

RULES OF PROCEDURE GOVERNING UNAUTHORIZED PRACTICE OF LAW

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Rule 1. Jurisdiction.

The Supreme Court, in the exercise of its jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Wyoming, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law. Nothing contained in these rules shall be construed as a limitation on any other civil remedy or criminal proceeding that may otherwise exist with respect to the unauthorized practice of law. Further, nothing contained in these rules shall be construed to limit or replace the powers of the Board of Professional Responsibility or the Supreme Court with respect to the unauthorized practice of law by lawyers.
(Added effective March 4, 2014.)

Rule 2. Unauthorized practice of law prohibited.

Only those persons authorized to practice law by the Supreme Court may engage in the practice of law in Wyoming or in any manner hold himself or herself out as authorized or competent to practice law in Wyoming.
(Added effective March 4, 2014.)

Rule 3. Appointment of the Committee on the Unauthorized Practice of Law.

(a) The Supreme Court shall appoint a Committee on the Unauthorized Practice of Law (the "Committee") to act in accordance with these rules. The Committee shall consist of nine (9) members, six (6) of whom shall be lawyers, and three (3) of whom shall be public members who neither are admitted to the bar nor practice law in any state. The Court shall also appoint three (3) alternate members, one (1) of whom shall not be a lawyer, to serve in the event members of the Committee are disqualified in particular proceedings. In the event of such temporary replacement, a lawyer shall replace a lawyer and a nonlawyer shall replace a nonlawyer member.

(b) All appointments to the Committee shall be for a term of three (3) years. No member shall be appointed to more than two (2) consecutive full terms. The members of the Committee shall not be subject to removal by the Court during their terms of office, except for cause. Cause shall include unexcused failures to attend scheduled meetings, the number of which shall be set forth by the Committee in an attendance policy.

(c) The Committee shall elect a chairperson and a vice-chairperson from among its members annually, subject to regulations and terms as may be established by the Committee not inconsistent with these rules.

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(d) A quorum shall be constituted of a majority of the Committee and must include at least one (1) non-lawyer member. The Committee shall act only with the concurrence of a majority of the members present either in person or by telephone.

(e) The Committee shall have jurisdiction to conduct hearings on complaints alleging the unauthorized practice of law submitted by any person, including Bar Counsel; to approve or reject consent agreements; and to submit a report and recommendation to the Supreme Court containing findings of fact and conclusions of law following such hearings or approvals of consent agreements.

(f) Funding for the Committee shall be provided by the Wyoming State Bar. The executive director of the Wyoming State Bar shall appoint a member of the Bar staff to serve as Clerk of the Committee, whose duties shall include filing of pleadings and general administrative support of the Committee.

(Added effective March 4, 2014.)

Rule 4. Bar Counsel; duties and powers.

In addition to those duties and powers set forth in the Disciplinary Code for the Wyoming State Bar, Bar Counsel shall have the following powers and duties:

(a) to investigate, or to refer for investigation to Special Bar Counsel, any complaint that sets forth reasonable grounds to believe that a person or entity has engaged in, or is engaging in, the unauthorized practice of law;

(b) to issue a cease and desist letter in those instances where in the judgment of Bar Counsel such action will suffice to bring an end to conduct potentially constituting the unauthorized practice of law;

(c) to initiate a complaint against a person or entity that Bar Counsel has a reasonable ground to believe has engaged in, or is engaging in, the unauthorized practice of law;

(d) to prepare and prosecute, or assist in the preparation and prosecution of, civil injunction proceedings as provided in these rules;

(e) to prepare and prosecute, or assist in the preparation and prosecution of, civil contempt proceedings as provided in these rules;

(f) to prepare and prosecute, or assist in the preparation and prosecution of criminal contempt proceedings as provided by Rule 9 and W.R.Cr.P. 42.

(g) to provide information and assistance to the State in the preparation and prosecution of criminal violations of state statutes in connection with these rules

(h) to enter into a consent agreement, as provided in subparagraph (3) of paragraph (f) of Rule 5 for the purpose of resolving a complaint against a person or entity that is alleged to have engaged in the unauthorized practice of law;

(i) to dismiss in accordance with paragraph (e) of Rule 5 a complaint against a person or entity who has been accused of the unauthorized practice of law; and

(j) to maintain records of all matters processed and the disposition thereof under the Rules Governing the Unauthorized Practice of Law Proceedings.

