

Garden State CLE Presents:



Return to Practice of Law

Instructor

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LESSON PLAN

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Part I

Foundational Disciplinary Issues

a) In General - The essential purpose of our system of attorney discipline is to protect the public, not to punish the attorney. The purpose of a disciplinary proceeding, as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer. Maintenance of public confidence in the integrity of the bar is the paramount element behind the imposition of all attorney discipline.

With this in mind, the Supreme Court has developed an analytical process in order to determine the appropriate quantum of discipline in attorney misconduct cases.

b) The Five Questions - There are five questions that need to be answered in New Jersey disciplinary cases under New Jersey law. (In re Witherspoon, 203 N.J. 343, 358-59(2010)). They include the following:

- 1) What are the facts? (Generally limited to violations of the NJ Rules of Professional Conduct as proved by clear and convincing evidence – (In re Seaman, 133 N.J. 67, 74(1993))
- 2) How have these types of cases been adjudicated in the past through Supreme Court precedent or through Disciplinary Review Board?
- 3) What has been the attorney's individual prior disciplinary history?
- 4) What was the extent of harm to clients, members of the public or the administration of justice?
- 5) Are there issues of attorney rehabilitation, payment of restitution or general mitigation of discipline?

c) Predetermined Discipline - For certain discrete ethical violations, there is only one question, not five. What are the facts? If the facts demonstrate by clear and convincing evidence any of the following, the case is over because the quantum of discipline in the form of mandatory disbarment has been predetermined in the case law.

This limited “one-step” analysis is reserved for the following violations:

- 1) Knowing misappropriation of funds – In re Wilson, 81 N.J. 451(1979);
- 2) Knowing misappropriation of escrow funds – In re Hollendonner, 102 N.J. 21(1985);
- 3) Bribery of a public official - In re Cammarano, 219 N.J. 415(2014);
- 4) Child pornography – In re Cohen, 220 N.J. 7(2014).

Part II

Evolution of Disbarment Under the Wilson Rule

a) In General - The original, public policy justifications for automatic disbarment in knowing misappropriation cases was explained by the Court in Wilson:

[The] maintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases. That confidence is so important that mitigating factors will rarely override the requirement of disbarment. If public confidence is destroyed, the bench and bar will be crippled institutions. Functioning properly, however, in the best traditions of each and with full public confidence, they are the very institutions most likely to develop required reform in the public interest. (Wilson, supra at 461.)

Accordingly, since 1979, both the public and offending attorneys are on notice that every knowing misappropriation of client funds will result in disbarment. Over time, the Court also added In re Hollendonner, 102 N.J. 21(1985) (Misuse of escrow funds) and law firm funds. (In re Siegel, 133 N.J. 162(1993)).

In years past, the Court has rejected a relaxation of this automatic rule of attorney discipline. The only exception occurred during the tenure of Chief Justice Portiz (1996-2006) when the Court promulgated Rule 1:20-15A(a)(2) which authorized the imposition of an indeterminate suspension (minimum 5 years). This sanction has been used infrequently since it was created. (In re Cohen, 220 N.J. 7(2014)).

Since 1979, the Wilson rule has resulted in the disbarment of many hundreds of attorneys since that time. The Court's prediction that this quantum of discipline would be almost invariable in knowing misappropriation cases has turned out to be entirely accurate.

As might be expected, the mandatory nature of disbarment in these cases has resulted in some sad, almost tragic consequences. Scores of long-term practitioners with otherwise unblemished records have been subject to disbarment in Wilson cases without regard to any mitigating factors. This is true in Wilson cases where a single, isolated mistake of judgment will invariably result in disbarment without regard to any mitigating factors.

The harsh impact of this invariable level of discipline has not been lost on the Justices. It can often be seen in their body language while entertaining oral argument during a Wilson hearing involving an otherwise stellar attorney.

There is some level of precedent for mitigating the impact of Wilson-type disbarment. For example, in In re Siegel, 133 N.J. 162(1993), the Court extended the holding in Wilson to include acts of misappropriation of law firm funds. The stability of this holding began to crumble in 1998 when two senior Justices, Stein and O'Hern filed a stinging dissent arguing that the Wilson rule was too harsh an outcome in cases involving law firm funds and expenses where there were significant mitigating factors that also constituted a defense. In re Greenberg, 155 N.J. 138(1998).

