

**THE JUDICIARY OF THE STUDENT BAR ASSOCIATION
OF THE WILLIAM S. RICHARDSON SCHOOL OF LAW**

IT IS ORDERED that updates to the Richardson Rules of Procedure, having been subject to public comment from the Student Bar Association, are HEREBY PROMULGATED. The updated Rules are published in full below.

The updated Rules shall become effective immediately and shall govern all actions filed after the date of promulgation.

/s/ Thomas J. Michener
Chief Justice

/s/ Andy L. Kiyuna
Justice

/s/ Dwane I. Tegman
Justice

/s/ Benjamin J. Krebs
Justice

September 6, 2016

Richardson Rules of Procedure

Cite as RRP ____ (2016).

Rule 1. Scope and Purpose

These rules govern the procedure in all actions, proceedings, and appeals to the en banc panel in the Judiciary of the Student Bar Association of the William S. Richardson School of Law. The rules should be construed and administered to secure the just, speedy, and efficient determination of every action and proceeding.

Comments:

Everyone should be mindful that every action commenced will require much time spent by those involved. Therefore, other collegial, and perhaps less formal, avenues of resolution should be exhausted before pursuing an action in the Judiciary.

Apart from providing responsive and efficient government, the Law School Government is an organization that provides opportunities for future professionals to hone their skills and the Judiciary is no different. A goal of those who participate should be to apply the skills learned in class while maintaining an atmosphere of cordiality necessary for practice in our community.

Many of these rules are patterned on federal and state laws and rules of procedure. Interpretation of similar laws may be instructive, but not binding.

As used in these rules, “Judiciary” means the Judiciary as a branch of the LSG, the en banc panel, or a Magistrate Justice.

The authority for these rules is the SBA Constitution.

Rule 2. Adoption and Alterations to these Rules

The adoption of or alterations or additions to these rules must be subject to comment by the SBA and approved by the Judiciary before promulgation via order.

Rule 3. Types of Actions

- (a) Section 5.3.1 of the SBA Constitution grants the Judiciary jurisdiction over questions arising under the Constitution of the SBA and the by-laws of the LSG. The following types of actions fall under Section 5.3.1:
- (1) A member of the SBA seeking review of an act of a branch of the LSG or of a branch's member in their official capacity.
 - (2) A branch of the LSG or a branch's member in their official capacity seeking review of an act of another branch of the LSG or a branch's member in their official capacity.
 - (3) A branch of the LSG or a branch's member in their official capacity seeking review of its own act.
 - (4) A Student Organization or an organization's member in their official capacity seeking review of an act of a branch of the LSG or of a branch's member in their official capacity.
 - (5) The Law School Administration seeking review of an act of a branch of the LSG or of a branch's member in their official capacity when the Administration will have a role in carrying out the act in question.
- (b) Actions commenced by petitions for redress or grievances may be brought under § 5.3.2 of SBA Constitution, subject to the resources of the Judiciary.

Comments:

“Branch of the LSG” or “branch” as used in this rule means only the Senate and the Executive Board, not the Judiciary. Corrective measures for the actions of the Judiciary and the Justices are dealt with under these rules, when on appeal, or otherwise by the SBA Constitution's recall procedures in Section 2.4.5.

Subsection (b), derived from Section 5.3.2 of the Constitution, allows the Judiciary to hear actions outside the scope of Section 5.3.1 of the Constitution.

Under Subsection (b), in determining how to allocate its resources, the Judiciary will consider such factors as whether questions presented are best left to the Senate or Executive Board and the availability of alternate methods of resolving the dispute.

Rule 4. Pleadings Allowed

Pleadings. Only these pleadings are allowed:

- (a) a complaint;
- (b) an answer to a complaint;
- (c) a motion for joinder or intervention; and
- (d) any other pleading the Judiciary requests or orders.

