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STANDARDS OF THE BOARD ON PROFESSIONAL RESPONSIBILITY FOR DETERMINING FINANCIAL HARDSHIP

1. A respondent is eligible to have counsel compensated and/or to have investigative, expert, and other reasonable and necessary expenses paid for from funds of the Board on Professional Responsibility (the "Board") when the combination of the respondent's gross income, as determined in paragraph 3, *infra,* and assets, as determined in paragraph 4, fall below the applicable category in the current Department of Labor Lower Living Standard Income Level for the Washington-Baltimore MSA (the "LLSIL"). A respondent in a reciprocal discipline case shall not be eligible to have counsel or other expenses compensated by the Board, unless the reciprocal case has been consolidated with another matter in which the respondent is eligible for such relief. A petitioner seeking reinstatement to the D.C. Bar is not entitled to have counsel or other expenses compensated by the Board.

2. To be eligible to have compensation of counsel and payment of reasonable and necessary expenses from the funds of the Board, the respondent shall file an *ex parte* motion requesting a finding of financial hardship pursuant to Board Rule 19.5, and an affidavit in support of motion for compensation of counsel based on financial hardship (a form affidavit is available from the Office of the Executive Attorney). The Chair of the Board may request supporting documents.

3. "Gross Income" for the purposes of determining financial hardship means any income, including but not limited to, salaries, wages, distributions, alimony, child support, gifts, inheritances, and government benefits payments, before withholding and other deductions, during the 12-month period preceding the filing of the motion requesting a finding of financial hardship. The form of affidavit available from the Office of the Executive Attorney shall require a respondent to report promptly any change in employment, income, or assets during the pendency of the disciplinary proceeding.

4. "Assets" for purposes of determining financial hardship means liquid assets such as cash, savings and securities owned by the respondent in his or her personal capacity (whether owned individually or jointly), at the time of the filing of the motion requesting a finding of financial hardship. In addition, other assets of a substantial nature, such as equity in real property or personal property, the sale of which would not cause unreasonable hardship, should be considered in terms of the amount which can be raised by a secured loan on these non-liquid assets. The value of such assets shall be computed as one-fourth of the person's equity in such property unless it appears that only a lesser amount can be raised by a secured loan on the property.

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5. The eligibility determination for each respondent shall be made by comparing the total of the respondent's gross income and assets to the applicable category in the LLSIL as follows: (1) If the total of gross income and assets do not exceed the yearly amount specified in the applicable category in the LLSIL, the respondent shall be eligible to have counsel compensated and/or other reasonable and necessary expenses paid for from funds of the Board, subject to any limitations set forth in Board Rule 19.5 or the Board Policy; (2) If the total of gross income and assets are greater than the yearly amount specified in the applicable category in the LLSIL, the respondent shall not be eligible to have counsel compensated and/or other services paid for from funds of the Board.

6. The LLSIL considers an individual's dependents. A dependent is defined as any person for whom the respondent provides more than 50% of the person's total support whether said dependent lives with the respondent or with someone else.

7. Under normal circumstances, a respondent's actual living expenses will not be considered in determining eligibility because these expenses are already incorporated in the LLSIL. However, where a respondent is able to document extraordinary medical or other similar expenses for himself or dependents, these expenses will be prorated on a monthly basis and subtracted from the monthly gross income of the respondent.

8. A respondent's retirement assets will not be considered in determining financial hardship unless the respondent is deriving income from or drawing down retirement accounts.

9. Except in extraordinary circumstances, a respondent's business expenses will not be considered in the determination of financial hardship.

10. Personal assets jointly owned by the respondent and the gross income of the respondent's spouse/domestic partner shall be included in determining financial hardship, except when due to marital estrangement or other reasons, it is unlikely that the jointly owned assets and/or spouse/domestic partner income will be available. As used herein, the term "domestic partner" shall have the meaning set forth in D.C. Code § 32-701(3).

11. Except in situations where other than liquid assets are involved as provided in paragraph 4, *supra,* or in unusual cases where justice so requires, funds which a respondent might obtain by borrowing shall not be considered in determining financial hardship.

12. Where a respondent is incarcerated, the resulting loss of employment and income shall be taken into consideration in determining financial hardship.

13. These standards shall be construed: (i) to obtain equitable and consistent determinations of eligibility for compensation of counsel and/or for payment of other reasonable and necessary expenses from the funds of the Board; (ii) to limit the expenditures of the funds of the Board to cases where justice so requires; (iii) to safeguard the rights of individuals to an adequate defense; and (iv) to ensure the effective and efficient functioning of the attorney discipline system.

Theodore D. Frank, Chair

Dated: JUL 25 2014