

II. RULES OF DISCIPLINARY ENFORCEMENT FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The United States Court of Appeals for the District of Columbia Circuit, in furtherance of its power and responsibility under Rule 46 of the Federal Rules of Appellate Procedure, and its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or are admitted for the purpose of a particular proceeding (*pro hac vice*), promulgates the following Rules of Disciplinary Enforcement.

RULE I

Standards For Professional Conduct

(a) For misconduct as defined in paragraph (b) below, or for failure to comply with these Rules or any rule or order of this Court, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be reprimanded (publicly or privately), suspended from practice before this Court, disbarred, or subjected to such other disciplinary action as the circumstances may warrant.

(b) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate any Code of Professional Responsibility or other officially-adopted body of disciplinary rules applicable to the conduct of the attorney constitute misconduct. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the District of Columbia Court of Appeals, as amended from time to time by that Court, except as otherwise provided by specific Rule of this Court.

RULE II

Committee On Admissions And Grievances

(a) **The Committee.** The Court shall appoint a standing committee of six members of the bar of this Court to be known as the Committee on Admissions and Grievances. Each member shall be appointed to serve for a term of three years. A member is eligible for reappointment to one additional term. Each member may serve until a successor has been appointed. If a member holds over after the expiration of the term for which that member was appointed, the period of the member's holdover shall be treated as part of the term of his or her successor. The Court may revoke any appointment at any time. In the case of any vacancy, the successor appointed shall serve the unexpired term of his or her predecessor. The Court shall designate one of the members of the Committee to serve as Chair.

(b) **Confidentiality.** Except to the extent reasonably necessary to carry out its responsibilities and unless otherwise ordered by the Court, the Committee shall treat in confidence the referral to it of an application for admission or a grievance, its consideration of such a matter, and its report to the Court.

(c) Admissions.

(1) The Court may refer to the Committee an application for admission to practice before the Court whenever that application or other available information raises a question as to whether the applicant is qualified for admission under the standards set forth in Rule 46(a) of the Federal Rules of Appellate Procedure.

(2) Upon referral by the Court of any such application for admission, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. The Committee shall provide the applicant with a copy of its findings and recommendations if the Committee recommends denial of the application.

(3) In considering applications for admission referred to it by the Court, the Committee may solicit relevant information from the applicant or from others. In addition, the applicant may submit to the Committee any information that he or she deems to be relevant, and shall be entitled to be represented by counsel.

(4) The applicant shall have the burden of establishing that he or she has the character and qualifications necessary for admission and shall cooperate with the Court and the Committee in their consideration of the application.

(d) Grievances.

(1) The Court may refer to the Committee any accusation or suggestion of misconduct on the part of any member of the bar, or any failure to comply with these rules or any rule or order of this Court, for such investigation, hearing and report as the Court deems advisable. Any such matter shall be referred to in these Rules as a Grievance.

(2) Upon referral by the Court of any Grievance, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. In such matters, the Committee shall be guided by Rule I of these Rules.

(3) The Committee shall consider each Grievance referred to it and, if in its opinion further action is warranted, it shall serve a statement thereof on the member of the bar of this Court to whom the Grievance relates, by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. As respondent thereto, the member shall file an answer with the Chair of the Committee subscribed and sworn to under oath on or before thirty (30) days after the date of mailing. The Chair of the Committee, upon good cause shown, may extend the time to answer.

(4) If the Committee concludes after investigation and review that a hearing is unnecessary because (a) the facts are not in dispute, (b) sufficient evidence to support the Grievance is not present, (c) there is pending another proceeding against the respondent, the disposition of which in the judgment of the Committee should be awaited before further action is considered, or (d) a hearing is otherwise not warranted under the circumstances presented, the Committee shall report to the Court its recommendation for disposition of the matter.

(e) Hearings by the Committee.

(1) The Committee may sit as a fact-finding body and upon reasonable notice to the respondent may hold hearings on the Grievance.

(2) The respondent shall be entitled to be represented by counsel. The respondent may submit to the Committee all relevant information he or she deems appropriate and may request that the Committee consider the testimony of witnesses. The Committee may require that witnesses, including the respondent, testify under oath.

(3) The persons who may be present at the hearing are the members of the Committee, the respondent, the respondent's counsel, if any, and a witness providing testimony.

