

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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ORDER AMENDING THE RULES OF  
DISCIPLINARY ENFORCEMENT

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PRESENT: McKEE, Chief Judge, and SLOVITER, SCIRICA, RENDELL,  
BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES,  
JORDAN, HARDIMAN, GREENAWAY, and VANASKIE, Circuit  
Judges

The Court having considered amendments to Rules 4, 7, and 10 of the Rules of Attorney Disciplinary Enforcement and having submitted them to the Lawyers Advisory Committee of the Court pursuant to 28 U.S.C. § 2077(b) and having given public notice of the proposed adoption of the amendments with an opportunity to the public to comment on the amendments pursuant to 28 U.S.C. § 2071(b) and the Court having considered the comments of the Lawyers Advisory Committee and the public with respect to the amendments;

IT IS HEREBY ORDERED that Rules 4, 7, and 10 of the Rules of Attorney Disciplinary Enforcement are amended to the end that they will read in the form attached hereto; and

IT IS FURTHER ORDERED that the amended Rules will be effective June 7, 2010, and that the adoption of the amended Rules shall not in any way affect any prior proceeding, order or imposition of discipline under the Rules prior to the amendment of the rules and that disciplinary proceedings pending under the Rules on June 7, 2010, may be continued under the Rules in their form prior to the amendments. Disciplinary

proceedings instituted on or after June 7, 2010, shall be subject to the amended Rules.

Per Curiam,

/s/ Theodore A. McKee

Chief Judge

DATED: June 7, 2010

A true copy:

/s/ Marcia M. Waldron

Clerk

#### RULE 4. DISCIPLINE IMPOSED BY A PANEL OF THE COURT AND BY THE STANDING COMMITTEE ON ATTORNEY DISCIPLINE

1. A panel of the Court may impose any sanction other than suspension or disbarment in accordance with Rule 5.
2. Any matter of attorney discipline in which suspension or disbarment may be considered as an appropriate sanction is referred to the Court's Standing Committee or, in the case of an uncontested matter, to its chairperson. The Standing Committee consists of three circuit judges, at least two of whom shall be active judges, who are appointed by the Chief Judge for three-year, staggered terms. If at the end of a three-year staggered term there has been no reappointment of a member of the Standing Committee or no appointment of a successor, the term of the member shall continue until the Chief Judge reappoints the member or appoints a successor. If a reappointment or appointment is made after the prior three-year term would have expired without the extension that this rule provides, the period of the term of the reappointed member or the successor shall be for three years commencing at the end of the prior three-year term without the extension of the member being reappointed or being replaced on the Standing Committee, as the case may be. The Chief Judge designates one of the three to serve as chairperson. If any member of the Standing Committee is unable to hear a particular matter, the Chief Judge designates another circuit judge as a member of the committee to hear that matter provided, however, that not less than two active judges shall hear a particular matter. After such a reference, any discipline may be imposed in accordance with Rules 6 through 10.

#### RULE 7. INITIATION OF DISCIPLINARY PROCEEDINGS

1. When a member of the bar of this Court is suspended or disbarred by another court, or has resigned from the bar of another court during the pendency of a misconduct investigation, the Clerk of this Court issues an order for the attorney to show cause why this Court should not impose upon the attorney an order disbaring or suspending the attorney, as the case may be, subject to terms or conditions comparable to those set forth by the other court. This provision requiring the Clerk to issue an order to show cause, however, shall not apply in circumstances in which this Court already has initiated disciplinary proceedings against the attorney for the same conduct underlying the suspension, disbarment, or resignation in the other court either as an original disciplinary proceeding in this Court or as a reciprocal proceeding to a proceeding in another court. In such a case, the Clerk of this Court rather than issuing an order to show cause shall refer the matter to the Standing Committee for it to take such action, if any, as it deems appropriate, including the initiation of another disciplinary proceeding in this Court by a

direction to the Clerk to issue an order to the attorney to show cause why this Court should not impose discipline on the attorney. The Clerk shall serve an order to show cause issued pursuant to this rule by certified mail to the attorney's last known address and shall include a copy of the order of the other court on which the order to show cause is based. In the event an attorney does not accept delivery of a certified mailing, the Clerk may re-send the order via first class mail. The mailing of an order to the attorney's last known address is deemed proper service. An order to show cause issued pursuant to this Rule shall require the attorney to respond within thirty (30) days. The Clerk, however, may shorten the response period if the Clerk deems it advisable to do so by reason of the urgency of the disposition of the matter involving the attorney or if the Standing Committee or its Chairperson directs the Clerk to do so. An order to show cause issued pursuant to this Rule shall provide that the attorney, upon receipt of the order to show cause, serve forthwith by mail or otherwise a copy of the order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. If the attorney fails to timely respond to the order to show cause, then the matter shall be deemed an uncontested proceeding pursuant to Rule 9, and the Clerk shall notify the Chairperson of the Standing Committee, who shall enter an order imposing the same discipline as imposed by the court that issued the order on which the order to show cause has been based. If the attorney responds to an order to show cause pursuant to the Rule and contests the imposition of the same discipline in this Court as imposed in the other court, the response shall be supported by an affidavit of the attorney of good cause as to why the discipline imposed in the other court should not be imposed in this Court. An attorney responding to an order to show cause shall include a certification that the attorney has complied with the requirement that he or she serve a copy of the order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. This certification shall include a list of all the litigants so notified and their addresses. The response may include such other materials as the attorney deems appropriate. After a response is filed, the matter is treated as a contested proceeding under Rule 10 unless the response does not contest the entry of an order in this Court imposing the same discipline as imposed in the other court, in which event the matter is treated as an uncontested proceeding under Rule 9.