(Added effective March 4, 2014.)

Rule 5. Investigation.

(a) Promptly after receiving or initiating a complaint alleging the unauthorized practice of law, Bar Counsel shall determine whether to proceed with an investigation. In making that determination, Bar Counsel may make such inquiry regarding the underlying facts as Bar Counsel deems appropriate.

(b) If Bar Counsel decides to proceed with an investigation, the respondent shall be notified that the investigation is underway, provided with a copy of the complaint, and asked to file with Bar Counsel a response to the complaint within fourteen (14) days of the date that Bar Counsel mails or otherwise serves notice of the complaint to the

respondent. Bar Counsel may grant a brief extension of time for such a response upon a showing of good cause by the respondent.

(c) The chair of the Committee or the chair's designee may issue subpoenas in the name of the Committee or the Supreme Court, upon a showing of good cause, to compel the attendance of respondents and other witnesses or to compel the production of books, papers, documents, or other evidence. Any person subpoenaed to appear and give testimony, or to produce books or records, who refuses to appear and give testimony, or to produce the books or records, and any person having been sworn to testify and who refuses to answer any proper questions, in addition to any potential violations of criminal law, may be held in civil contempt of the Supreme Court under Rule 8. Any person who knowingly obstructs the Committee or Bar Counsel in the performance of their duties, in addition to any potential violations of criminal law, may be held in civil contempt of the Supreme Court pursuant to Rule 8.

(d) If, at any point during the investigation, Bar Counsel reasonably believes that the respondent has engaged, or is continuing to engage, in criminal activity, Bar Counsel may provide information concerning the complaint and investigation to the appropriate legal authority. Upon notice that the appropriate legal authority is pursuing criminal charges against the respondent, Bar Counsel, with the consent of the Committee, may suspend the investigation.

(e) If, after investigation of the complaint, Bar Counsel determines that the complaint should be dismissed, the respondent and the person making the complaint shall be notified, in writing, of that decision. The dismissal may contain appropriate cautionary language to the respondent. The person making the complaint may request review of the dismissal by the chair of the Committee or the chair's designee. Upon review, the Committee member's determination is limited to either concurring in the dismissal or ordering additional investigation by Bar Counsel.

(f) If, after conducting an investigation, Bar Counsel believes that the respondent has engaged in the unauthorized practice of law, Bar Counsel may do one or more of the following:

- (1) commence civil injunction proceedings as provided in Rule 6;
- (2) commence civil contempt proceedings as provided in Rule 8;
- (3) enter into a consent agreement with the respondent in which the respondent agrees to do one or more of the following:

- (A) refrain from the conduct in question;
- (B) refund any fees collected;
- (C) make restitution;

- (D) pay a fine that may range from one hundred dollars (\$100) to two hundred and fifty dollars (\$250) per incident of unauthorized practice of law.

(Added effective March 4, 2014.)

Rule 6. Civil injunction proceedings.

(a) If Bar Counsel determines that civil injunction proceedings should be instituted against a respondent, including when seeking approval of a consent agreement entered into under subparagraph (3) of paragraph (f) of Rule 5, Bar Counsel may commence such proceedings in the name of the Committee by filing a petition in the Supreme Court. The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts that Bar Counsel contends constitute the unauthorized practice of law. The petition shall specify the requested relief, which may include, without limitation, injunction, refund, restitution, a fine, and assessment of costs of the proceeding, or the approval of a consent agreement. Bar Counsel shall, at the time of filing the petition, serve a copy upon the respondent by certified mail.

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(b) Upon receipt of a petition filed by Bar Counsel in accordance with paragraph (a) of this rule, the Court may issue an order referring the matter to the Committee for further proceedings in accordance with paragraphs (d) through (h) of this rule.

