



## AGENDA

### Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex  
Date: March 30, 2021  
Time: 4:00 p.m. to 5:30 p.m.

<b>Action:</b> Welcome and approval of the January 25, 2021 minutes. <b>Tab 1:</b> Draft meeting minutes for January 25, 2021.	Judge Diana Hagen
<b>Discussion &amp; Action:</b> Review of Sanction Rules 11-582 through 11-586 <b>Tab 2:</b> Redline of Rules 11-582–11-586 (with Supreme Court feedback)	Judge Diana Hagen
<b>Other business</b> – Schedule next meeting	

Committee Webpage: <https://www.utcourts.gov/utc/opc/>

Tab 1



## Utah Supreme Court Oversight Committee for the Office of Professional Conduct

### Draft Meeting Minutes

January 25, 2021

Via Webex

4:00–5:30 p.m.

*Judge Diana Hagen, presiding*

#### **Attendees:**

Judge Diana Hagen, Chair  
Magistrate Judge Brooke Wells  
Roger Smith  
Art Berger  
John Baldwin, Ex-officio member

#### **Staff:**

Marina Kelaidis, Recording Secretary

#### **Guests:**

Billy Walker, Office of Professional Conduct  
Christine Greenwood, Ethics and Discipline Committee

#### **Excused:**

Margaret Plane

### **1. Welcome and approval of the November 9, 2020 minutes:** (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and asked for approval of the minutes.

*Judge Wells moved to approve the November 9, 2020 minutes. Art Berger seconded the motion, and it passed unanimously.*

### **2. Action—Rule 11-501 introductions of each committee member and general practice area:** (Judge Diana Hagen)

In accordance with Code of Judicial Administration Rule 11-501, each committee member briefly described their general practice area.

**3. Discussion – Ethics and Disciplinary Committee Staff Counsel position: (J Hagen)**

John Baldwin reported this matter has been added to the agenda for the next Bar Commission meeting on February 5, 2021. At this meeting, the Commission will review the position proposal and determine if there is adequate funding. Mr. Baldwin is optimistic that the position will be approved. Judge Hagen reported she will be presenting before the Bar Commission at this meeting. In her presentation, Judge Hagen will explain the purpose and goals of the OPC Oversight Committee and how this position will contribute to achieving those goals.

Judge Hagen reported the Supreme Court has asked this Committee to make a recommendation as to whether the position should be the Chair of the Ethics and Discipline Committee, or staff counsel to the Chair. The Committee discussed and identified some pros and cons of each option and ultimately agreed to recommend that the position serve as staff counsel to the Chair. However, Judge Hagen will present the pros and cons of each option to the Supreme Court for further discussion. Additionally, Judge Hagen may also draft separate job descriptions for further review by the Court if needed.

**4. Discussion & Action – Review of Sanction Rules 11-582 through 11-586: (J Hagen)**

Judge Hagen gave a brief overview of the Supreme Court's feedback on the recent sanction rules proposals. Ultimately, the Court prefers to adopt more specific language in these rules compared to the ABA standard for imposing sanctions. As we review these rules, the Court has asked this Committee to consider what we are trying to achieve, if the language makes sense, and if the sanctions are proportional. Judge Hagen directed the Committee to review the Court's feedback and return to our next meeting with an idea as to how we should approach the sanction rules. The Committee will then begin drafting proposed changes.

**5. Other business—Schedule next meeting: (all)**

The next meeting will be held on Monday, February 22, 2021 from 4:00-5:30 p.m.

The meeting adjourned at 5:30 p.m.

# Tab 2

1 **Rule ~~14-604~~11-582. Factors to be considered in imposing sanctions.**

2 (a) The Committee and the court must consider the following factors in imposing  
3 sanctions after a finding of Lawyer misconduct.~~The following factors should be~~  
4 considered in imposing a sanction after a finding of lawyer misconduct:

5 (1) the presumptive sanction based on:

6 (A) the duty violated;

7 (B) the Lawyer's mental state;

8 (C) the potential or actual injury caused by the Lawyer's misconduct;  
9 and

10 (2) the existence of aggravating or mitigating factors.