Rule 5. Signing Pleadings, Motions, and Other Papers; Representations to the Judiciary; Format

- (a) Signature. Every pleading, written motion, and other paper must be signed electronically by at least one party. A signature is sufficient if given in the following form: /s/ [Name]. The paper must state the signer's e-mail address and telephone number. The Judiciary must strike an unsigned paper unless the omission is promptly corrected after being called to the party's attention.
- (b) Representations to the Judiciary. By presenting to the Judiciary a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – a party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 - (1) it is not being presented for any improper purpose, such as to harass, cause, or unnecessary delay resolution of the action;
 - (2) the claims, defenses, and other legal contentions are warranted;
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.
- (c) Format. All papers must be in portable document format (PDF) form.

Comments:

Parties may file any motion that they deem necessary, so long as motions comply with these rules. Motions include those for:

- an extension of time;
- reconsideration;
- an initial decision en banc;
- discovery;
- temporary relief;
- joinder;
- intervention;
- enforcement of rules;
- disqualification of a Justice;
- approval of a proposed mediator; and
- a hearing.

Papers submitted under this rule should be sent from the email address of the signatory. If the signatory is not acting on their own behalf, the paper should clearly indicate on whose behalf the signatory is acting.

Rule 6. Commencing and Responding to an Action

- (a) An action is commenced by filing a complaint with the Judiciary. The complaint must:
 - (1) be submitted electronically;
 - (2) name opposing parties, if any, and, at the time of filing, be served electronically by the petitioner to opposing parties, if any;
 - (3) contain a short and plain statement of the grounds for the Judiciary's jurisdiction;
 - (4) contain a demand for the relief or information sought, which may include relief in the alternative or different types of relief; and,
 - (5) if the action is brought under Rule 3(a)(1), (2), (4), (5), or Rule 3(b), contain a short and plain statement of the claim showing that the petitioner is entitled to relief.
- (b) Answer. An answer by an opposing party must:
 - (1) be submitted electronically to the Judiciary and opposing parties within 14 days of receiving a copy of the complaint. The Judiciary may alter the time of the answer as justice requires.
 - (2) state in short and plain terms its defenses to each claim asserted against it; and
 - (3) admit or deny the allegations asserted against it by an opposing party.
- (c) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.
 - (1) In General. Each allegation must be simple, concise, and direct. No technical form is required.
 - (2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
 - (3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.
- (d) Construing Pleadings. Pleadings must be construed so as to do justice.

Comments:

In situations requiring resolution on short notice, the Judiciary will consider whether the complaint initiating the action was filed in a timely manner.

Rule 7. Magistrate Justice

The Magistrate Justice is the Justice in the first instance and shall have the authority to direct actions and proceedings. The Magistrate Justice may rule on pleadings and other filings, and may issue discovery orders and decisions on actions. When an action is to be heard by the en banc panel, the Magistrate Justice shall continue to direct actions and proceedings and shall be the point of contact for all of the parties. The Magistrate Justice is selected by the Judiciary from among its members.

Comments:

“Decisions on actions” means a decision that is dispositive to the whole action or to part of the action.

If a Magistrate Justice declines to hear an action, they may issue an opinion stating the reasons.

Rule 8. En Banc Decisions

- (a) On appeal. En banc decisions must be issued if:
 - (1) the Judiciary receives from a party a petition for rehearing en banc of a decision on an action by the Magistrate Justice; and
 - (2) 2 Justices other than the Magistrate Justice presiding over the decision below agree that an en banc decision is proper.
- (b) Initially. En banc decisions must be issued if, after receipt of all the pleadings, 3 Justices agree that an initial decision en banc is proper. A party to an action may motion for or include in its pleadings a motion for an initial decision en banc.
- (c) The en banc panel consists of every Justice.

Comments:

Subsection (b) allows the Judiciary to issue a decision en banc in the first instance, bypassing a decision by the Magistrate Justice. An initial decision en banc can be requested by a party if the issues are especially difficult, novel, or important, or can be initiated by the Judiciary on its own motion.

A denial of a motion for an initial decision en banc under Subsection (b) does not necessarily stop the action; it continues as normal in front of the Magistrate Justice in the absence of a decision by the en banc panel to the contrary.