(c) If the Court refers a case to the Committee under paragraph (b) of this rule, the Court shall order the respondent to file with the Committee a written answer admitting or denying the matter stated in the petition. Unless otherwise ordered by the Court, the answer shall be filed within twenty (20) days after service of the Court's order on the respondent. If the Court is notified at the time the petition is filed by Bar Counsel that the respondent has entered into a consent agreement as provided for in subparagraph (3) of paragraph (f) of Rule 5, no answer need be filed by respondent unless otherwise ordered by the Court.

(d) Disposition without hearing.

(1) If the respondent fails to file an answer within the time permitted, Bar Counsel may move the Committee to conclude that the respondent has admitted the facts set forth in the petition. If the Committee grants such a motion, the Committee shall proceed to decide the case based on the petition and shall report in writing to the Supreme Court its findings of fact, conclusions of law, and recommended disposition of the case.

(2) If the respondent's answer raises no genuine issue of material fact, any party may move the Committee to decide the case based on the pleadings. If the Committee grants such a motion, the Committee shall proceed to decide the case and shall report in writing to the Supreme Court its findings of fact, conclusions of law, and recommended disposition of the case.

(3) Consent agreement.

(A) If the respondent has entered into a consent agreement under subparagraph (3) of paragraph (f) of Rule 5, the consent agreement shall be submitted to the Committee for consideration along with the recommendations of Bar Counsel. Within thirty (30) days of the agreement being tendered to the Committee, the Committee shall issue a decision either accepting or rejecting the agreement.

(B) In considering the agreement and reaching a decision, the Committee shall take any and all steps that the Committee deems are reasonably necessary, including but not limited to admitting and considering stipulated exhibits, reviewing any written admissions or factual stipulations, reviewing memoranda or briefs submitted by the parties, or, in the Committee's discretion, holding a hearing to question and otherwise take testimony from the respondent and, if necessary, other witnesses.

(C) If the Committee accepts the agreement, the Committee shall proceed to report in writing to the Supreme Court the Committee's findings of fact, conclusions of law, and recommended disposition of the case, and the Court shall proceed as provided in Rule 7.

(D) If the Committee rejects the agreement, the Committee shall proceed to schedule and conduct an evidentiary hearing pursuant to paragraphs (e) through (h) of this rule, and neither the agreement nor any of the factual stipulations made in connection with the agreement can be used against the respondent or Bar Counsel in any further proceedings.

(e) Evidentiary hearing.

(1) Unless the Committee resolves the case without a hearing under paragraph (d) of this rule, the Committee shall set a date, time, and place for an evidentiary hearing on the pending petition.

(2) The evidentiary hearing shall be held in any county designated by the Committee chair or the chair's designee. When designating a place for the hearing, consideration will be given to whether the location will be convenient for potential witnesses.

(3) The notice of hearing shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf. Notice of hearing shall be served by certified mail.

(f) Record of evidentiary hearing.

(1) "Record," as used in these rules means the transcript of any evidentiary hearing and all pleadings, exhibits, and other documents filed with the Committee during the course of the proceedings.

(2) The Committee shall arrange for a certified court reporter to take a record of all evidence received during the course of the hearing. The Wyoming State Bar shall pay the expense for the transcript of proceedings, provided that the Court may later assess the expense against the respondent under Rule 7. The respondent may request a copy of the transcript directly from the court reporter at the respondent's own expense.

(g) Evidentiary hearing procedure.

(1) Hearings shall be adversary in nature, prosecuted by Bar Counsel who shall bear the burden, by a preponderance of the evidence, of demonstrating that the respondent has engaged in or is engaging in the unauthorized practice of law.

(2) All witnesses shall be sworn.

(3) Bar Counsel shall present evidence in support of all allegations in the petition, followed by the respondent's evidence.

(4) The Committee chair or the chair's designee shall preside and shall make rulings upon questions of admissibility of evidence and conduct of proceedings. The Committee may ask questions of any witness, including the respondent, at any stage of the proceedings.

(5) Hearings may be adjourned from time to time at the discretion of the Committee.

(6) The complaining witness or witnesses, the respondent, and Bar Counsel may be present throughout the hearing. Other witnesses may be excluded, except when testifying, at the discretion of the Committee.