11 **(b) Multiple charges of misconduct.**

12 (1) Where a Respondent is found to have committed multiple charges of  
13 misconduct, the ultimate sanction imposed must at least be consistent with the  
14 sanction for the most serious instance of misconduct among the violations, and  
15 may be greater than the sanction for the most serious misconduct.

16 (2) Either a pattern of misconduct or multiple instances of misconduct should be  
17 considered as aggravating factors.

**Commented [DH1]:** Aren't these factors already balanced (baked in) to the next four rules? This suggests that the committee and court should reweigh the factors that the rule has already taken into account. Perhaps:  
(a) the Committee and the court must consider the presumptive sanction contained in these rules and the existence of any aggravating or mitigating factors when imposing sanctions after a finding of Lawyer misconduct."  
(delete subsections)  
OR maybe we have too many presumptive sanctions and this rule should say:  
(1) the presumptive sanction contained in these rules, or if no presumptive sanction exists, then (A)-(C).

1 **Rule ~~14-60511-583. Imposition of sanctions.~~Sanctions for violating duties owed to**  
2 **clients.**

3 **(a) Failing to preserve the client's property.** The following sanctions are generally  
4 appropriate when a Lawyer fails to preserve client property:

5 (1) Delicensure is generally appropriate when a Lawyer knowingly converts  
6 client property and causes injury or potential injury to a client.

7 (2) Suspension is generally appropriate when a Lawyer knows or should know  
8 that the Lawyer is dealing improperly with client property and causes injury or  
9 potential injury to a client.

10 (3) Reprimand is generally appropriate when a Lawyer is negligent in dealing  
11 with client property and causes injury or potential injury to a client.

12 (4) Admonition is generally appropriate when a Lawyer is negligent in dealing  
13 with client property and causes little or no actual or potential injury to a client.

14 **(b) Failing to preserve the client's confidences.** The following sanctions are generally  
15 appropriate when a Lawyer improperly reveals information related to representing a  
16 client:

17 (1) Delicensure is generally appropriate when a Lawyer, with the intent to  
18 benefit the Lawyer or another, knowingly reveals information relating to  
19 representation of a client not otherwise lawfully permitted to be disclosed, and  
20 this disclosure causes injury or potential injury to a client.

21 (2) Suspension is generally appropriate when a Lawyer knowingly reveals  
22 information relating to the representation of a client not otherwise lawfully  
23 permitted to be disclosed, and this disclosure causes injury or potential injury to  
24 a client.

25 (3) Reprimand is generally appropriate when a Lawyer negligently reveals  
26 information relating to representation of a client not otherwise lawfully

1 permitted to be disclosed and this disclosure causes injury or potential injury to a  
2 client.

3 (4) Admonition is generally appropriate when a Lawyer negligently reveals  
4 information relating to representation of a client not otherwise lawfully  
5 permitted to be disclosed and this disclosure causes little or no actual or potential  
6 injury to a client.

7 (c) Failing to avoid conflicts of interest. The following sanctions are generally  
8 appropriate in cases involving conflicts of interest:

9 (1) Delicensure is generally appropriate when a Lawyer, without the informed  
10 consent of client(s):

11 (A) engages in representation of a client knowing that the Lawyer's  
12 interests are adverse to the client's with the intent to benefit the Lawyer or  
13 another, and causes serious or potentially serious injury to the client;

14 (B) simultaneously represents clients that the Lawyer knows have adverse  
15 interests with the intent to benefit the Lawyer or another, and causes  
16 serious or potentially serious injury to a client; or

17 (C) represents a client in a matter substantially related to a matter in  
18 which the interests of a present or former client are materially adverse,  
19 and knowingly uses information relating to the representation of a client  
20 with the intent to benefit the Lawyer or another, and causes serious or  
21 potentially serious injury to a client.

