

RULES OF DISCIPLINARY ENFORCEMENT

FOR THE COURT OF APPEALS

FOR THE FIRST CIRCUIT

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RULES OF DISCIPLINARY ENFORCEMENT
FOR THE COURT OF APPEALS FOR THE FIRST CIRCUIT

The Court of Appeals for the First Circuit, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (pro hac vice), promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

RULE I

Attorneys Convicted of Crimes.

A. Upon 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 the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Chief Judge shall refer the matter to a disciplinary panel. The disciplinary panel shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such

conviction. A copy of such order shall immediately be served by the Clerk of this Court upon the attorney personally or by certified or registered mail. Upon motion and good cause shown, the disciplinary panel may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and 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 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."

C. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the disciplinary panel shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also initiate disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that no final disposition will be rendered until all direct appeals from the conviction are concluded. The certified copy of the judgment of conviction shall be conclusive evidence of the commission of that crime by the attorney in question.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for any crime not constituting a "serious crime," the Chief Judge may refer the matter to a disciplinary panel for disciplinary proceedings or may exercise discretion to make no reference with respect to convictions for minor offenses for which

discipline would not be appropriate.

E. Any attorney suspended under the first paragraph of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been vacated or reversed on direct appeal, but the reinstatement shall not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the disciplinary panel on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

RULE II

Discipline Imposed by Other Courts.

A. Any attorney admitted to practice before this Court shall, upon being subject to public discipline by any other Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

B. Upon filing of a certified copy of a judgment, order, or other official document demonstrating that an attorney admitted to practice before this Court has been publicly disciplined by another court, the Chief Judge shall refer the matter to a disciplinary panel and the Clerk of this Court shall serve on the attorney, personally or by certified or registered mail, a notice containing:

1. a copy of the judgment or order from the other court; and

2. an order to show cause directing that the attorney inform this Court within 30 days after service of the order of any claim predicated upon the grounds set forth in paragraph (C) of this Rule that the imposition of substantially similar discipline on the attorney would be unwarranted and the reasons therefor. The order shall also state that a hearing on such a claim must be requested within 30 days after service of the order.

C. Upon the expiration of the time to show cause, if no response has been filed, then the disciplinary panel shall enter an order imposing substantially similar discipline. If a timely response is filed, the disciplinary panel shall, after any applicable hearing or other proceedings, impose substantially the same discipline imposed by the other court unless the attorney demonstrates, and the disciplinary panel is persuaded:

1. that the procedure used by the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
2. that 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. that the imposition of substantially similar discipline by this Court would result in grave injustice; or

4. that the misconduct established is deemed by this Court to warrant different discipline.

Where the disciplinary panel determines that any of these elements exist, it shall enter such other order as it deems appropriate.

D. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of any disciplinary proceeding in this Court.

RULE III

Disbarment on Consent or Resignation in Other Courts.

A. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign 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, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning 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, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

RULE IV

Standards for Professional Conduct.

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded 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 the Code of Professional Responsibility, either of the state, territory, commonwealth or possession of the United States in which the attorney maintains his principal office; or of the state, territory, commonwealth or possession of the United States in which the attorney is acting at the time of the misconduct; or of the state in which the circuit maintains its Clerk's Office, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of the attorney-client relationship. The Code of Professional Responsibility means that code adopted by the highest court of the state, territory, commonwealth or possession of the United States, as amended from time to time by that court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state, territory, commonwealth or possession of the United

States. Failure to comply with the Federal Rules of Appellate Procedure, the Local Rules of this Court, or the orders of this Court may also constitute misconduct and be grounds for discipline.

RULE V

Disciplinary Proceedings.

A. When misconduct or allegations of misconduct on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge or officer of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the Judge or officer shall refer the matter to the Chief Judge for initial review. If the Chief Judge determines that misconduct is alleged which, if substantiated, would warrant discipline by this Court, the Chief Judge shall refer the matter to a disciplinary panel; if not, the Chief Judge may dismiss the matter. A disciplinary panel shall consist of three judges of this Court, whether active or senior, appointed by the Chief Judge. The Chief Judge may serve as a member of the disciplinary panel. In the absence of the Chief Judge, the active judge most senior in service on the Court serves as chair. If no active judge is on the disciplinary panel, the Chief Judge shall appoint the chair. The disciplinary panel may at any time appoint counsel to investigate or to prosecute any disciplinary matter. In a matter in which the Chief Judge is recused, references to "Chief Judge" shall mean the senior active judge who is not recused.

B. If the disciplinary panel determines that cause may exist for disciplinary action, the disciplinary panel will direct the Clerk of the Court to issue an order to the attorney in question to show cause

why (1) specified discipline should not be imposed or (2) discipline to be determined later should not be imposed. The order shall be served on the attorney personally or by certified or registered mail, shall notify the attorney of the alleged conduct and the reason the conduct may justify disciplinary action, and shall direct that 5 copies of a response, including any supporting evidence or request for a hearing, be filed within 30 days of service of the order or such other time as the order may specify. The Clerk shall also append a copy of these rules to the order. In any response to the order, the attorney must also (a) include an affidavit listing the other bars to which the attorney is admitted, (b) note which if any of the facts alleged are controverted, and (c) specify the basis on which any controverted facts are disputed. If the disciplinary panel determines on initial investigation and review that cause does not exist for disciplinary action, the disciplinary panel may dismiss the matter.