(7) A party may procure the attendance of a witness by requesting that the Committee issue a subpoena in the name of the Supreme Court. In addition to any potential violations of criminal law, the Court may hold a person in civil contempt of court for failing or refusing, without adequate excuse, to comply with any such subpoena.

(8) The Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence shall be applicable when not inconsistent with these rules, subject to the fact that the hearing officer may receive and consider any evidence that the hearing officer believes to be cogent and credible in the exercise of sound judicial discretion.

(9) Within a reasonable time after the hearing, as ordered by the Committee, both parties shall have the right to submit proposed findings of fact and conclusions of law, and a suggested disposition of the case.

(h) Notice of findings, conclusions, and recommended disposition.

(1) Within thirty (30) days of receipt of the parties' proposed findings of fact, conclusions of law, and recommended disposition of the case, the Committee shall submit to the Supreme Court the record of the hearing and a written report setting forth the Committee's findings of fact, conclusions of law, and recommended final disposition of the case. A copy of the written report shall be mailed to respondent and Bar Counsel.

(2) If the Committee concludes in the report that the respondent has engaged in the unauthorized practice of law, then the Committee may recommend that a fine be imposed for each incident of unauthorized practice of law; the minimum fine for each incident shall be not less than two hundred and fifty dollars (\$250) and not more than one thousand dollars (\$1000).

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(Added effective March 4, 2014.)

Rule 7. Determination by the Supreme Court.

(a) Respondent may file a response with the Court to the Committee's report and recommendations within thirty (30) days of mailing of the report and recommendations to respondent. Respondent shall mail a copy of the response to Bar Counsel. A response shall state respondent's objections to the written report.

(b) The Court may, in its discretion, order respondent or Bar Counsel to file briefs on any issue the Court determines appropriate and may order oral argument before the Court.

(c) After reviewing the Committee's report and recommendations, any response by respondent, the record, and any briefs and oral argument submitted by the parties, the Court may adopt, modify, or reject the Committee's recommendations, in whole or in part, and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law or, in the case of a consent agreement, whether to accept or reject the agreement. In reaching its decision, the Court will give due consideration to the Committee's factual findings. The Court will review de novo the Committee's conclusions of law and recommended disposition.

(d) If the Court finds that the respondent has engaged in the unauthorized practice of law, the Court may enter an order granting any or all of the following relief:

- (1) enjoining the respondent from further conduct found to constitute the unauthorized practice of law;
- (2) imposing on the respondent any fines recommended by the Committee;
- (3) ordering restitution;
- (4) assessing the costs of the proceedings against the respondent; and/or
- (5) ordering such other and further relief as the Court deems proper.

(e) If the Court accepts a consent agreement entered into by respondent, it shall enter an order adopting the terms of the agreement. If the Court rejects the agreement, the matter shall be remanded to the Committee to conduct an evidentiary hearing pursuant to paragraphs (e) through (h) of Rule 6, and neither the agreement nor any of the factual stipulations made in connection with the agreement can be used against the respondent or Bar Counsel in any further proceedings.

(f) Nothing in this rule shall be construed to limit the Court's power to issue an injunction at any stage of the proceedings in order to prevent public harm.

(Added effective March 4, 2014.)

Rule 8. Civil contempt proceedings.

(a) The Supreme Court may use its civil contempt power to enforce a subpoena issued by the Committee, to ensure a person's compliance with the Committee and Bar Counsel's investigation into the unauthorized practice of law, a person's compliance with the terms of a consent agreement reached in accordance with subparagraph (3) of paragraph (f) of Rule 5, or to ensure a person's compliance with a Court ordered injunction issued under Rule 7.

(b) Bar Counsel shall bring the following to the attention of the Court in a verified motion for order to show cause:

- (1) a person's failure to obey a Committee subpoena;
- (2) a person's obstruction of the Committee or Bar Counsel in the performance of their duties;
- (3) a respondent's failure or refusal to comply with any Court order that is yet within the respondent's power to perform; or
- (4) a respondent's failure to abide by the terms of a consent agreement entered into under subparagraph (3) of paragraph (f) of Rule 5.