22 (2) Suspension is generally appropriate when a Lawyer knows of a conflict of  
23 interest and does not fully disclose to a client the possible effect of that conflict,  
24 and causes injury or potential injury to a client.

25 (3) Reprimand is generally appropriate when a Lawyer is negligent in  
26 determining whether the representation of a client may be materially affected by

1 the Lawyer's own interests, or whether the representation will adversely affect  
2 another client, and causes injury or potential injury to a client.

3 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
4 instance of negligence in determining whether the representation of a client may  
5 be materially affected by the Lawyer's own interests, or whether the  
6 representation will adversely affect another client, and causes little or no actual  
7 or potential injury to a client.

8 (d) Lack of diligence. The following sanctions are generally appropriate when a  
9 Lawyer fails to act with reasonable diligence and promptness in representing a client:

10 (1) Delicensure is generally appropriate when:

11 (A) a Lawyer abandons the practice and causes serious or potentially  
12 serious injury to a client;

13 (B) a Lawyer knowingly fails to perform services for a client and causes  
14 serious or potentially serious injury to a client; or

15 (C) a Lawyer engages in a pattern of neglect with respect to client matters  
16 and causes serious or potentially serious injury to a client.

17 (2) Suspension is generally appropriate when:

18 (A) a Lawyer knowingly fails to perform services for a client and causes  
19 injury or potential injury to a client; or

20 (B) a Lawyer engages in a pattern of neglect and causes injury or potential  
21 injury to a client.

22 (3) Reprimand is generally appropriate when a Lawyer is negligent and does not  
23 act with reasonable diligence in representing a client, and causes injury or  
24 potential injury to a client.

Commented [DH2]: What does "abandons the practice" mean?

1 (4) Admonition is generally appropriate when a Lawyer is negligent and does  
2 not act with reasonable diligence in representing a client, and causes little or no  
3 actual or potential injury to a client.

4 (e) Lack of competence. The following sanctions are generally appropriate when a  
5 Lawyer fails to provide competent representation to a client:

6 (1) Delicensure is generally appropriate when a Lawyer's course of conduct  
7 demonstrates that the Lawyer does not understand the most fundamental legal  
8 doctrines or procedures, and the Lawyer's conduct causes injury or potential  
9 injury to a client.

**Commented [DH3]:** What does "the most fundamental legal doctrines" mean? (Although the court was less concerned when it heard that this was in the model rules.)

10 (2) Suspension is generally appropriate when a Lawyer engages in an area of  
11 practice in which the Lawyer knows the Lawyer is not competent, and causes  
12 injury or potential injury to a client.

13 (3) Reprimand is generally appropriate when a Lawyer:

14 (A) demonstrates failure to understand relevant legal doctrines or  
15 procedures and causes injury or potential injury to a client; or

16 (B) is negligent in determining whether the Lawyer is competent to handle  
17 a legal matter and causes injury or potential injury to a client.

18 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
19 instance of negligence in determining whether the Lawyer is competent to  
20 handle a legal matter, and causes little or no actual or potential injury to a client.

21 (f) Lack of candor. The following sanctions are generally appropriate in cases where a  
22 Lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

23 (1) Delicensure is generally appropriate when a Lawyer knowingly deceives a  
24 client with the intent to benefit the Lawyer or another, and causes serious or  
25 potentially serious injury to a client.

1 (2) Suspension is generally appropriate when a Lawyer knowingly deceives a  
2 client, and causes injury or potential injury to the client.

3 (3) Reprimand is generally appropriate when a Lawyer negligently fails to  
4 provide a client with accurate or complete information, and causes injury or  
5 potential injury to the client.

6 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
7 instance of negligence in failing to provide a client with accurate or complete  
8 information, and causes little or no actual or potential injury to the client.