(4) At the respondent's request and expense, the hearing will be recorded.

(5) The Committee shall report its findings and recommendations to the Court. A copy of its findings and recommendations shall be forwarded simultaneously to the respondent.

(f) Duty of Respondent to Cooperate. It shall be the duty and responsibility of the respondent and his or her counsel to cooperate with the Committee. If a respondent fails to respond to the Committee, the Committee may recommend to the Court that discipline be imposed.

(g) Show Cause Order or Hearing by the Court.

(1) Upon receipt of the Committee's finding that misconduct occurred, the Court may issue an order requiring the respondent to show cause why discipline should not be imposed. The Court may invite the Committee or any member of the bar of this Court to reply to the respondent's answer to the show cause order or to pursue the Grievance against the respondent at a show cause hearing.

(2) If the Grievance is sustained, the Court may reprimand, suspend, disbar or otherwise discipline the respondent.

[As amended January 31, 2003.]

RULE III

Attorneys Convicted Of Crimes

(a) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or of the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as defined in paragraph (F) below, the Clerk shall enter an order immediately suspending that attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced

upon such conviction. The Clerk shall immediately serve a copy of such order upon the attorney by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(b) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall refer the matter to the Committee on Admissions and Grievances for a recommendation to the Court on the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that the recommendation for final discipline shall not be made until all appeals from the conviction are concluded.

(c) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to the Committee for a recommendation to the Court for appropriate action, including the institution of a disciplinary proceeding.

(d) In any disciplinary proceedings instituted against an attorney based upon a conviction, a certified copy of a judgment of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime.

(e) An attorney suspended under the provisions of this Rule shall be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement shall not terminate any disciplinary proceeding then pending against the attorney. In any such proceeding, evidence relating to the conduct which resulted in the conviction may be considered despite the reversal of the conviction.

(f) The term "serious crime" includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

RULE IV

Discipline Imposed By Other Courts Or Agencies

(a) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined for professional misconduct as defined in Rule I.B to another court, or by an agency of the United States as defined in 5 U.S.C. § 551, this Court may refer the matter to the Committee on Admissions and Grievances for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

- (1) a copy of the judgment or order from the other court or agency; and

(2) an order to show cause directing that the attorney inform this Court within the time specified of any claim by the attorney predicated upon the grounds set forth in paragraph (c) below that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court may be deferred until such stay expires.

(c) After consideration of the response called for by the order issued pursuant to paragraph (a) above or after expiration of the time specified in the order, this Court shall impose the identical discipline unless the attorney demonstrates, or this Court is satisfied that:

- (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) the imposition of the same discipline by this Court would result in grave injustice; or
- (4) the misconduct warrants substantially different discipline.

When this Court determines that any of these elements exists, it shall enter such other order as it deems appropriate.

(d) Except as provided in paragraph (c) above, a final adjudication in another court or in an agency of the United States that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(e) This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court or by an agency.

RULE V

Disbarment On Consent Or Resignation In Other Courts

Any attorney admitted to practice before this Court who is disbarred on consent or resigns from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, be disbarred.

RULE VI

Disbarment On Consent While Under Disciplinary Investigation Or Prosecution

(a) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practicing law before this Court, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subject to coercion or duress; the attorney is fully aware of the implications of so consenting;

(2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(3) the attorney acknowledges that the material facts so alleged are true or that he has no defense to the allegations; and

(4) the attorney so consents because the attorney knows that if a Grievance were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

(b) Upon receipt of the required affidavit, the Clerk shall enter an order disbaring the attorney.

(c) An order disbaring an attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

RULE VII

Reinstatement

(a) **After Disbarment or Suspension.** An attorney who is suspended for a definite period shall automatically be reinstated at the end of the period of suspension upon the filing with the Clerk of an affidavit of compliance with the provisions of the order. An attorney who is suspended indefinitely or disbarred may not resume practice until reinstated by order of this Court. A suspension may be directed to run concurrently with a suspension mandated by another court, in which event the attorney shall be eligible for reinstatement in this Court when that suspension expires, and will automatically be reinstated upon filing with the Clerk an affidavit indicating that the period of suspension has run and that the attorney has been reinstated by the other court.