(c) The Court may refer the matter to the district court in which the respondent resides or, if the respondent is not a Wyoming resident, to the district court for the First Judicial District, for issuance of an order directing the respondent to appear and show cause why the respondent should not be held in civil contempt of court and why the Court should not impose remedial sanctions on the respondent. The district court shall conduct an evidentiary hearing and submit its findings of fact and conclusions of law to the Court.

(d) The Court may impose on a person held in civil contempt of court one or more of the following remedial sanctions:

- (1) Imprisonment which may extend only so long as it serves a coercive purpose;
- (2) An order designed to ensure compliance with a prior order of the court; or
- (3) Any other remedial sanction other than the sanctions specified in subparagraph (1) or (2) if the Court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(Added effective March 4, 2014.)

Rule 9. Criminal contempt proceedings.

Criminal contempt proceedings for unauthorized practice of law shall be prosecuted in the district court for the district in which the respondent resides or in which the unauthorized practice is alleged to have occurred in the following manner:

(a) Upon receiving a written affidavit of Bar Counsel alleging facts indicating that a person, firm or corporation has violated a previous order by the Supreme Court enjoining the accused from further conduct found to constitute the unauthorized practice of law, and containing a prayer for a contempt citation, the court may issue an order directed to the respondent, stating the essential allegations charged and requiring respondent to appear before the court to show cause why respondent should not be held in contempt of court for violations of a previous order by the Supreme Court enjoining the accused from further conduct found to constitute the unauthorized practice of law. The order shall specify the time and place of the hearing, and a reasonable time shall be allowed for preparation of the defense after service of the order on the respondent.

(b) Any respondent, who is determined to be insolvent by the court, shall be entitled to the appointment of counsel. In proceedings for the determination of insolvency, there shall be a presumption of solvency, and the respondent shall have the burden of rebutting the presumption by competent proof.

(c) Venue for the hearing before the district court shall be in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the district court.

(d) The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a bill of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing. A respondent's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(e) The district court may issue an order of arrest of the respondent if the court has reason to believe the respondent will not appear in response to the order to show cause. The respondent shall be admitted to bail in the manner provided by law in criminal cases.

(f) The respondent shall be arraigned at the time of the hearing before the court, or prior thereto upon his request. A hearing to determine the guilt or innocence of the respondent shall follow a plea of not guilty at a later date. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against him. The respondent may testify in his own defense. No respondent may be compelled to testify. A presumption of

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innocence shall be accorded the respondent, and Bar Counsel or Bar Counsel's designee, which shall act as prosecuting authority, must provide proof of the guilt of the respondent beyond a reasonable doubt.

(g) The court shall hear all issues of law and fact and all evidence and testimony presented shall be transcribed.

(h) At the conclusion of the hearing, the court shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty.

(i) A person found guilty of contempt under this procedure shall be fined not more than five thousand dollars (\$5,000) or imprisoned in the county jail for not more than three (3) months, or both. In addition, the court may order that all fees paid by clients of any person found guilty under this procedure be restored.

(j) Prior to the pronouncement of a sentence upon a judgment of guilty, the court shall inform the respondent of the accusation and judgment against him and afford him the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the respondent.

(k) Any judgment of guilty shall be subject to review by the Wyoming Supreme Court pursuant to the Wyoming Rules of Appellate Procedure.

(Added effective March 4, 2014.)

Rule 10. Immunities.

(a) Members of the Committee, Bar Counsel, their respective staff, and any other agents of the Committee shall be immune from suit as provided by statute or common law for all conduct in the course of their official duties. Immunity from suit shall also extend, as provided by statute or common law, to complainants and witnesses for all communications to the Committee or Bar Counsel relating to allegations of unauthorized practice of law.