C. If the attorney fails to timely respond to an order to show cause, or if the attorney's timely response to the order to show cause does not specifically request to be heard in person, the disciplinary panel may direct entry of an order imposing discipline or take any other appropriate action. If the attorney specifically requests to be heard in person, either in defense or in mitigation, the disciplinary panel shall set the matter for such hearing as is appropriate under the circumstances. The disciplinary panel may itself order a hearing whether or not one is requested. Following such a hearing and the receipt of any findings or recommendation that may be required and any further submissions that the disciplinary panel may invite, the disciplinary panel may direct entry of an order imposing discipline or take any other appropriate action.

D. If a hearing is ordered, the disciplinary panel may conduct the hearing itself or designate a special master (including but not limited to a district judge or magistrate judge serving within the circuit) for purposes of conducting any hearing. The disciplinary panel (or the special master, subject to the instruction of the disciplinary panel) may in its discretion adopt appropriate procedural and evidentiary rules for any such hearing. At the conclusion of a hearing held before a special master, the special master shall promptly make a report of findings and--if directed by the disciplinary panel--recommendations to the disciplinary panel. A copy of the report and any recommendations shall be made available to the attorney under investigation. The disciplinary panel may reject or adopt the findings and/or recommendations of the special master in whole or part.

E. Any attorney may file a petition for rehearing by the disciplinary panel or a combined petition for rehearing by the disciplinary panel and suggestion for rehearing en banc by the active judges of the Court. Similarly, the attorney may seek a stay of any disciplinary order entered by the disciplinary panel, the stay to be sought from the disciplinary panel in the first instance and thereafter if desired by the attorney from the Court en banc. The procedures for any such petition will be in accordance with the Federal Rules of Appellate Procedure and the Local Rules of this Court. If en banc review is granted, any senior judge shall be eligible to be a member of the en banc Court, at that judge's election, in the circumstances specified in 28 U.S.C. § 46(c).

F. At any time, the disciplinary panel may in its discretion refer a disciplinary matter pending before it to an appropriate state bar association or state disciplinary board. In such a case, the

disciplinary panel is free to dismiss the matter or hold its own proceedings in abeyance pending the completion of the state disciplinary proceedings. Nothing in these rules prevents any disciplinary panel, Judge, or officer of this Court from bringing disciplinary matters to the attention of the appropriate state disciplinary authorities.

G. The provisions of this Rule shall govern disciplinary proceedings addressed to misconduct as defined in Rule IV, and shall also apply to any proceedings under Rule I (Attorneys Convicted of Crimes), Rule II (Discipline Imposed by Other Courts), and Rule VII (Reinstatement) to the extent not inconsistent with the express provisions of those rules.

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 or misconduct may consent to disbarment, 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 subjected 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 allegation 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; and
4. the attorney so consents because the attorney knows that if charges were predicted 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, this Court shall enter an order disbarring the attorney.

C. The order disbarring the 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. Unless the suspension order provides otherwise, an attorney who is suspended shall be automatically reinstated at the end of the period of suspension upon filing with this Court 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. Suspensions may be directed to run concurrently with a suspension mandated by other state or federal courts, in which event the attorney shall be eligible for reinstatement in this Court when said suspension expires and will be automatically reinstated upon filing with this Court an affidavit indicating that the period of suspension has run.

B. Petitions for reinstatement by an attorney disbarred or indefinitely suspended under these rules shall be filed with the Clerk of this Court and contain a concise statement of the circumstances of the disciplinary proceeding, the discipline imposed by this Court, and the grounds that justify reinstatement of the attorney in question. In accordance with Rule V, the Chief Judge shall conduct an initial review, and, as warranted, dismiss the petition or refer it to a disciplinary panel. After whatever investigation it sees fit, the disciplinary panel may set the matter for whatever hearing it deems appropriate under the circumstances.

C. The petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice law before this Court and that the resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive to the public interest.

D. If the disciplinary panel finds that the petitioner is 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 disciplinary panel shall enter an order of reinstatement, provided that the

disciplinary panel may make reinstatement 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 petitioner whose conduct led to the suspension or disbarment, and the disciplinary panel may impose such other reasonable conditions as it deems meet. Further, if the petitioner has been suspended or disbarred for five or more years, the disciplinary panel may in its discretion condition reinstatement upon the furnishing of proof of competency and learning in the law, which proof may include successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

E. No petition for reinstatement under this Rule shall be filed within one year following an adverse final judgment upon a petition for reinstatement filed by or on behalf of the same attorney.

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 or in the preparation for such proceeding.

RULE IX

Appointment of Counsel.

Whenever counsel is appointed pursuant to these rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, a member of the Bar of this Court shall be appointed. Counsel, once appointed, shall not resign without the consent of the disciplinary panel.

RULE X

Duties and Powers of the Clerk.

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

B. The Clerk of this Court is empowered, upon being informed that any attorney admitted to practice before this Court has been convicted of any crime or has been subjected to discipline by another court, to obtain and file with this Court a certified or exemplified copy of such conviction or disciplinary judgment or order.

C. Whenever it appears that any person who is disbarred or suspended or censured 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 is empowered, to the extent he deems it desirable and necessary to supplement the action taken under clause A, above, to so advise the disciplinary authority in such other jurisdiction or such other court.

RULE XI

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.

RULE XII

Effective Date

These Rules shall become effective on August 1, 2002, provided that any formal disciplinary proceedings then pending before the Court shall (unless the Court otherwise directs) be concluded under the Rules existing prior to that date.