In re Iulo, 115 N.J. 498 - The result is, of course, deeply troubling. Respondent was respected, trusted, and admired in his community. He had given his time to work with a local cleric, helping the mentally retarded and senior citizens in his community. He argued before us and the jury that he had never withdrawn money from his trust account for any other purpose than the clients'. But we are unable to impeach the jury's verdict. If there be a flaw in the conviction, it must find correction in the criminal appeal process.

Ultimately, the Court backed down from the automatic disbarment discipline required for misappropriation of law firm resources in In re Sigman, 220 N.J. 141, 158(2014) claiming on the basis of a number of obscure, unpublished DRB decisions, that the Wilson rule "is not, and has never been, absolute."

Comment – Sigman is not the first indication of cracks in the Wilson foundation of (almost) invariable automatic disbarment. It is important to note that the Wilson Rule is purely a product of the late Chief Justice Robert Wilentz and his strong-

held view of the sacred nature of practice of law. As a result, a challenge of sorts was presented to Chief Justice Poritz when she took over stewardship of the Judiciary in 1996. This effort was led by the State Bar Association of which she had been an active and influential member. This challenge resulted in the adoption of Rule 1:20-15A(a)(2) authorizing the disciplinary option of an indeterminate suspension. However, the new Chief Justice answered any questions about the continuing viability of the Wilson Rule in her first decision, In re Greenberg, supra. This holding was the subject of a comprehensive dissent by Justices Stein and O’Hern. In retrospect, Sigman and Wade represent a natural progression in the law over the decades toward eliminating the harsh outcome in Wilson for appropriate cases.

Part III

A New Procedure in Disbarment Cases

The Supreme Court has determined to address the conflict between its constitutional obligation to maintain public confidence in the integrity of the bar and the harsh, invariable consequences that Wilson disbarments impose on otherwise distinguished members of the bar.

It was this conflict that resulted in the Court’s determination to explore a new disciplinary pathway in In re Wade, 250 N.J. 581(2022).

Wade Analysis

a) Certain disciplinary principles will not change as a result of Wade.

1) Wilson violations will continue to result in disbarment on an invariable basis;

2) However, the Court committed itself to consider adopting a new rule that will provide a pathway for readmission to the bar following a period of time. The Rule is now set forth under Rule 1:20-21A and provides for the following procedures:

Restatement Procedures – In General

- 1) General eligibility - Readmission eligibility is available to attorneys who were disbarred for any reason, not just knowing misappropriation cases. However, re-admission is unlikely in matters involving egregious circumstances or serious criminal offenses, including heinous and violent acts.
- 2) Time period - Supreme Court adopted the Special Committee's recommendation that disbarred attorneys may apply for readmission five (5) years after the effective date of their disbarment.
- 3) Indeterminate suspensions - The Court amended the Court Rule governing indeterminate suspensions, Rule 1:20-15A(a)(2), to allow for reinstatement applications after four (4) years (rather than the current five (5)) in order to maintain a distinction between indeterminate suspensions and disbarments.
- 4) Burden of proof - The Court adopted the recommendation of the Special Committee, namely that petitioners shall bear the burden of proof in readmission matters, and that the standard of proof in readmission proceedings shall be by clear and convincing evidence.
- 5) Bar exam - All petitioners seeking readmission must earn a passing score on both the New Jersey Bar Examination and the MPRE no more than one year before filing a petition.
- 6) CLE - Accordingly, before filing a petition for readmission, a petitioner must have completed CLE courses to be specified by the Court. Those courses will be published on the Court's website so that petitioners are apprised of the obligations prior to filing a petition. The list of mandatory courses is not finalized, but the Court tentatively approved relevant topics including ethical law practice management, financial management, trust and business accounting, and intensive coursework for new attorneys.
- 7) Public notice - Petitioners will be required to give notice to (1) all Grievant's whose complaints resulted in disbarment; (2) all Grievant's whose complaints had been docketed but were dismissed as a result of the disbarment; and (3) any Grievant's who received disbursement via a claim with the Fund. The petitioner is responsible to obtain lists from the Office of Attorney Ethics and the Fund for Client Protection for the purpose of such notice.

