

Rules of Disciplinary Enforcement

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The United States District Court for the Eastern District of Missouri, 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 previous local Rules or administrative orders pertaining to disciplinary enforcement.

Rule I -- 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 this 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 court may 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 commenced upon such filing. A copy of an order of suspension shall be served immediately upon the attorney. Upon good cause shown, the court may set aside such order when it is in the interest of justice to do so. "Conviction" includes suspended imposition of sentence and comparable dispositions.

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, dishonesty misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall in addition to suspending that attorney in accordance with the provisions of this Rule, refer the matter to counsel appointed pursuant to Rule X for the commencement of a disciplinary proceeding before the court, 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 a disciplinary proceeding so instituted will not be final until all appeals from the conviction are concluded.

E. 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 appointed counsel for action counsel may deem warranted, including the institution of a disciplinary proceeding before the court.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying criminal conviction has been reversed on appeal, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

Rule II -- Discipline Imposed By Other Courts.

A. Any attorney admitted to practice before this court shall, upon being disciplined by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this court of such action. The court may also initiate an investigation upon information from any other reliable source which indicates an attorney has been disciplined in another jurisdiction.

B. After obtaining a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

1. a copy of the judgment or order obtained from the other court; and
2. an order to show cause directing that the attorney inform this court within 30 days after the service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by this court would be unwarranted and the reasons therefor.

C. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

D. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this court may impose the identical discipline unless the respondent-attorney demonstrates, and this court finds:

1. that the procedure in the other jurisdiction 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 of the other jurisdiction on that subject; or
3. that the imposition of the same discipline by this court would result in grave injustice; or
4. that the misconduct established is deemed by this court to warrant substantially different discipline.

Where this court determines that any of these elements exist, it may enter such other order as it deems appropriate.

E. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the acts of the attorney constituting the misconduct for purposes of a disciplinary proceeding in the court of the United States.

F. This court may at any stage appoint counsel pursuant to Rule X to prosecute a disciplinary proceeding based on misconduct that has resulted in discipline of an attorney by another jurisdiction.

**Rule III -- Disbarment on Consent or Resignation in Other
Courts.**

A. 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 by this court.

B. Upon such filing, the court shall order that the attorney's name be stricken from the roll of attorneys admitted to practice before this court. Failure by an attorney to file another court's order accepting disbarment on consent or resignation as required by this rule may result in additional sanctions against an attorney.

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. Conduct of an attorney admitted to practice before this court, which violates the Code of Professional Responsibility adopted by this court may be grounds for discipline, whether or not the conduct occurred in this jurisdiction or in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of Missouri as amended from time to time by that court, except as otherwise provided by specific Rule of this court.

Rule V -- Disciplinary Proceedings.

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of an attorney admitted to practice before this court shall come to the attention of a Judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge may refer the matter to counsel appointed under Rule X for investigation and prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney for any valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the basis for the decision.

C. To initiate formal disciplinary proceedings under these Rules, counsel shall seek an order of this court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. Except as otherwise provided in these Rules, the proceedings and all filings in this court in every disciplinary case shall be matters of public record, unless a judge orders otherwise.

D. Upon the respondent-attorney's answer to the order to show cause, if a material issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this court may set the matter for hearing before one or more judges of this court. If the disciplinary proceeding is predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three other judges of

this court appointed by the Chief Judge, or, if there are less than three judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this circuit, or his designee.

**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, but only by filing 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 pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline, the nature of which the attorney shall 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 predicated upon the matters under investigation, or if the proceeding were prosecuted, the allegations could not successfully be defended.

B. Upon receipt of the required affidavit, this court may 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 the court.

Rule VII -- Reinstatement.

A. **After Disbarment or Suspension.** An attorney suspended from practice in this court for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.

B. **Time of Applications Following Disbarment.** An attorney who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. When disbarment has resulted from conviction of any felony, an attorney may not apply for reinstatement until after the date of successful completion of any sentence including a period of probation or supervised release, or until the expiration of five (5) years from the effective date of the disbarment, whichever date is later.

C. **Hearing on Application.** Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this court. Upon receipt of the petition, the Chief Judge may refer the petition to counsel appointed under Rule X and may assign the matter for hearing before one or more judges of this court, provided however that if the disciplinary proceeding was predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the Chief Judge, or, if there are less than three judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this circuit. The judge or judges

assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his 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 of the public interest.

D. **Duty of Counsel.** In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the petitioner-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel appointed under Rule X.

E. **Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount set by the court to cover anticipated costs of the reinstatement proceeding, including fees of counsel appointed by the court. Disbursements from the deposit shall be made as ordered by the court at the conclusion of the proceedings

F. **Conditions of Reinstatement.** If the petitioner is found 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 judgment shall reinstate him, provided that the judgment 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 found to have been harmed by petitioner's conduct which led to the suspension or disbarment. If the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, 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 that the attorney has successfully completed an examination for admission to practice

subsequent to the date of suspension or disbarment.

G. **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment 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, or in the preparation for such proceeding, no matter where the attorney's conduct may occur.

Rule IX -- Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the roll of attorneys of this court, or on pleadings filed by the attorney in a pending case. Service of any other papers or notices required by these Rules shall be made by mail to the respondent-attorney at the address shown on the roll of attorneys or the address indicated in the most recent pleading or other document filed by the attorney in a pending case.

Rule X -- Appointment of Counsel.

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct, or to prosecute disciplinary proceedings, or in conjunction with a reinstatement petition filed by a disciplined attorney, this court shall appoint as counsel the disciplinary agency of the Supreme Court of Missouri, unless the disciplinary agency of another court has jurisdiction. If the disciplinary agency declines appointment, or such appointment is clearly inappropriate, this court may appoint as counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules. The respondent-attorney may move to disqualify an attorney so appointed upon a showing of good cause. Counsel, once appointed, may not withdraw unless permission to do so is given by this court.

Rule XI -- Duties of the Clerk.

A. Upon being notified that an attorney admitted to practice before this court has been convicted of any crime, the Clerk of this court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the Clerk of this court shall promptly obtain a certificate and file it with this court.

B. Upon being notified that an attorney admitted to practice before this court has been subjected to discipline by another court, the Clerk of this court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the Clerk shall promptly obtain a certified copy of the disciplinary judgment or order and file it with this court.

C. Whenever any attorney who is convicted of any crime, disbarred, suspended, 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 shall transmit to the disciplinary authority in such other jurisdictions, a certificate of the conviction or a certified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the attorney.

D. 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.

Rule XII -- Jurisdiction.

Nothing contained in these Rules shall be construed to deny to any judge of this court such inherent powers as are necessary to maintain control over judicial proceedings including initiation of civil or criminal contempt proceedings, or imposition of sanctions pursuant to any applicable authority, against an attorney appearing in an action in this court.

Rule XIII -- Effective Date.

These Rules shall become effective on January 1, 1996, provided that any formal disciplinary proceeding then pending before this court shall be concluded under the procedure existing prior to the effective date of these Rules.