“Decisions on actions” means a decision that is dispositive to the whole action or to part of the action. This meaning limits the review of the en banc panel.

If the Judiciary declines to consider an action en banc, either on a motion for an initial decision en banc or on appeal from a Magistrate Justice, it may issue an opinion stating the reasons.

Rule 9. Discovery

- (a) The Magistrate Justice may order production of all documents, electronically stored information, and tangible things or may order answers to interrogatories that the Magistrate Justice believes necessary for the determination of the action.
- (b) Parties may motion the Magistrate Justice to order production of all documents, electronically stored information, and tangible things or to order answers to interrogatories that the movant believes necessary for the determination of the action. At the time such motions are filed, copies must be electronically served by the movant on other parties.
- (c) The Magistrate Justice may shape discovery to properly resolve the action and to ensure that discovery is no more invasive than is needed to resolve the action.
- (d) Parties may file with the Judiciary objections to discovery orders. The Magistrate Justice shall rule on such objections.
- (e) In the event a party does not abide by a discovery order, the Magistrate Justice may enforce the order pursuant to Rule 12.

Rule 10. Additional Parties

- (a) Joinder. On motion by a party, the Judiciary may order or request a non-party to join an action.
- (b) Intervention. On motion by a non-party, the Judiciary may allow the non-party to join the action.
- (c) On its own motion, the Judiciary may order or request a non-party to join an action.

Comments:

Parties added under this rule must be relevant to the resolution of the action.

Rule 11. Orders

The Judiciary may issue orders as provided by these rules, or any order, in furtherance of the just and efficient resolution of an action.

Rule 12. Enforcement of the Rules

- (a) If, after notice and a reasonable opportunity to respond, the Judiciary determines that any of these rules have been violated without good cause, the Judiciary may take whatever steps it deems appropriate, including dismissal of the action with or without prejudice, without reaching the merits.
- (b) On motion by a party or by the Judiciary on its own motion, the Judiciary may order a party to show cause why conduct specifically described in the order has not violated a rule and why the Judiciary should not take appropriate corrective measures.

Comments:

This rule is only for alleged misconduct and does not limit the Judiciary's ability to otherwise dispense with an action.

This rule is meant to be used only in serious circumstances or after disregard for those involved in the process. Time should not be wasted. It is recognized that a student who actually is inundated with other responsibilities may not be able to respond to the original request, let alone an order to show cause.

Rule 13. Disqualification of a Justice

- (a) A Justice shall disqualify themselves in the following circumstances:
 - (1) They have personal knowledge of disputed evidentiary facts concerning the action;
 - (2) They have been a material witness concerning the action;
 - (3) They know that they could be substantially affected by the outcome of the proceeding;
 - (4) They or someone in a close relationship with them:
 - (A) Is a party to the action;
 - (B) Is known by the Justice to have an interest that could be substantially affected by the outcome of the proceeding;
 - (C) Is to the Justice's knowledge likely to be a material witness in the proceeding.
- (b) On Motion by a Party. A party to the action may motion for a Justice to be disqualified from deciding the action. The decision on a motion for disqualification shall be made by the en banc panel. The Justice who is the subject of the motion shall not participate in the decision.

Comments:

Rule 13 is patterned on 28 U.S.C. § 455 (2012).