9 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out~~  
10 ~~in Rule 14-604, the following sanctions are generally appropriate.~~

11 ~~(a) **Disbarment.** Disbarment is generally appropriate when a lawyer:~~

12 ~~(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a),~~  
13 ~~(d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the~~  
14 ~~lawyer or another or to deceive the court, and causes serious or potentially~~  
15 ~~serious injury to a party, the public, or the legal system, or causes serious or~~  
16 ~~potentially serious interference with a legal proceeding; or~~

17 ~~(a)(2) engages in serious criminal conduct, a necessary element of which includes~~  
18 ~~intentional interference with the administration of justice, false swearing,~~  
19 ~~misrepresentation, fraud, extortion, misappropriation, or theft; or the sale,~~  
20 ~~distribution, or importation of controlled substances; or the intentional killing of~~  
21 ~~another; or an attempt or conspiracy or solicitation of another to commit any of~~  
22 ~~these offenses; or~~

23 ~~(a)(3) engages in any other intentional misconduct involving dishonesty, fraud,~~  
24 ~~deceit, or misrepresentation that seriously adversely reflects on the lawyer's~~  
25 ~~fitness to practice law.~~

26 ~~(b) **Suspension.** Suspension is generally appropriate when a lawyer:~~

1 ~~(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a),~~  
2 ~~(d), (e), or (f) of the Rules of Professional Conduct and causes injury or potential~~  
3 ~~injury to a party, the public, or the legal system, or causes interference or~~  
4 ~~potential interference with a legal proceeding; or~~

5 ~~(b)(2) engages in criminal conduct that does not contain the elements listed in~~  
6 ~~Rule 14-605(a)(2) but nevertheless seriously adversely reflects on the lawyer's~~  
7 ~~fitness to practice law.~~

8 ~~(c) **Reprimand.** Reprimand is generally appropriate when a lawyer:~~

9 ~~(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a),~~  
10 ~~(d), (e), or (f) of the Rules of Professional Conduct and causes injury to a party,~~  
11 ~~the public, or the legal system, or causes interference with a legal proceeding; or~~

12 ~~(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or~~  
13 ~~misrepresentation and that adversely reflects on the lawyer's fitness to practice~~  
14 ~~law.~~

15 ~~(d) **Admonition.** Admonition is generally appropriate when a lawyer:~~

16 ~~(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a),~~  
17 ~~(d), (e), or (f) of the Rules of Professional Conduct and causes little or no injury to~~  
18 ~~a party, the public, or the legal system or interference with a legal proceeding,~~  
19 ~~but exposes a party, the public, or the legal system to potential injury or causes~~  
20 ~~potential interference with a legal proceeding; or~~

21 ~~(d)(2) engages in any professional misconduct not otherwise identified in this~~  
22 ~~rule that adversely reflects on the lawyer's fitness to practice law.~~

1 Rule 11-584. Sanctions for violating duties owed to the public.

2 (a) Failing to maintain personal integrity. The following sanctions are generally  
3 appropriate when a Lawyer commits a criminal act that reflects adversely on the  
4 Lawyer's honesty, trustworthiness, or fitness as a Lawyer in other respects; or in cases  
5 with involving conduct involving dishonesty, fraud, deceit, or misrepresentation.

6 (1) Delicensure is generally appropriate when a Lawyer intentionally or  
7 knowingly engages in criminal conduct that would be a felony under applicable  
8 law and the conduct:

9 (A) a Lawyer intentionally engages in serious criminal conduct involves  
10 dishonesty, fraud, deceit, or misrepresentation, including but not limited  
11 to theft, fraud, extortion, bribery, obstruction of justice, and false  
12 statements; or

13 (B) a Lawyer engages in any other intentional conduct involving  
14 dishonesty, fraud, deceit, or misrepresentation that seriously adversely  
15 reflects on the Lawyer's fitness to practice poses a serious danger to public  
16 safety, including but not limited to assault, homicide, kidnapping, sexual  
17 offenses, and distribution of controlled substances.