(b) **Hearing on Application.** Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this Rule shall be filed with the Clerk. Upon receipt of the petition, the Clerk shall promptly refer the

petition to the Committee, which shall assign the matter for prompt hearing before the Committee. At the hearing the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she possesses the moral and professional qualifications required for admission to practice law before this Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice. The Committee shall make its recommendation to the Court, which may adopt its findings, schedule a hearing on the matter, or take such other action as it deems appropriate.

(c) Conditions of Reinstatement. If the petitioner is found by the Court to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the petitioner will be ordered reinstated. Reinstatement may be conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the misconduct which led to the suspension or disbarment. If the petitioner has been suspended or disbarred for five years or more, reinstatement may also be conditioned upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(d) Successive Petitions. No petition for reinstatement under this Rule may be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

RULE VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of, in the preparation for, or in connection with such proceedings.

RULE IX

Proceedings Where An Attorney Is Declared To Be Mentally Incompetent Or Is Alleged To Be Incapacitated

(a) Attorneys Declared Mentally Incompetent. Where an attorney who is a member of the bar of this Court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Court, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon the attorney, his guardian and the Director of the mental health hospital in such a manner as the Court may direct.

(b) Attorneys Alleged to be Incapacitated. Whenever it appears to the Court that a member of the bar

may be incapacitated by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate, and including reference of the matter to the Committee. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If the Court concludes that the attorney is incapacitated and should not be permitted to continue to practice law before the Court, it shall enter an order suspending the attorney for an indefinite period and until further order of the Court. The Court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if the respondent is without representation.

(c) Claim of Disability During Disciplinary Proceedings. If during the course of a disciplinary proceeding the respondent contends that he or she is suffering from a disability by reason of a mental or physical infirmity or illness or because of the use of drugs or intoxicants, and that this disability makes it impossible for the respondent to make an adequate defense, the Court shall enter an order immediately suspending the respondent from continuing to practice law before this Court until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (B) above.

(d) Application for Reinstatement. Any attorney suspended for incompetency, mental illness or because of the use of drugs or intoxicants may apply to the Court for reinstatement once a year or at such shorter intervals as the Court may direct in the order of suspension. The application shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he or she is fit to resume the practice of law. The Court may take or direct such action as it deems necessary or proper to make a determination of whether the attorney's disability has been remedied, including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. The Court may direct that the expenses of such an examination shall be paid by the attorney.

Where an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the court may dispense with further evidence and direct the reinstatement of the attorney upon such terms as are deemed proper and advisable.

(e) Waiver of Physician-Patient Privilege. The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability for the condition underlying the suspension. The attorney may be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since his suspension for the condition underlying the suspension, and may be required to furnish the Court with written consent for such psychiatrists, psychologists, physicians or hospitals to divulge such information or records as may be requested by the medical experts designated by the Court.

RULE X

Duty Of Attorneys To Notify The Court Of Convictions Or Discipline By Other Courts Or Agencies

If an attorney admitted to practice before this Court (a) is subjected to public discipline for professional misconduct as defined in Rule I.B; (b) is indicted or charged with a felony or serious crime as defined in Rule III.F; (c) is convicted of a felony or misdemeanor; (d) is disbarred on consent; or (e) resigns from the bar of any court while an investigation into an allegation of misconduct is pending, the attorney shall so notify the Clerk of this Court in writing within ten days of such discipline, indictment, charge, conviction, disbarment on consent or resignation.

RULE XI

Duties Of The Clerk

(a) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime or has been subjected to discipline by another court, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred or in which such discipline was imposed has forwarded a certificate of such conviction or discipline to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(b) Whenever it appears that any person disbarred, suspended, publicly reprimanded, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within ten days of that action transmit a certified copy of the order of disbarment, suspension, reprimand, or disbarment on consent to the disciplinary authority for each other jurisdiction or court, and the administrative tribunal, if any, affected by the misconduct.

(c) The Clerk of this Court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order of this Court imposing public discipline upon any attorney admitted to practice before this Court.

RULE XII

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of criminal Procedure, or to deprive the Court of its inherent disciplinary powers.

RULE XIII

Effective Date

These Rules shall become effective on July 1, 1984, and shall apply to proceedings brought thereafter and also shall apply to pending proceedings unless their application would not be feasible or would be unjust.