(b) If a person has been or may be called to testify or to produce a record, document, or other object in an official proceeding conducted under these rules, such person or Bar Counsel may file a written application with the Supreme Court requesting the Court to issue a written order requiring the person to testify or to produce the record, document, or other object notwithstanding the person's privilege against self-incrimination. Bar Counsel shall give the appropriate prosecuting authority notice of any application filed under this paragraph. Upon consideration of the application and any objection that may be filed by the appropriate prosecuting authority, the Court may grant the application and issue a written order under this paragraph if the Court finds that:

(1) production of the testimony, record, document, or other object may be necessary to protect the public interest; and

(2) the person has refused or is likely to refuse to testify or to produce the record, document, or other object on the basis of the person's privilege against self-incrimination.

(c) Where evidence has been obtained under the provisions of this rule through an order requiring a person to testify or to produce a record, document, or other object notwithstanding the person's privilege against self-incrimination, neither that evidence nor any information directly or indirectly derived from that evidence may be used against the person in any criminal case except a prosecution for perjury committed in the course of testifying or in a civil contempt proceeding for failure to comply with the order.

(Added effective March 4, 2014.)

Rule 11. General provisions.

(a) In determining whether particular conduct involves the unauthorized practice of law, Bar Counsel, the Committee and the Court shall be guided by the following principles:

(1) The Court's rules regarding the authorized practice of law.

(2) The core element of practicing law is the giving of legal advice to a client.

Factors to be applied in determining between legal and non-legal advice include:

(A) the specificity of the advice;

(B) the likelihood that the advice will be erroneous; and

(C) the degree of harm to the recipient if the advice is erroneous.

(3) Any activity which calls for the exercise of discretion, such as interviewing or advising another about the legal effect of certain choices, involves the practice of law.

(4) Receiving money for drafting documents or performing other services involving legal matters constitutes the practice of law.

(5) Holding one's self out as qualified to assist others in legal matters constitutes the practice of law.

(6) The reason for restricting the practice of law to lawyers is to protect the public.

(7) In the absence of case law in Wyoming, deference should be given to the weight of authority from other jurisdictions.

(b) All civil injunction proceedings and civil contempt proceedings filed in the Supreme Court under Rule 6 and Rule 8, including proceedings before the Committee, shall be public proceedings, unless otherwise ordered by the Court.

(c) Except as otherwise provided by these rules or by order of the Court, all investigations conducted under Rule 5 prior to the filing of a petition for injunctive relief with the Court shall be held confidential by Bar Counsel, subject to the need to disclose such information as necessary for Bar Counsel to conduct the appropriate investigation.

(d) Notwithstanding the provisions of paragraph (c), Bar Counsel may disclose the pendency, subject matter, and status of proceedings conducted under these Rules to the following:

(1) an entity authorized to investigate the qualifications of persons for admission to practice law;

(2) an entity authorized to investigate the qualifications of judicial candidates;

(3) a lawyer discipline enforcement agency;

(4) any person or agency requesting such information, if the respondent has waived confidentiality and the request is within the scope of the waiver;

(5) an agency authorized to investigate violations of the criminal laws, other civil laws prohibiting the unauthorized practice of law, or the consumer protection laws of Wyoming, any other state, or the United States; and

(6) any person or agency, once a petition for injunctive relief or contempt proceeding has been filed with the Court.

(e) In the absence of a Court order to the contrary, any fine imposed against a respondent under these rules shall be paid to the Wyoming State Bar's Clients' Security Fund.

(f) Records of proceedings pertaining to the unauthorized practice of law shall be maintained as follows:

(1) If the complaint was dismissed, the paper file may be destroyed three (3) years after the dismissal. The complaint, the respondent's response, and any other public records shall be scanned and electronically saved indefinitely.

(2) If a consent agreement was reached with the respondent, the complaint, the response, the petition, the answer, if any, the agreement, all orders, and any other

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public records shall be maintained in paper form for three (3) years and, thereafter, scanned and electronically saved indefinitely.

(3) If a petition is filed with the Court for injunctive relief or civil contempt proceedings, the petition, the respondent's answer, all orders, and any other public records shall be maintained in paper form for three (3) years and, thereafter, scanned and electronically saved indefinitely.

(g) These Rules should be cited as the "Rules of Procedure Governing Unauthorized Practice of Law Proceedings."

(Added effective March 4, 2014.)

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