

1 **Rule ~~14-523~~11-568.** Proceedings in which Lawyer is declared to be incompetent or
2 alleged to be incapacitated.

3 (a) **Involuntary commitment or adjudication of incompetency.** If a Lawyer has been
4 judicially declared incompetent or is involuntarily committed on the grounds of
5 incompetency, ~~then OPC counsel,~~ upon proper proof of the fact, ~~the shall~~OPC must file
6 a petition with the district court for the immediate transfer of the Lawyer to disability
7 status for an indefinite period until further order of the district court. The OPC must
8 serve a~~A~~ copy of the order ~~shall be served by OPC counsel up~~on the Lawyer or the
9 Lawyer's guardian or, if no guardian or legal representative has been appointed, ~~up~~
10 the director of the institution to which the Lawyer has been committed.

11 (b) **Inability to properly defend.** If a Lawyer alleges in the course of a disciplinary
12 proceeding an inability to assist in the defense due to mental or physical incapacity, the
13 district court ~~shall~~will immediately transfer the Lawyer to disability status pending
14 determination of the incapacity.

15 (1) If the district court determines the claim of inability to defend is valid, the
16 disciplinary proceeding ~~shall~~will be deferred and the Lawyer retained on
17 disability status until the district court subsequently considers a petition for
18 transfer of the Lawyer to active status. If the district court considering the
19 petition for transfer to active status determines the petition should be granted,
20 the interrupted disciplinary proceedings may resume.

21 (2) If the district court determines the claim of incapacity to defend to be invalid,
22 the disciplinary proceeding ~~shall~~will resume.

23 (c) **Proceedings to determine incapacity.** Information relating to a Lawyer's physical or
24 mental condition ~~which~~that adversely affects the Lawyer's ability to practice law
25 ~~shall~~will be investigated, and if warranted, ~~shall~~will be the subject of formal
26 proceedings to determine whether the Lawyer ~~must~~shall be transferred to disability
27 status. Hearings ~~shall~~will be conducted in the same manner as disciplinary proceedings,
28 except that all of the proceedings ~~shall~~will be confidential. The district court ~~shall~~will

29 provide the Lawyer with~~for~~ such notice ~~to the lawyer~~ of proceedings in the matter as it
30 deems proper and advisable and may appoint counsel to represent the Lawyer if the
31 Lawyer is without adequate representation. The district court may take or direct
32 whatever action it deems necessary or proper to determine whether the Lawyer is so
33 incapacitated, including designating qualified experts to~~the examination of the~~
34 Lawyer ~~by qualified experts designated by the district court~~. If, ~~upon due consideration~~
35 ~~of the matter~~, the district court concludes that the Lawyer is incapacitated from
36 continuing to practice law, it ~~shall~~ will enter an order transferring the Lawyer to
37 disability status for an indefinite period and until the further order ~~of the district court~~.
38 Any pending disciplinary proceedings against the Lawyer ~~shall~~ will be held in
39 abeyance.

40 **(d) Reinstatement from disability status.**

41 (1) **Court order.** No Lawyer transferred to disability status may resume active
42 status except by district court order ~~of the district court~~.

43 (2) **Petition.** Any Lawyer transferred to disability status ~~is~~ shall be entitled to
44 petition for transfer to active status once a year, or at whatever shorter intervals
45 the district court may direct in the order transferring the Lawyer to disability
46 status or any modifications thereof.

47 (3) **Examination.** ~~Upon the filing of~~ Upon filing a petition for transfer to active
48 status, the district court may take or direct whatever action it deems necessary or
49 proper to determine whether the disability has been removed, including
50 directing designated qualified experts to ~~a direction for an~~ examination of the
51 Lawyer ~~by qualified experts designated by the district court~~. In its discretion, the
52 district court may direct the Lawyer to pay the examination expense ~~that the~~
53 ~~expense of the examination be paid by the lawyer~~.

54 (4) **Waiver of privilege.** ~~When~~ with the filing ~~of~~ a petition for reinstatement to
55 active status, the Lawyer ~~shall~~ will be required to disclose the name of each

56 psychiatrist, psychologist, physician, or other health care provider and hospital
57 or other institution by whom or in which the Lawyer has been examined or
58 treated related to the disability since the transfer to disability status. The Lawyer
59 ~~shall~~must furnish written consent to each listed provider to divulge information
60 and records relating to the disability if requested by the district court or the
61 district court's appointed experts.

62 (5) **Learning in law; Bar Examination.** The district court may also direct that the
63 Lawyer establish proof of competence and learning in law, which proof may
64 include the Bar's certification ~~by the Bar of~~ that the Lawyer has successfully
65 ~~completion~~ed of an examination for ~~admission to practice~~relicensure.

66 (6) **Granting petition for transfer to active status.** The district court ~~shall~~will
67 grant the petition for transfer to active status ~~up~~on a showing by clear and
68 convincing evidence that the disability has been removed.

69 (7) **Judicial declaration of competence.** If a Lawyer transferred to disability
70 status on the basis of a judicial determination of incompetence is subsequently
71 judicially declared to be competent, the district court may dispense with further
72 evidence that the Lawyer's disability has been removed and may immediately
73 order the Lawyer's reinstatement to active status upon terms as are deemed
74 proper and advisable.

75 *Effective December 15, 2020*