18 (2) Suspension is generally appropriate when a Lawyer intentionally or  
19 knowingly engages in other criminal conduct that seriously adversely reflects on  
20 the Lawyer's honesty, trustworthiness, or fitness to practice as a Lawyer in other  
21 respects.

22 (3) Either Reprimand or admonition is generally appropriate when a Lawyer  
23 negligently engages in any other criminal conduct that involves dishonesty,  
24 fraud, deceit, or misrepresentation and that adversely reflects on the Lawyer's  
25 fitness to practice law, depending on the potential or actual injury to the public  
26 trust.

**Commented [DH4]:** Re-written with Billy in response to these comments from the court:

1) They're still concerned that it's too hard to distinguish between intentional and knowing conduct for purposes of the presumptive sanction.

2) They've expressed some interest in listing certain crimes as presumptively triggering delicensure, while still making clear that the list is non-exhaustive and the ultimate standard is as stated in the proposed rule.

**Commented [DH5]:** Court thought suspension should still involve intentional or knowing conduct but less severe conduct than set forth above.

**Commented [DH6]:** Rewritten with input from the Court. No real distinction between reprimand and admonition once we remove "negligently." Final phrase was added to give the decision maker some guidance on how to choose between the two, referring back to subsection (a)(1)(C) of Rule 11-582 ("potential or actual injury") and the specific type of injury this rule addresses.

1 ~~(4) Admonition is generally appropriate when a Lawyer engages in any other~~  
2 ~~conduct that reflects adversely on the Lawyer's fitness to practice law.~~

3 (b) Failing to maintain the public trust. The following sanctions are generally  
4 appropriate in cases involving public officials who engage in conduct that is prejudicial  
5 to the administration of justice or who state or imply an ability to influence improperly  
6 a government agency or official:

7 (1) Delicensure is generally appropriate when a Lawyer in an official or  
8 governmental position knowingly misuses the position with the intent to obtain  
9 a significant benefit or advantage for himself or another, or with the intent to  
10 cause serious or potentially serious injury to a party or to the integrity of the legal  
11 process.

12 (2) Suspension is generally appropriate when a Lawyer in an official or  
13 governmental position knowingly fails to follow proper procedures or rules, and  
14 causes injury or potential injury to a party or to the integrity of the legal process.

15 (3) Reprimand is generally appropriate when a Lawyer in an official or  
16 governmental position negligently fails to follow proper procedures or rules, and  
17 causes injury or potential injury to a party or to the integrity of the legal process.

18 (4) Admonition is generally appropriate when a Lawyer in an official or  
19 governmental position engages in an isolated instance of negligence in not  
20 following proper procedures or rules, and causes little or no actual or potential  
21 injury to a party or to the integrity of the legal process.  
22

**Commented [DH7]:** This section has to be limited to the "practice of law" - otherwise we would be interfering simply because the public official happens to have a bar license. What about the separation of powers issue?

1 Rule 11-585. Sanctions for violating duties owed to the legal system.

2 (a) False statements, fraud, and misrepresentation. The following sanctions are  
3 generally appropriate when a Lawyer's conduct is prejudicial to the administration of  
4 justice or involves dishonesty, fraud, deceit, or misrepresentation to a court:

5 (1) Delicensure is generally appropriate when a Lawyer, with the intent to  
6 deceive the court, makes a false statement, submits a false document, or  
7 improperly withholds material information, and causes serious or potentially  
8 serious injury to a party, or causes a significant or potentially significant adverse  
9 effect on the legal proceeding.

10 (2) Suspension is generally appropriate when a Lawyer knows that false  
11 statements or documents are being submitted to the court or that material  
12 information is improperly being withheld, and takes no remedial action, and  
13 causes injury or potential injury to a party to the legal proceeding, or causes an  
14 adverse or potentially adverse effect on the legal proceeding.