8) Restitution - Aggrieved individuals and the Client Security Fund must be fully repaid. Repayment should occur as soon as possible and generally prior to the petition for readmission. The Fund retains all of its current mechanisms to seek reimbursement, including by obtaining civil judgments, and those judgments are not affected by the readmission process. If the petitioner has been unable to fully repay the Fund prior to submitting a petition for readmission, the Court may – on a showing of hardship supported by, at a minimum, tax returns for every year since disbarment – impose as a condition of readmission a payment plan to satisfy any outstanding repayment amount within twelve (12) months of readmission.

9) Disbarred attorneys must fully satisfy all prior orders concerning the payment of disciplinary costs, subject to the same hardship provisions described above. The hardship provisions described herein do not apply to a disbarred attorney's obligation to pay a fee arbitration award or other order for restitution or disgorgement to a harmed client. Such debts must be satisfied in full prior to the filing of a petition for readmission.

10) Petition filing fee – This amount has been set at \$1,500.00 by the Court.

11) Successive petitions - A petitioner must wait two (2) years from the date of the Court's denial of a petition for readmission to submit a subsequent petition for readmission. Moreover, the Court retains the authority to order that no further submissions will be permitted from a specific petitioner.

12) No third chances - When an individual is granted a second chance at practicing law in New Jersey, there shall be no further opportunities for readmission if that person later betrays the public trust and again commits an ethical breach worthy of disbarment.

13) Exceptions for permanent disbarment - Notwithstanding the adoption of a path back for disbarred attorneys the Court reserves the ability to impose permanent disbarment in egregious circumstances. When warranted, the imposition of permanent disbarment would further the protection of the public.

14) Conditions and restrictions following re-admission – The Court promulgated a non-exhaustive list of conditions that may be imposed on re-admitted attorneys:

1) Financial controls including, but not limited to, a designated co-signatory for all attorney trust and business accounts;

2) Periodic submissions of trust account reconciliations;

- 3) Periodic audits of trust accounts;
- 4) Restrictions on the ability to practice including, but not limited to, the use of a supervising attorney approved by the Office of Attorney Ethics as a prerequisite to engaging in the private practice of law;
- 5) Addiction treatment and controls including, but not limited to, requiring abstinence, testing, and an identifiable commitment to appropriate support groups;
- 6) Mental health treatment and counseling, together with a finding of fitness to practice by a mental health professional approved by the Office of Attorney Ethics;
- 7) Satisfaction of all other qualifications for plenary admission including, but not limited to, a certification of the attorney's good character by the Supreme Court after review by the Committee on Character;
- 8) Satisfactory completion of additional CLE courses as the Court may require; and
- 9) Such other conditions as may be deemed appropriate in the light of the circumstances presented.

15) Reviewing agency - The Court will convene a new Board – the Attorney Regulatory Board (ARB) – to develop expertise and adjudicate petitions for re-admission. The ARB will make findings and recommendations to the Court on requests for readmission. Like the DRB, the Board will be staffed by the Office of Board Counsel. Creating a new Board of volunteers to adjudicate re-admission matters will allow the petitions to be addressed by a diverse body of individuals, including members of the public who are not lawyers, who can assist the Court while the DRB continues to dedicate its effort to the efficient adjudication of ongoing disciplinary matters.

16) Equity - The Court is mindful of the Special Committee's recommendation that the Judiciary develop a mechanism to assess whether bias, either implicit or explicit, might affect disbarment or readmission. The Special Committee understood that statistical data is not available historically and suggested that the

Judiciary explore how to evaluate disciplinary and readmission outcomes going forward.

The Supreme Court is committed to uphold equity in the attorney regulatory system – a goal shared by all stakeholders. Finally, the Administrative Director and the Clerk of Court will take steps to undertake this study. Entities within the attorney disciplinary and regulatory system, including the Office of Attorney Ethics, will provide data and information but will not have an evaluative role in the assessment.

Part IV **The New Rule for Reinstatement**

Rule 1:20-21A

Rule 1:20-21A. Re-admission after Disbarment

(a) Waiver of Confidentiality. All petitioners filing for readmission waive the confidentiality of (i) Supreme Court Committee on Character materials, and (ii) such other information and records required pursuant to this rule. Petitioners shall execute such written waivers, releases, or consents as the Office of Attorney Ethics and Attorney Regulatory Board may require to access all records involving conduct, past and present. The petitioner's file will be deemed abandoned if the petitioner withdraws or modifies petitioner's written waivers, releases, or consents.

