

MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

American Bar Association
Standing Committee on Professional Discipline
and
Center for Professional Responsibility

The Model Federal Rules of Disciplinary Enforcement
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Statement of Need for AdoptingFederal Rules of Disciplinary Enforcement

Membership in good standing in the Bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as a lawyer and as an officer of the Court.

It is the duty of every lawyer admitted to practice before a Court of the United States to conduct himself or herself at all times in conformity with the standards imposed upon members of the Bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its Bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, these Rules provide for the appointment of the appropriate state disciplinary agency in the jurisdiction in which the Court sits whenever appointment of counsel is required hereunder.

In order to be admitted to practice in a Court of the United States, a lawyer must demonstrate that he or she is a member in good standing before the courts of one of the 50 states or the District of Columbia. Consequently, for purposes of admitting lawyers to practice before them the Courts of the United States may and do rely upon the standards for admission of the respective states. Insofar as discipline of admitted lawyers is concerned, however, the Supreme Court of the United States has held that revocation of a license to practice by state or other courts may not automatically be relied upon by the Courts of the United States. Theard v. United States, 354 U.S. 278 (1957). In Theard, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the lawyer's underlying conduct warranted the discipline imposed. For that reason, if there is to be effective discipline within the federal system, appropriate procedures must be developed. These Rules are proposed to achieve that purpose.

Model Federal Rules
of Disciplinary Enforcement

The [Insert Name of Court], in furtherance of its inherent power and responsibility to supervise the conduct of lawyers 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

Lawyers Convicted of Crimes.

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any lawyer 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 Court shall enter an order immediately suspending that lawyer, 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 upon the lawyer. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice so to do.

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 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."

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

D. Upon the filing of a certified copy of a judgment of conviction of a lawyer for a serious crime, the Court shall in addition to suspending that lawyer in accordance with the provisions of this Rule, also refer the matter to counsel for the institution 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 brought to final hearing until all appeals from the conviction are concluded.

E. Upon the filing of a certified copy of a judgment of conviction of a lawyer for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

F. A lawyer suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the lawyer, the disposition of which shall be determined by the Court 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 lawyer admitted to practice before this Court shall, upon being subjected to public discipline 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.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that a lawyer admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the lawyer containing:

1. a copy of the judgment or order from the other court; and
2. an order to show cause directing that the lawyer inform this Court within 30 days after service of that order upon the lawyer, personally or by mail, of any claim by the lawyer predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the 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 shall impose the identical discipline unless the respondent-lawyer demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure 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 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 said elements exist, it shall enter such other order as it deems appropriate.

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

F. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

Rule III

Disbarment on Consent or Resignation in Other Courts.

A. Any lawyer 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 lawyers admitted to practice before this Court.

B. Any lawyer 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 lawyer 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 a lawyer admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

Rule V

Disciplinary Proceedings.

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of a lawyer 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 shall refer the matter to counsel for investigation and the 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-lawyer because sufficient evidence is not present, or because there is pending another proceeding against the respondent-lawyer, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered or for any other 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 reasons therefor.

C. To initiate disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-lawyer to show cause within 30 days after service of that order upon that lawyer, personally or by mail, why the lawyer should not be disciplined.

D. Upon the respondent-lawyer's answer to the order to show cause, if any issue of fact is raised or the respondent-lawyer wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided however that 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.

Rule VI

Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

A. Any lawyer 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 delivering to this Court an affidavit stating that the lawyer desires to consent to disbarment and that:

1. the lawyer's consent is freely and voluntarily rendered; the lawyer is not being subjected to coercion or duress; the lawyer is fully aware of the implications of so consenting;
2. the lawyer is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the lawyer's discipline the nature of which the lawyer shall specifically set forth;
3. the lawyer acknowledges that the material facts so alleged are true; and
4. the lawyer so consents because the lawyer knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the lawyer could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court

shall enter an order disbaring the lawyer.

C. The order disbaring the lawyer 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/Readmission.

A. After Disbarment or Suspension. A lawyer suspended for three [six] 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. A lawyer suspended for more than [six] months or disbarred may not resume practice until reinstated by order of this Court, except as provided in Rule XI (H).

B. Time of Application Following Disbarment [or Suspension for More Than Six Months]. A person who has been disbarred after hearing or by consent may not apply for reinstatement [readmission] until the expiration of at least five years from the effective date of the disbarment. A lawyer who has been suspended for more than six months may not apply for reinstatement until six months before the period of suspension has expired.

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended lawyer under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt 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 or she has the moral qualifications, competency and learning in the law required for admission to practice law 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.

D. Duty of Counsel. In all proceedings upon a petition for reinstatement or readmission, cross-examination of the witnesses of the respondent-lawyer and the submission of

evidence, if any, in opposition to the petition shall be conducted by counsel.

E. Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement or readmission proceeding.

F. Conditions of Reinstatement/Readmission. 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 or readmit him or her, provided that the judgment may make reinstatement or readmission conditional upon the payment of all or part of the costs of the proceedings, and upon the making or partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that 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 of the lawyer's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. Successive Petitions. No petition for reinstatement or readmission under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement or readmission filed by or on behalf of the same person.