15 (3) Reprimand is generally appropriate when a Lawyer is negligent either in  
16 determining whether statements or documents are false or in taking remedial  
17 action when material information is being withheld and causes injury or  
18 potential injury to a party to the legal proceeding, or causes an adverse or  
19 potentially adverse effect on the legal proceeding.

20 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
21 instance of neglect in determining whether submitted statements or documents  
22 are false or in failing to disclose material information upon learning of its falsity,  
23 and causes little or no actual or potential injury to a party, or causes little or no  
24 adverse or potentially adverse effect on the legal proceeding.

25 (b) Abuse of the legal process. The following sanctions are generally appropriate when  
26 a Lawyer fails to expedite litigation or bring a meritorious claim, or fails to obey any

**Commented [DH8]:** Is this too broad?

Should "fails to expedite" be "unreasonably delays"?

Should fails to "bring a meritorious action" be "brings a frivolous action"? Even then, what does that mean and is delicensure really the appropriate presumptive sanction or should these types of actions be sanctioned by the court presiding over the case?

Should there have to be a pattern of abusing the legal process?

1 obligation under the rules of a tribunal except for an open refusal based on an assertion  
2 that no valid obligation exists:

3 (1) Delicensure is generally appropriate when a Lawyer knowingly violates a  
4 court order or rule with the intent to obtain a benefit for the Lawyer or another,  
5 and causes serious or potentially serious injury to a party or causes serious or  
6 potentially serious interference with a legal proceeding.

7 (2) Suspension is generally appropriate when a Lawyer knows that the Lawyer is  
8 violating a court order or rule, and causes injury or potential injury to a client or  
9 a party, or causes interference or potential interference with a legal proceeding.

10 (3) Reprimand is generally appropriate when a Lawyer negligently fails to  
11 comply with a court order or rule, and causes injury or potential injury to a client  
12 or other party, or causes interference or potential interference with a legal  
13 proceeding.

14 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
15 instance of negligence in complying with a court order or rule, and causes little  
16 or no actual or potential injury to a party, or causes little or no actual or potential  
17 interference with a legal proceeding.

18 **(c) Improper communications with individuals in the legal system.** The following  
19 sanctions are generally appropriate when a Lawyer attempts to influence a judge, juror,  
20 prospective juror, or other official by means prohibited by law:

21 (1) Delicensure is generally appropriate when a Lawyer:

22 (A) intentionally tampers with a witness and causes serious or potentially  
23 serious injury to a party, or causes significant or potentially significant  
24 interference with the outcome of the legal proceeding;

25 (B) makes an ex parte communication with a judge or juror with intent to  
26 affect the outcome of the proceeding, and causes serious or potentially

**Commented [DH9]:** Does knowingly violating a rule really merit suspension? Again, should this be limited to a pattern of misconduct?

1 serious injury to a party, or causes significant or potentially significant  
2 interference with the outcome of the legal proceeding; or  
3 (C) improperly communicates with someone in the legal system other  
4 than a witness, judge, or juror with the intent to influence or affect the  
5 outcome of the proceeding, and causes significant or potentially  
6 significant interference with the outcome of the legal proceeding.

7 (2) Suspension is generally appropriate when a Lawyer engages in  
8 communication with an individual in the legal system when the Lawyer knows  
9 that such communication is improper, and causes injury or potential injury to a  
10 party or causes interference or potential interference with the outcome of the  
11 legal proceeding.

12 (3) Reprimand is generally appropriate when a Lawyer is negligent in  
13 determining whether it is proper to engage in communication with an individual  
14 in the legal system, and causes injury or potential injury to a party or interference  
15 or potential interference with the outcome of the legal proceeding.

16 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
17 instance of negligence in improperly communicating with an individual in the  
18 legal system, and causes little or no: (A) actual or potential injury to a party, or  
19 (B) actual or potential interference with the outcome of the legal proceeding.  
20

1 Rule 11-586. Sanctions for violating duties owed as a professional.

2 The following sanctions are generally appropriate in cases involving false or misleading  
3 communication about the Lawyer or the Lawyer's services, including improper  
4 communication of fields of practice, improper solicitation of professional employment  
5 from a prospective client, unreasonable or improper fees, unauthorized practice of law,  
6 improper withdrawal from representation, or failure to report professional misconduct.