2. Upon receipt of a certified copy of a judgment or other court record demonstrating that a member of the bar of this Court has been convicted of a serious crime, unless a proceeding has been instituted as provided in Rule 7.1, the Clerk issues an order to show cause why the Court should not impose upon the attorney the presumed discipline described in Rule 3. The notice is sent by certified mail, orders that any response be filed within thirty (30) days, and directs that the attorney complete and return to the Clerk

within that time a declaration of the names and addresses of the other bars to which he or she is admitted using the form supplied by the Clerk, whether or not the attorney chooses otherwise to respond to the notice. In the event an attorney does not accept delivery of a certified mailing, the Clerk may re-send the order via first class mail. The mailing of an order to the attorney's last known address is deemed proper service. The Clerk also sends a copy of the judgment, order, or other court record and these Rules.

3. When the Standing Committee determines that cause may exist for the suspension or disbarment of an attorney pursuant to Rule 2.3 or Rule 2.4, one of its members or the Clerk issues an order to show cause why such discipline should not be imposed by this Court. This order is sent by certified mail, sets forth the alleged conduct that is the subject of this proceeding and the reason this conduct may justify such discipline, directs that a response be filed within thirty (30) days, requires the submission of a declaration as described in paragraph (2) of this Rule, and is accompanied by a copy of these Rules. In the event an attorney does not accept delivery of a certified mailing, the Clerk may re-send the order via first class mail. The mailing of an order to the attorney's last known address is deemed proper service.

4. Once an order to show cause has been issued pursuant to paragraph (2) or (3) of this Rule, the Standing Committee may decline to accept a resignation from the lawyer and continue the proceeding in accordance with these Rules.

#### RULE 10. CONTESTED PROCEEDINGS

1. If an attorney's response to an order to show cause issued under Rule 7.1 contests the entry of an order in this Court imposing the same discipline as imposed in the other court and specifically requests to be heard in person in defense or mitigation, or if an attorney's response to an order to show cause issued pursuant to Rule 7.2 or Rule 7.3 specifically requests to be heard in person in defense or mitigation, the Standing Committee sets the matter for a prompt hearing before it. The attorney is given at least thirty (30) days notice of the time, date and place of the hearing. Prior to the hearing, the attorney is afforded the opportunity to inspect all documents which the Standing Committee has obtained in its investigation. At the hearing, the Standing Committee enters upon the record the order to show cause, the response, and such evidence as it considers relevant to the issues posed for resolution and the attorney is afforded the opportunity to cross-examine any witnesses called by the Standing Committee and to introduce evidence in defense or mitigation. The hearing is transcribed.

2. If an attorney's response to an order to show cause does not specifically request to be heard in person, the Standing Committee prepares a record consisting of the order to

show cause, the response, the relevant documents, and a summary of the other relevant information obtained by the Standing Committee in its investigation. If the record so prepared contains any information not reflected in the order to show cause and the response, the attorney is afforded the opportunity to inspect the record and to file an additional response within ten (10) days of the date of the notice of his or her opportunity to inspect.

3. Based solely on the record created pursuant to paragraphs (1) or (2) of this Rule, the Standing Committee prepares a Report and Recommendation setting forth its findings of fact and recommending whether, and if so what, discipline should be imposed. A copy of the Report and Recommendation is promptly sent to the attorney who is afforded the opportunity to file exceptions within twenty (20) days of the date thereof. The Report and Recommendation, any exceptions thereto, and the record are then submitted to the active members of the Court who make a final decision by a majority vote based solely on those documents.

4. A certified copy of a judgment of conviction for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. If the conviction is subsequently reversed or vacated, any discipline imposed on the basis thereof will be promptly reviewed by the Standing Committee and the Court upon submission of a certified copy of the relevant mandate.

5. A certified copy of a judgment or order demonstrating that a member of the bar of this Court has been disbarred or suspended by another court is accepted as establishing that the conduct for which the discipline was imposed in fact occurred and that the discipline imposed was appropriate unless it appears:

- (a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (b) 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
- (c) that the imposition of the same discipline by this Court would result in grave injustice; or
- (d) that the misconduct established is deemed by this Court to warrant substantially different discipline.

6. A member of the bar of this Court to whom an order to show cause is issued pursuant to Rule 7 has the right to have counsel at all stages of the proceeding.

7. The Standing Committee may compel by subpoena the attendance of witnesses, including the attorney whose conduct is the subject of the proceeding, and the production of pertinent documents. If a hearing is held, the Standing Committee will compel by subpoena the attendance of any witness and the production of any document reasonably designated by the attorney as relevant to his or her defense.