Rule VIII

Lawyers Specially Admitted

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

Rule IX

Service of Papers and Other Notices.

Service of an order to show cause instituting a disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-lawyer at the address shown in the most recent registration filed pursuant to Rule X (F) hereof. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or

notice is addressed to the respondent-lawyer at the address shown on the most recent registration statement filed pursuant to Rule X (F) hereof; or to counsel or the respondent's lawyer at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

Rule X

Appointment of Counsel

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement or readmission petition filed by a disciplined lawyer, this Court shall appoint as counsel the disciplinary agency of the highest court of [Insert the Applicable Reference to State, or the District of Columbia, or Territory, Commonwealth or Possession of the United States] wherein the Court sits, or the lawyer maintains his or her principal office in the case of the courts of appeal, or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this Court shall 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, provided, however, that the respondent-lawyer may move to disqualify a lawyer so appointed who is or has been engaged as an adversary of the respondent-lawyer in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

Rule XI

Periodic Assessment of Lawyers: Registration Statements

A. Every lawyer admitted to practice before this Court shall pay to the Administrative Office of the United States Courts an annual fee of [\$] for each fiscal year beginning [Insert Date] to be used exclusively to pay the cost of disciplinary administration and enforcement under these Rules, but only by those courts which have adopted these rules and have required registration and assessment.

B. Payment of the fee prescribed hereunder shall be a condition precedent to any application for admission pro hac vice by any lawyer not otherwise admitted to this Court.

C. A lawyer admitted to practice before this Court as well as one or more other Courts of the United States shall be required to make only a single payment of the fee prescribed hereunder in any fiscal year regardless of the number of Courts of the United States to which he or she may be admitted.

D. Any lawyer who fails to timely pay the fee required under (A) above shall be summarily suspended, provided a notice of delinquency has been forwarded to him or her by certified mail, return receipt requested, addressed to his or her last known business address at least 30 days prior to such suspension.

E. Any lawyer suspended under the provisions of (D) above shall be reinstated without further order upon payment of all arrears and a penalty of 20 % of the amount due from the date of his or her last payment to the date of his request for reinstatement.

F. To facilitate the collection of the annual fee provided for in (A) above, every person required by this Rule to pay an annual fee shall, on or before [Insert Date] of every year, commencing [Insert Date] file with the Administrative Office of the United States Courts a registration statement, on a form prescribed by the Administrative Office of the United States Courts, setting forth his or her current residence and office addresses; the bars of all states, territories, districts, commonwealths or possessions or other Courts of the United States to which the lawyer is admitted. In addition to such statement, every lawyer subject to these Rules shall file with the Administrative Office of the United States Courts a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to practice before this Court after [Insert Date] shall file the statement required by this Rule at the time of admission and shall pay the fee prescribed by (A) and (C) above for the fiscal year then in effect without proration.

G. Within 30 days of the receipt of a statement and payment or a supplement thereto filed by a lawyer in accordance with the provisions of (A) and (F) above, the Administrative Office of the United States Courts shall acknowledge receipt thereof, on a form prescribed for that purpose, in order to enable the lawyer on request to demonstrate compliance with the requirements of (A) and (F) above.

H. Any lawyer who fails to file the statement or supplement thereto in accordance with the requirements of (F) above shall be summarily suspended, provided a notice of delinquency has been forwarded to him or her by certified mail, return receipt requested, addressed to his or her last known business address at least 30 days prior to such suspension. He or she shall remain suspended until he or she shall have complied therewith, whereupon he or she shall become reinstated without further order.

I. A lawyer who has retired or is not engaged in the practice of law before a Court of the United States may advise the Administrative Office of the United States Courts in writing

that he or she desires to assume inactive status and discontinue the practice of law before the Courts of the United States. Upon the filing of such a notice, the lawyer shall no longer be eligible to practice law in the Court. A lawyer who is retired or on inactive status shall not be obligated to pay the annual fee imposed by this Rule upon active practitioners.

J. Upon the filing of a notice to assume inactive status, the lawyer shall be removed from the roll of those classified as active until and unless he or she requests and is granted reinstatement to the active rolls. Reinstatement shall be granted (unless the lawyer is subject to an outstanding order of suspension or disbarment or has been on inactive status for five years or more) upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to the transfer to inactive status. Lawyers who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required in the discretion of this Court, to establish proof of competency and learning in the law. The proof shall include evidence that the lawyer has continued to engage in the practice of law in good standing in another jurisdiction or before any other court or certification by the Bar Examiners of a state or other jurisdiction in which the lawyer is admitted to practice, of his or her successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

Rule XII

Payment of Fees and Costs.

At the conclusion of any disciplinary investigation or prosecution under these Rules, counsel may make application to this Court for an order awarding reasonable fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. Any such order shall be submitted to the Administrative Office of the United States Courts which shall pay the amount required thereunder from the funds collected pursuant to Rule X (A) hereof.

Rule XIII

Duties of the Clerk.

A. Upon being informed that a lawyer 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 informed that a lawyer 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 or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person convicted of any crime or 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 shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

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

Rule XIV

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 XV

Effective Date.

These rules shall become effective on [Insert Date], 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.