(b) Permanent Disbarment and Second Disbarment. An attorney who has been permanently disbarred following the effective date of this rule or has been disbarred a second time may not file a petition for readmission with the Attorney Regulatory Board. A second disbarment shall be permanent.

(c) Other Disbarments. In all other disbarment cases, a petitioner may file a petition for readmission and publish notice of their intent to apply for readmission forty days prior to the expiration of five years from the effective date of the disbarment. As conditions precedent to the filing of such a petition, a petitioner must, within the twelve months prior to the filing of the petition for readmission:

- (1) pass the New Jersey bar examination;
- (2) pass the Multistate Professional Responsibility Examination with a score of 75 or higher; and

(3) complete all continuing legal education courses the Supreme Court designates as required for readmission.

(d) Additional Criteria for Readmission. The petitioner shall prove fit to practice law in this state; possession of the requisite traits of honesty, integrity, fiscal responsibility, and trustworthiness, and a professional commitment to the judicial process and the administration of justice required of members of the bar. Moreover, a petitioner may be readmitted to the practice of law in New Jersey only if the petitioner satisfies each of the following criteria:

(1) The petitioner proves full compliance with the terms and conditions of all prior disciplinary orders, temporary suspension orders, and fee arbitration determinations (including restitution and disgorgement orders and the petitioner's compliance with Rule 1:20-20), unless an extraordinary financial hardship claim has been timely requested;

(2) The petitioner has reimbursed, or has reached agreement in writing with the New Jersey Lawyers' Fund for Client Protection, to reimburse it in full for all sums paid or authorized to be paid because of petitioner's misconduct, unless an extraordinary financial hardship claim has been timely requested;

(3) The petitioner has paid all annual registration fees and charges to the satisfaction of the New Jersey Lawyers' Fund for Client Protection;

(4) The petitioner has obeyed applicable Court Rules in this jurisdiction and other jurisdictions where now or previously licensed;

(5) The petitioner has not engaged, or attempted to engage, in any jurisdiction, in the unauthorized practice of law during the period of disbarment;

(6) If the petitioner was suffering under a physical or mental condition, disability, or infirmity at the time of disbarment or other prior discipline, including any addiction, the condition, disability, or infirmity has been addressed. Where addiction was a causative factor in the petitioner's misconduct, the petitioner shall not be readmitted unless petitioner can establish:

- i. The petitioner has successfully pursued and participated in appropriate rehabilitative treatment;
- ii. The petitioner has abstained from the cause of the addiction for at least one year; and
- iii. The petitioner is likely to continue to abstain.

(7) The petitioner clearly demonstrates rehabilitation in the form of acts evidencing personal reform and current good character and recognizes that the Rules of Professional Conduct and disciplinary precedent govern their future practice of law in New Jersey;

(8) During the period of disbarment, the petitioner has not engaged in any misconduct, as a professional or otherwise, which reflects adversely on the moral character or fitness of the petitioner;

(9) During the period of disbarment, the petitioner has not been convicted or adjudicated of, or received the benefit of diversionary treatment for, any criminal or quasi-criminal offense (all levels of such offenses);

(10) A petitioner who has been disbarred must have fully paid the required petition fee; and

(11) If disbarred on a motion for reciprocal discipline, the petitioner must be readmitted in the originating jurisdiction, unless the petitioner can show good cause for not seeking readmission in the originating jurisdiction.

(e) Filing and Service of Petition. The petitioner shall file redacted and un-redacted copies of the verified petition with the Attorney Regulatory Board and shall serve redacted and unredacted copies on the (i) Director of the Office of Attorney Ethics, and (ii) Director of the New Jersey Lawyers' Fund for Client Protection.

(f) Costs. Petitions for readmission shall be accompanied by a non-refundable check payable to the Disciplinary Oversight Committee in the amount of \$1,500.00 to cover the reasonable administrative costs of processing the petition. Either the Attorney Regulatory Board or the Supreme Court may also direct the petitioner to pay such additional costs during the processing of a petition as required to satisfy actual out-of-pocket expenses, including transcripts and expenses deemed necessary to a proper evaluation of the readmission petition.