Rule 14. Mediation

- (a) This rule governs all mediation attempting to resolve actions filed with the Judiciary in which there are opposing parties. Agreements reached through mediation in non-compliance with this rule shall not be accepted or enforced by the Judiciary, which may dismiss the associated action with or without prejudice, without reaching the merits, and before completion of such mediation.
- (b) Commencing Mediation; Mediator Selection.
 - (1) At any time after a complaint is filed pursuant to Rule 6(a), and before a final judgment is issued, the parties may agree to enter mediation. All parties must agree to enter mediation and must inform the Magistrate Justice of their agreement to enter mediation as soon as practicable.
 - (2) The parties shall select a person to serve as the Mediator and all parties must agree on the selection. No current Justice shall be eligible to serve as the Mediator. Within 3 days of selecting the Mediator, the parties must file a joint motion with the Magistrate Justice seeking the Judiciary's approval of the proposed Mediator. The Mediator must be approved by the Magistrate Justice or the en banc panel before mediation may begin.
 - (3) When deciding a motion for approval of a proposed Mediator, the Judiciary shall consider the proposed Mediator's objectivity, their capacity to be fair, and other similar factors.
- (c) Mediation.
 - (1) After approval of the Mediator by the Judiciary, the parties must reach an agreement through mediation within 21 days, or sooner, if ordered by the Judiciary. Upon recommendation by the Mediator, the Judiciary may grant more time for mediation.

- (2) If an agreement has been reached, the Mediator shall submit any agreement to the Magistrate Justice after mediation has concluded. All agreements submitted to the Judiciary must be signed by the parties bound by the agreement pursuant to Rule 5(a).
- (3) If no agreement has been reached after mediation has concluded, the Mediator must submit a brief memorandum to the Magistrate Justice declaring that no agreement has been reached.
- (d) Any agreement submitted to the Judiciary shall only be reviewed by the Judiciary to ensure that the agreement is in compliance with the SBA Constitution and other SBA governing documents and to ensure that the mediation was fairly and properly executed.
- (e) After an agreement has been reviewed and accepted by the Judiciary under Subsection (d), the Magistrate Justice or en banc panel shall issue an order binding the parties to the agreement.

Comments:

This rule applies only to actions filed with the Judiciary. Before filing, the parties are free to engage in any mediation they think proper. Such pre-suit efforts comport with the recommendation in the comments to Rule 1 that “other collegial, and perhaps less formal, avenues of resolution should be exhausted before pursuing an action in the Judiciary.”

Subsection (a) does not preclude settlement efforts by the parties, so long as such settlement efforts involve the parties only.

Even though this rule requires the parties to agree on a proposed Mediator, the parties’ agreement may not be a sufficient safeguard of the proposed Mediator’s impartiality. Therefore, the choice of Mediator is subject to approval by the Judiciary to ensure that the mediation can be fairly and properly executed. The Mediator should be a disinterested third party so that they may guide the parties to resolve their dispute without the Mediator’s own interests influencing the outcome. If the Judiciary has a good faith basis to believe that a proposed Mediator may be unable to properly serve as a Mediator, the Judiciary should deny the motion for approval of a proposed Mediator.

Agreements need not dispose of the whole action. If the parties agree on certain issues but disagree on others, the issues on which they do not agree may continue before the Judiciary.

Rule 15. Hearings

- (a) On motion by a party or by the Judiciary on its own motion, the Judiciary may order the parties to appear for a hearing. The order shall be published to the SBA and contain:
 - (1) the time and place for the hearing;
 - (2) the issues for the hearing; and
 - (3) anything else the Judiciary deems relevant for the resolution of the issues for the hearing, including:
 - A. the format of the hearing; or
 - B. the contents and timeline for submission of briefs.
- (b) Requests by parties for postponement of the hearing must be made by motion filed within 3 days of the date of the order for the hearing. The request for postponement shall state the reasons the case cannot be presented at the time ordered.
- (c) If a party fails to appear at the hearing and the opposing party appears, the court may hear argument on behalf of the opposing party. If neither party appears, the case will be decided on the briefs, if any, unless the Judiciary otherwise orders. Non-appearance without reasonable notice may be subject to enforcement under Rule 12.
- (d) The party moving for the hearing or, if the hearing is ordered by the Judiciary, the plaintiff, is entitled to open and conclude the argument. The parties will not be permitted to read at length from briefs or records.
- (e) Hearings must be open to the members of the SBA, unless the Judiciary orders otherwise.
- (f) Hearings must be held in the Law School Moot Court Room, if practicable.

Comments:

Rule 15 is patterned on Rule 34 of the Hawai‘i Rules of Appellate Procedure.