

United States Court of Appeals
for the Third Circuit

RULES OF ATTORNEY DISCIPLINARY ENFORCEMENT

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**RULES OF ATTORNEY DISCIPLINARY
ENFORCEMENT**

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

RULE 1. DEFINITIONS

1. "The Court" means the United States Court of Appeals for the Third Circuit.
2. "Another Court" means any court of the United States, the District of Columbia, or any state, territory or commonwealth of the United States.
3. "Serious Crime" means any felony or any lesser crime involving 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 such a lesser crime.
4. "Standing Committee" means this Court's Standing Committee on Attorney Discipline.

RULE 2. GROUNDS FOR DISCIPLINE

A member of the bar of this Court may be disciplined by this Court as a result of

1. conviction in another court of a serious crime;
2. disbarment or suspension by another court, whether or not with the attorney's consent, or the resignation from the bar of another court while an investigation into allegations of misconduct is pending;
3. conduct with respect to this Court which violates the Federal Rules of Appellate Procedure, the Rules or Internal Operating Procedures of this Court, or orders or other instructions of the Court; or
4. any other conduct unbecoming a member of the bar of this Court.

RULE 3. DISCIPLINARY SANCTIONS; ASSESSMENTS UNDER 28 U.S.C. §1927 AND F.R.App.P. 38

1. Discipline may consist of disbarment, suspension from practice before this Court, monetary sanction, removal from the roster of attorneys eligible for appointment as Court-appointed counsel, reprimand, or any other sanction that the Court or a panel thereof may deem appropriate. Disbarment is the presumed discipline for conviction of a serious crime. Disbarment is also the presumed discipline when an attorney has resigned from the bar of another court while an investigation into allegations of misconduct is pending. The identical discipline imposed by another court is presumed appropriate for discipline imposed as a result of that other court's suspension or disbarment of an attorney. A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client directly or indirectly. Notice to that effect is sent to the client by the Clerk whenever a monetary sanction is imposed.
2. Assessments of damages, costs, expenses or attorneys' fees under 28 U.S.C. §1927 or Federal Rule of Appellate Procedure 38 are not disciplinary sanctions within the meaning of these Rules and proceedings with respect thereto are not governed by these Rules.

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 5. PANEL PROCEDURE

Before imposing any disciplinary sanction, a panel notifies the attorney of the alleged conduct which may justify the imposition of discipline and affords the attorney an opportunity to be heard, in writing or in person at the option of the panel. If an attorney who has been afforded an opportunity to be heard in writing files a timely written application to appear before the panel in person, the panel schedules a hearing for that purpose. An application is timely if filed within eight (8) days of the date of the notice affording the opportunity to be heard in writing.

RULE 6. NOTIFICATIONS OF CONVICTION OR DISCIPLINE IMPOSED BY ANOTHER COURT

1. A member of the bar of this Court shall notify the Clerk within ten (10) days if he or she is convicted of a serious crime, if he or she is disbarred or suspended by another court, or if he or she resigns or is disbarred by consent from the bar of another court while an investigation into allegations of misconduct is pending.
2. The Clerk refers to the Standing Committee all information received by him or her concerning disbarments, suspensions, resignations during the pendency of misconduct investigations, and other conduct sufficient to cast doubt upon the continuing qualification of a member of the bar of this Court to practice before it.

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 8. SUSPENSION DURING PENDENCY OF A DISCIPLINARY PROCEEDING

1. Upon receiving a certified copy of a judgment of conviction of a member of the bar of this Court of a serious crime or upon receiving a notice from such an attorney that he or she has been convicted of such a crime, the Standing Committee may summarily issue an order suspending the attorney's privilege to practice before this Court pending the determination of appropriate discipline.
2. The Court or the Standing Committee, after notice and an opportunity to be heard, may suspend an attorney's privilege to practice before this Court during the

course of any disciplinary investigation and proceeding.

RULE 9. UNCONTESTED PROCEEDINGS

1. If an attorney fails to timely respond to an order to show cause in a case in which a presumptive discipline is specified in Rule 3 or if an attorney consents to imposition of the presumptive discipline, the Clerk notifies the Chairperson of the Standing Committee who enters an order imposing the presumptive discipline.
2. Any member of the bar of this Court who is the subject of an investigation by this Court into allegations of misconduct may consent to disbarment by filing with the Clerk an affidavit stating that the attorney desires to consent to disbarment and that:
 - (a) 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;
 - (b) the attorney is aware that there is a presently pending proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth; and
 - (c) the attorney acknowledges that he or she cannot successfully defend in the pending proceeding.

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.

RULE 11. NOTIFICATION OF DISCIPLINE IMPOSED

Unless directed otherwise, within ten (10) days of the imposition of discipline by this Court or a panel thereof upon a member of its bar, the Clerk notifies the attorney and all other courts before whom the attorney is admitted to practice and the National Disciplinary Data Bank, enclosing a certified copy of the order imposing discipline.

RULE 12. REINSTATEMENT

1. An attorney suspended for six (6) months or less is automatically reinstated at the end of the period of suspension upon the filing of an affidavit of compliance with the provisions of the order. An attorney suspended for more than six (6) months or disbarred may not resume practice until reinstated by order of the Court.
2. An attorney who has been disbarred may not apply for reinstatement until the expiration of five (5) years from the effective date of the disbarment.
3. No petition for reinstatement may be filed within one (1) year following an adverse determination on the attorney's petition for reinstatement.
4. The Clerk refers petitions for reinstatement to the Standing Committee. If the Standing Committee is satisfied that reinstatement is appropriate based upon the findings of another court or otherwise, it recommends to the Court that the petition be granted. If the Standing Committee is not so satisfied or if the matter is returned to it by the Court, the Standing Committee schedules a prompt hearing on the petition. At the hearing, the petitioner has 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 before this Court and that his or her 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. The Standing Committee submits its Report and Recommendation, together with any exception thereto filed within twenty (20) days of the issuance thereof, to all active members of the Court who act

upon the petition by a majority vote.