(g) Notice. Contemporaneously with the filing of the petition for readmission, or within twenty-one days prior thereto, the petitioner shall provide a notice of application for readmission to (1) all Grievant's whose grievances or complaints resulted in disbarment, (2) all Grievant's whose grievances or complaints had been pending but were dismissed as a result of the disbarment, and (3) any Grievant's who received disbursement connected to the petitioner via a claim with the New Jersey Lawyers' Fund for Client Protection. The petitioner is responsible to obtain a list from the Office of Attorney Ethics and the Lawyers' Fund for Client Protection for the purpose of such notice. Objections or relevant information concerning this application for readmission should be forwarded immediately to Chief Counsel, Attorney Regulatory Board, P.O. Box 962, Trenton, New Jersey 08625-0962.

(h) Contents of Petition; Compliance with Rule 1:38. The petitioner shall provide the Attorney Regulatory Board with a certified petition for readmission setting forth all material facts on which the petitioner relies to establish fitness to be readmitted to the practice of law. As set forth above, the petitioner shall provide to the required agencies (i) copies of the petition and all supporting documents redacted in accordance with R. 1:38, and (ii) copies of the petition and all supporting documents in unredacted form. The petition shall, in the discretion of the Attorney Regulatory Board, considering the nature of the disciplinary offense, contain the following information in correlatively numbered paragraphs:

(1) the name of the petitioner and a copy of a current photograph of petitioner, not smaller than three inches by three inches showing front and side views;

(2) the effective date of the disbarment and the citation of the Supreme Court's Order and reported opinion, if any;

(3) the age, current residence address, and telephone number of the petitioner, as well as the address of all residences maintained during the suspension period and the date of each residence;

(4) the nature of petitioner's occupation during the disbarment, including the name and address of each employer, the dates of each employment, the positions occupied and titles held, the name, address, and telephone number of the immediate supervisor, and the reason for leaving the employment;

(5) the case caption, general nature, dates, and disposition of every civil, criminal, municipal, administrative, bankruptcy, or disciplinary action that was pending during the period of disbarment to which petitioner was either a party or claimed an interest;

(6) petitioner's written consent or provision of a waiver to the Attorney Regulatory Board and to the Director of the Office of Attorney Ethics to examine and secure copies of any records relating to any criminal investigation of or action against petitioner (all levels of offenses);

(7) a statement of the earnings and other income of the petitioner and the sources from which all earnings and income were derived during the period of disbarment;

(8) a statement of financial obligations, loans, and debts of the petitioner as of the date of the readmission application, including the dates when such obligations were acquired or incurred, the balances owed, and the names and addresses of all creditors. In its discretion, the Board may request a statement of assets and accounts on a case-by-case basis to obtain a complete picture of petitioner's finances, including when a petitioner is seeking a payment schedule based on financial hardship;

(9) copies of petitioner's federal and state income tax returns and any business tax returns for each year, or part of a year, during the period of disbarment and, in an appropriate form, petitioner's written consent to the Attorney Regulatory Board and the Director of the Office of Attorney Ethics to secure copies of the original returns;

(10) a statement of restitution made for all obligations to all former clients and the New Jersey Lawyers' Fund for Client Protection, and the source and amount of funds used for this purpose;

(11) in matters where the petitioner asserted a condition or impairment as a defense, in mitigation, or as an explanation for their conduct in connection with the underlying disbarment, furnish a thorough explanation and certification that the condition is or has been treated effectively by a health care provider;

(12) in matters where the petitioner, within the last five (5) years, exhibited conduct or behavior that could call into question their ability

to practice law in a competent, ethical, and professional manner, furnish a thorough explanation, unless the conduct or behavior related to a mental health diagnosis, addiction, or other condition that is or has been treated effectively by a health care provider or other medical professional, or through consistent participation in an established treatment program, in which case the petitioner need not disclose the information;

(13) whether the petitioner, during the period of disbarment, applied for admission, re-admission, or reinstatement to practice as an attorney in this state or any other state or jurisdiction, the caption and details of the application, and its disposition, if any;

(14) whether the petitioner has ever applied for or been granted a license or certificate relating to any business or occupation and whether that license or certificate has ever been the subject of any disciplinary action and the details thereof;

(15) a statement as to whether any applications were made during the period of disbarment for a license requiring proof of good character, the dates, name, address, and telephone number of the authority to whom such applications were addressed, and the disposition thereof;