7 (a) Delicensure is generally appropriate when a Lawyer knowingly engages in  
8 conduct that is a violation of a duty owed as a professional with the intent to  
9 obtain a benefit for the Lawyer or another, and causes serious or potentially  
10 serious injury to a client, the public, or the legal system.

11 (b) Suspension is generally appropriate when a Lawyer knowingly engages in  
12 conduct that is a violation of a duty owed as a professional and causes injury or  
13 potential injury to a client, the public, or the legal system.

14 (c) Reprimand is generally appropriate when a Lawyer negligently engages in  
15 conduct that is a violation of a duty owed as a professional and causes injury or  
16 potential injury to a client, the public, or the legal system.

17 (d) Admonition is generally appropriate when a Lawyer engages in an isolated  
18 instance of negligence that is a violation of a duty owed as a professional, and  
19 causes little or no actual or potential injury to a client, the public, or the legal  
20 system.

**Commented [DH10]:** What does "as a professional" mean? Should it be "duties to the legal profession"?

The items included in the list don't all relate to false or misleading statements (like charging unreasonable fees or not reporting misconduct).

Are the presumptive sanctions proportionate or overinclusive? For instance, this rule includes failure to report professional misconduct - is delicensure really the appropriate presumptive sanction if a lawyer knowingly fails to report misconduct?

**Commented [DH11]:** Is this rule too broad? Does a knowingly violation of ANY rule - even failure to report a violation of the rules merit these sanctions?

**Maybe it doesn't make sense to lay out presumptive sanctions for EVERYTHING - maybe set forth some presumptive sanctions that are narrow and make sense and, for everything else, balance the three general factors.**

1 **Rule ~~14-606~~11-587. Prior discipline orders.**

2 The following sanctions are generally appropriate in cases involving prior discipline.

3 (a) Delicensure is generally appropriate when a Lawyer:

4 (1) intentionally or knowingly violates the terms of a prior disciplinary  
5 order and such violation causes injury or potential injury to a client, the  
6 public, the legal system, or the profession; or

7 (2) has been suspended for the same or similar misconduct, and  
8 intentionally or knowingly engages in further similar acts of misconduct  
9 that cause injury or potential injury to a client, the public, the legal system,  
10 or the profession.

11 (b) Suspension is generally appropriate when a Lawyer has been reprimanded  
12 for the same or similar misconduct and engages in further similar acts of  
13 misconduct that cause injury or potential injury to a client, the public, the legal  
14 system, or the profession.

15 (c) Reprimand is generally appropriate when a Lawyer:

16 (1) negligently violates the terms of a prior disciplinary order and such  
17 violation causes injury or potential injury to a client, the public, the legal  
18 system, or the profession; or

19 (2) has received an admonition for the same or similar misconduct and  
20 engages in further similar acts of misconduct that cause injury or potential  
21 injury to a client, the public, the legal system, or the profession.

22 (d) An admonition is generally not an appropriate sanction when a Lawyer  
23 violates the terms of a prior disciplinary order or when a Lawyer has engaged in  
24 the same or similar misconduct in the past.

1 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out~~  
2 ~~in Rule 14-604, the following principles generally apply in cases involving prior~~  
3 ~~discipline.~~

4 ~~(a) The district court or Supreme Court may impose further sanctions upon a~~  
5 ~~lawyer who violates the terms of a prior disciplinary order.~~

6 ~~(b) When a lawyer engages in misconduct similar to that for which the lawyer~~  
7 ~~has previously been disciplined, the appropriate sanction will generally be one~~  
8 ~~level more severe than the sanction the lawyer previously received, provided~~  
9 ~~that the harm requisite for the higher sanction is present.~~

10