5. A reinstatement may be on such terms and conditions as the Court directs. If the attorney has been disbarred or suspended for five (5) years or more, this 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.

RULE 13. APPOINTMENT OF COUNSEL

The Standing Committee may at any time appoint counsel to investigate or prosecute a disciplinary matter or to represent an indigent attorney instructed to show cause. The Court prefers to appoint as prosecuting counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. However, if the state disciplinary agency declines appointment, or the Court deems other counsel appropriate, it may appoint any other member of the bar as prosecuting counsel. Counsel appointed either for prosecution or defense will be compensated for his or her services as the Standing Committee shall direct.

RULE 14. ACCESS TO DISCIPLINARY INFORMATION

1. A disciplinary proceeding before a panel conducted pursuant to Rule 4.1 and Rule 5 is public except:
 - (a) for deliberations of the panel;
 - (b) to the extent otherwise ordered by the panel.
2. Prior to the imposition of a suspension or disbarment or the issuance of a Report and Recommendation of the Standing Committee recommending a sanction other than a private reprimand, whichever shall first occur, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by the Court or the Standing Committee if:
 - (a) the respondent has waived confidentiality;
 - (b) the proceeding is based upon allegations which include the conviction of a crime;
 - (c) the proceeding is based upon allegations that have become generally known to the public; or
 - (d) there is a need to notify another person or organization in order to

protect the public, the administration of justice, or the legal profession.

3. Upon the imposition of a suspension or disbarment, the issuance of a Report and Recommendation of the Standing Committee recommending a sanction other than a private reprimand, or the filing of a petition for reinstatement, the proceeding is public, except for:
 - (a) deliberations of the Standing Committee or the Court;
 - (b) information with respect to which a protective order has been entered under paragraph (4) of this Rule.

When a proceeding becomes public under this paragraph, any order to show cause why discipline should not be imposed, any record created by the Standing Committee pursuant to Rule 10.1 or 10.2, and any Report and Recommendation of the Standing Committee are docketed in the Clerk's office and are accessible to the public in the same manner as other records of the Court. Other documents previously created by or in the possession of the Standing Committee or prosecuting counsel do not become public records and are not accessible to the public.

4. In order to protect the interests of a complainant, witness, third party, or the attorney, a panel or the Standing Committee may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order.
5. A request for nonpublic information other than that authorized for disclosure under paragraph (2) of this Rule shall be denied unless the request is from one of the following agencies:
 - (a) an agency authorized to investigate qualifications for admission to practice;
 - (b) an agency authorized to investigate qualifications for government employment, including a committee or similar group authorized to investigate qualifications for judicial position; or
 - (c) a lawyer disciplinary enforcement agency

If a panel or the Standing Committee decides to provide the nonpublic

information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney is notified in writing at his or her last known address that the information has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The panel or the Standing Committee releases the information to the requesting agency eight (8) days after the mailing of the notice unless the attorney has satisfied the panel or the Standing Committee that there is good cause to withhold the requested information.

If an otherwise authorized requesting agency has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

- (a) the request is made in furtherance of an ongoing investigation;
 - (b) the information is essential to that investigation; and
 - (c) disclosure of the existence of the investigation to the lawyer would seriously prejudice that investigation.
6. Except with respect to the content of his or her own testimony, each participant in a proceeding under these rules shall maintain the confidentiality mandated by this Rule.

RULE 15. DISABILITY INACTIVE STATUS

1. There is hereby created a disability inactive status for an attorney whose mental or physical condition prevents the attorney from competently representing the interest of the attorney's clients.
2. An attorney is immediately and automatically transferred to disability inactive status upon proof being received by the Court that:
 - (a) the attorney has been declared incompetent in a judicial proceeding; or
 - (b) the attorney has been involuntarily committed because of incapacity or disability; or
 - (c) during a disciplinary or criminal proceeding the attorney alleges an incapability to assist in the defense due to mental or physical

incapability; or

- (d) the attorney has been placed on a disability inactive or equivalent status by another court.
3. If an attorney is immediately and automatically transferred to disability inactive status but desires to contest the transfer, the attorney institutes reinstatement proceedings which are conducted as though instituted under Rule 7.1. By bringing such a proceeding, the attorney waives the doctor-patient privilege (and other similar privileges) regarding the disability.
4. If the Standing Committee determines that cause may exist to place an attorney on disability inactive status and the attorney is not immediately and automatically transferred to such status under paragraph (2) of this Rule, the Standing Committee institutes proceedings which shall be conducted as though instituted under Rule 7.3. In these proceedings Rule 14 shall be applicable.
5. An attorney on disability inactive status may file a petition for reinstatement on the basis that the disability has been removed and the attorney is fit to resume the practice of law. The filing of a petition for reinstatement waives the doctor-patient privilege (and other similar privileges) regarding the disability. The attorney states in the petition the name and address of each physician, psychologist, and/or psychiatrist who has examined or treated the attorney and any hospital or other institution in which the attorney has been examined or treated since the attorney's transfer to disability inactive status, as well as the attorney's current status in all bars to which the attorney was or is admitted. A petition for reinstatement is treated in the same manner as a petition for reinstatement filed under Rule 12 by an attorney suspended for more than six (6) months.
6. An attorney raising the defense of current mental or physical disability in a disciplinary proceeding waives the doctor-patient privilege (and other similar privileges) regarding the disability. Furthermore, if the defense of current mental or physical disability is raised, the court may order an examination of the attorney by a court-appointed physician.