(16) whether petitioner, during the period of disbarment, engaged in the practice of law in any jurisdiction and all material facts relating thereto;

(17) a statement of any procedure or inquiry during the period of disbarment relating to petitioner's standing as a member of any other profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of petitioner, and, as to each, the dates, facts, and the disposition thereof and the name, address, and telephone number of the authority in possession of the record thereof;

(18) a statement of petitioner's professional intentions if readmitted to practice law;

(19) a newly completed Annual Attorney Registration Statement;

(20) a copy of the detailed affidavit required to be filed in accordance with Rule 1:20-20; and

(21) such other information as the Director of the Office of Attorney Ethics, the Attorney Regulatory Board, or the Supreme Court may require.

(i) Docketing; Objections by Director; Recommendation by the Board. Within ninety days following the Attorney Regulatory Board's formal docketing of a conforming petition for readmission, the Director of the Office of Attorney Ethics shall file an original and twelve copies of a response with the Attorney Regulatory Board either objecting or not objecting to the petition. The Director shall serve the petitioner with a copy of the response. If the Director consents or fails to file objections, the Attorney Regulatory Board may submit its findings and recommendations to the Supreme Court. If the Director files objections, the Attorney Regulatory Board may set the matter down for oral argument on notice to the parties or may, after considering the objections, submit its findings and recommendations as to the attorney's fitness to practice law to the Supreme Court without argument. The Attorney Regulatory Board may recommend, and the Supreme Court may impose, any conditions on the attorney's readmission deemed necessary to protect the petitioner, clients, or the public.

(j) Referral to Trier of Fact. In an appropriate case, the Attorney Regulatory Board may refer specific issues regarding readmission to a trier of fact, which shall then hold a hearing and furnish the Attorney Regulatory Board with a report of findings and recommendations.

(k) Consideration of Petition for Readmission. No petition for readmission shall be considered by the Attorney Regulatory Board unless:

(1) the petitioner first affirmatively demonstrates full compliance with all conditions precedent set forth herein and in Rule 1:20-20;

(2) all disciplinary costs assessed have been paid, unless an extraordinary financial hardship claim has been timely requested;

(3) all orders for restitution have been paid, and the petitioner has reimbursed or has reached agreement in writing with the Lawyers' Fund for Client Protection to reimburse it in full for all sums paid or authorized to be paid as a result of the petitioner's conduct, unless an extraordinary financial hardship claim has been timely requested; and

(4) all annual registration fees and any late charges or other applicable assessments have been paid.

(l) Successive Petitions. Except as otherwise ordered by the Supreme Court, a petitioner may not file a subsequent petition for readmission until twenty-four months after a Supreme Court order denying a prior petition. Moreover, the Supreme Court retains the authority to order that no further submissions will be permitted or considered from a specific petitioner.

(m) Public Proceedings and Records. All readmission records and proceedings shall be considered public in accordance with Rule 1:20-9. The burden of redacting any confidential material or information contained within the supporting documents that would otherwise be protected by Rule 1:38 or other authority is on the petitioner.

(n) Standard of Proof. The standard of proof in readmission proceedings shall be by clear and convincing evidence.

(o) Burden of Proof; Burden of Going Forward. The burden of proof in proceedings seeking readmission shall be on the petitioner.

(p) Review. All decisions of the Attorney Regulatory Board shall become final upon the entry of an Order of the Supreme Court. Unless the Supreme Court otherwise orders, entry of a final Order regarding readmission shall be stayed by the filing of a timely petition for review of the Attorney Regulatory Board's decision by the petitioner or the Office of Attorney Ethics or by the entry of an Order scheduling the matter for briefing and, where appropriate, oral argument on the Supreme Court's own motion. The Supreme Court may, on its own motion, decide to review any determination of the Attorney Regulatory Board. Either petitioner or the Office of Attorney Ethics may seek review by filing a notice of petition for review within twenty days of the filing of the Attorney Regulatory Board's decision with the Court. The notice shall be accompanied by nine copies of a petition for review, which shall be a brief that meets the format requirements of Rule 2:12-7(a). The responding party shall serve and file a responding brief within ten days of the filing of the petition for review. A reply brief, if any, shall be served and filed within seven days thereafter. If the Supreme Court grants the petition for review, the record before it shall consist of the briefs filed on the petition and the record developed below.