serve;
- (b) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and to convey an understanding of appropriate ways of interacting with affected individuals;
- (c) Investigation, planning, and participation in interventions, assessments and/or evaluations with members of the legal profession in need of assistance;
- (d) Sponsoring and maintaining substance abuse and/or mental health support meetings for members of the legal profession;
- (e) Aftercare services upon request, by order, or under contract that may include but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and
- (f) Monitoring services that may include, but are not limited to, the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

## **Rule 6. Referrals**

(a) *Self-referral.* — Any ~~lawyer admitted to practice in West Virginia~~ Member may voluntarily contact the ~~WVLAP~~ WVLJAP seeking assistance.

(b) *Referrals from Third Parties.* — ~~WVLAP~~ WVLJAP shall receive referrals concerning any member of the legal profession from any source. The identity of the referring third-party shall be held in confidence by ~~WVLAP~~ WVLJAP unless the third-party consents to disclosure.

(c) *Disciplinary Authority Referrals.* — ~~WVLAP~~ WVLJAP shall receive referrals from the West Virginia Supreme Court, the Lawyer Disciplinary Board, the Office of Lawyer Disciplinary Counsel, Judicial Investigation Commission, Judicial Disciplinary Counsel, Judicial Hearing Board or the Board of Law Examiners (individually referred to hereafter as a "referring authority") of any ~~lawyer~~ Member whom the referring authority determines or believes should be contacted by ~~WVLAP~~ WVLJAP.

(d) *Member Resistance.* — In the event an impaired ~~lawyer~~ Member resists all efforts of assistance by ~~WVLAP~~ WVLJAP, the executive director or the Board may notify the initial referral source of the ~~lawyer's~~ Member's resistance for the sole purpose of allowing the

referral source to pursue other recourse or ~~resources reporting obligations. Moreover, the executive director may refer an impaired lawyer who resists all efforts of assistance by WVLP to the Office of Disciplinary Counsel for an investigation, but such referral shall only be made with the approval of the Board.~~

## **Rule 7. Confidentiality**

(a) Except as required by law, or to prevent the commission of a crime, or to prevent a person from committing serious harm to self or others, all information provided to or gathered by ~~WVLP~~ WVLJAP, and actions taken by ~~WVLP~~ WVLJAP, shall be privileged and held in strictest confidence and shall not be disclosed, subject to discovery, subpoena or required to be disclosed to any person or entity outside of WVLP WVLJAP, unless such disclosure is authorized by ~~WVLP~~ both WVLJAP and the lawyer Member to whom it relates or as provided in Rule 6.

(b) The executive director, board members, employees, and agents, including volunteers recruited and covered under Rule 4, shall be deemed to be agents of ~~WVLP~~ WVLJAP for purposes of the privilege and confidentiality provisions of this Rule.

## **Rule 8. Privilege and Immunity**

Except as otherwise provided in these rules, all information provided with respect to any referral, investigation, monitoring or follow-up under these rules shall be privileged. The executive director, board members, employees and agents, including, but not limited to, referring third-parties under Rule 6 and volunteers acting on behalf of WVLP WVLJAP under Rule 4, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this state for any conduct undertaken on behalf of the ~~WVLP~~ WVLJAP.

## **Rule 9. Costs**

Payment for all services provided under these Rules shall be the responsibility of the ~~lawyer Member~~ receiving such services and ~~WVLP~~ WVLJAP shall not be liable for the costs of any services provided under these Rules; provided, however, that ~~WVLP~~ WVLJAP shall have discretion to financially or otherwise assist ~~lawyers Members~~, on a case by case basis, to obtain services anticipated under these Rules.

## **Rule 10. Miscellaneous**

(a) At any time it deems reasonable and feasible, and without the necessity of amending these rules, the Board of Directors may, through its ~~by-laws~~ policies and procedures approved pursuant to Rule 2(d)(1), expand the assistance contemplated herein to encompass ~~law students or others in the legal profession.~~

(b) Any diversion or other program which requires involvement of ~~WVLP~~ WVLJAP in rehabilitative efforts on the part of the ~~lawyer Member~~ that is a result of an agreement with the Office of Lawyer Disciplinary Counsel, Lawyer Disciplinary Board, Board of Law Examiners, Judicial Investigation Commission, Judicial Disciplinary Counsel, Judicial

Hearing Board or otherwise imposed by order of the Supreme Court of Appeals, shall govern the extent and scope of confidentiality which may be asserted by the ~~lawyer~~ Member. To the extent such agreement and/or order may require ~~WVLAP~~ WVLJAP to violate a confidentiality protection granted under these rules, the order or agreement shall control and any disclosure made pursuant thereto shall not be deemed a breach of confidentiality otherwise imposed by these rules.

(c) At any time it deems reasonable and feasible, and without the necessity of amending these Rules, the ~~WVLAP~~ WVLJAP and the Office of Lawyer Disciplinary Counsel, Board of Law Examiners or Judicial Investigation Commission may, through written agreement between them, establish a program of monitoring and diversion from discipline and, subsequent entry into rehabilitation for those ~~lawyers~~ Members deemed candidates for such a ~~diversion~~ program.

(d) ~~It is hereby acknowledged that a~~ An impaired lawyer's Member's successful completion of rehabilitation in conjunction with ~~WVLAP~~ WVLJAP may be considered as a mitigating factor with respect to any disciplinary action arising out of the impairment for which rehabilitation was completed.

A True Copy

Attest: //s// Rory L. Perry II  
Clerk of Court

