

# FEDERAL CIRCUIT ATTORNEY DISCIPLINE RULES

## INTRODUCTION

The United States Court of Appeals for the Federal Circuit, in furtherance of its power and responsibility under Federal Rule of Appellate Procedure 46 and its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following Attorney Discipline Rules.

The rules contemplate that a disciplinary proceeding stemming from most misconduct that occurs before a merits or motions panel will be conducted by that panel. A proceeding stemming from more serious misconduct, based on conviction of a serious crime, or imposing reciprocal discipline will be conducted by a Standing Panel on Attorney Discipline composed of three judges. In conformance with Federal Rule of Appellate Procedure 46, a hearing, if requested, will be available in any proceeding. The record in an ongoing proceeding will be confidential unless otherwise ordered. At the conclusion of a proceeding in which discipline is imposed, the final order and the record will be made a public record. A final order issued by a panel will be reviewable in a manner analogous to review under Federal Rules of Appellate Procedure 35 and 40.

### Rule 1. Definitions

- (a) **Another Court.** Another court means any Court of the United States or any court of a state, the District of Columbia, a territory, or a commonwealth of the United States. For purposes of these rules, ~~a Court of the another court also includes the~~ United States ~~includes the Court of~~ Court of Appeals for Veterans Appeals Claims and the United States Court of Federal Claims.
- (b) **Agency.** Agency means any agency of the United States as defined in 5 U.S.C. § 551.
- (c) **Serious Crime.** Serious crime means (1) any felony or (2) any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction occurred, is (i) interference with the administration of justice, (ii) false swearing, (iii) misrepresentation, (iv) fraud, (v) willful failure to file an income tax return, (vi) deceit, (vii) bribery, (viii) extortion, (ix) misappropriation, (x) theft, or (xi) an attempt or conspiracy or solicitation of another to commit a serious crime.

### Rule 2. Grounds for Discipline

- (a) **Conviction.** Conviction in another court of a serious crime may be the basis for discipline.
- (b) **Disbarment or Suspension.** Reciprocal discipline may be imposed based on disbarment or suspension by another court or by an agency.

- (c) **Resignation.** Disbarment may be imposed based on an attorney's disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending.
- (d) **Act or Omission.** An act or omission by an attorney that violates the Federal Rules of Appellate Procedure, the Federal Circuit Rules, these rules, or orders or instructions of the court, other than an act or omission contemplated by Rule 3(d) of these rules, may be the basis for discipline. A failure to notify the court in compliance with Rule 6(a) may itself be the basis for discipline.
- (e) **Conduct Unbecoming.** Any conduct before the court unbecoming a member of the bar may be the basis for discipline.

### **Rule 3. Types of Discipline**

- (a) **Discipline for Misconduct.** Discipline for attorney misconduct may consist of disbarment, suspension for a definite period, monetary sanction, public reprimand, private reprimand, or any other disciplinary action that the court deems appropriate.
- (b) **Disbarment.** Disbarment is the presumed discipline for conviction of a serious crime.
- (c) **Reciprocal Discipline.** The imposition of reciprocal disbarment or suspension is the presumed discipline based on ~~another court's~~the disbarment or suspension of an attorney by another court or an agency. Disbarment based on an attorney's disbarment on consent or resignation from a bar of another court or an agency while an investigation into an allegation of misconduct is pending constitutes reciprocal discipline.
- (d) **Sanctions under other Provisions.** Assessment of damages, costs, expenses, or attorney fees under Federal Rule of Appellate Procedure 38, 29 U.S.C. § 1927, or similar statutory provision are not disciplinary sanctions within the meaning of these rules and are not governed by these rules.

### **Rule 4. Disciplinary Matters Referred to the Court**

- (a) **Docketing.** The Clerk shall maintain a miscellaneous attorney disciplinary matter docket and shall assign a number to each matter.
- (b) **Merits or Motions Panel.** When attorney misconduct under these rules occurs within the context of a case before a merits panel or a motions panel, that panel may impose any discipline except disbarment, suspension, or a monetary sanction over \$1,000. The proceeding is conducted in accordance with Rule 5. In lieu of conducting its own proceeding, a majority of the panel may refer the matter to the Standing Panel on Attorney Discipline.

(c) **Standing Panel on Attorney Discipline.**

- (1) The Standing Panel shall conduct proceedings in any matter in which disbarment, suspension, or a monetary sanction over \$1000 may be considered, or in any matter referred by a merits or motions panel.
- (2) The Standing Panel shall consist of three judges, at least two of whom shall be active judges, appointed by the Chief Judge. The Chief Judge may serve as a member of the Standing Panel. The initial appointments shall be for one, two, and three year terms, so that the members' terms are staggered. Thereafter, a member shall be appointed for a three-year term. A member who has served on the Standing Panel for three years shall not be eligible for appointment to another term until three years after termination of his or her last appointment.
- (3) The chairperson of the Standing Panel shall be the senior active judge.
- (4) If a member of the Standing Panel is unable or unavailable to hear a particular matter, the Chief Judge shall appoint another judge to be a member of the Standing Panel for that matter. If a member of the Standing Panel is unable to complete the remainder of his or her term for any reason, e.g., retirement, incapacity, death, the Chief Judge shall appoint another judge to serve the remainder of the term.

**Rule 5. Merits/Motions Panel or Standing Panel Procedure**

- (a) **Representation.** An attorney may be represented by counsel in any disciplinary proceeding. Counsel must enter an appearance promptly, and in any event prior to submitting any documents or at least 14 days before appearing at a hearing, whichever is earlier. Except as provided by Fed. Cir. R. 46(d), counsel must be a member of the bar of this court.
- (b) **Show Cause Order.** Any panel may issue an order describing an attorney's misconduct and ordering the attorney to show cause (1) why a specific discipline should not be imposed or (2) why a discipline to be determined later should not be imposed. Unless otherwise ordered, a response shall be due within 30 days. Any request for a hearing shall be included in a response.
- (c) **Uncontested Matter.** If an attorney does not respond to a show cause order or does not object to the imposition of a specified discipline, the Clerk may then issue a final order imposing such discipline.
- (d) **Contested Matter.** If an attorney contests the imposition of discipline or requests a hearing, further proceedings shall be conducted in accordance with Rule 8.
- (e) Referral to State Bar Association or Other Disciplinary Entity. The Standing Panel or any merits or motions panel may in its discretion refer a pending disciplinary matter or

a matter that has been concluded to an appropriate state bar association or other disciplinary entity.

(f) **Final Order.** At the conclusion of a proceeding, a panel shall issue a final order in the matter. The order may direct the attorney or the Clerk to send a copy of the order to all other courts and agencies before which an attorney is admitted. The Clerk may also be directed to notify the American Bar Association's National Disciplinary-Lawyer Regulatory Data Bank of the discipline.

(fg) **Review by the Panel or the Active Judges of the Court.** An attorney may file a petition for rehearing by the panel or a combined petition for rehearing by the panel and suggestion for rehearing by the active judges of the court, or a majority of the active judges may order that a disciplinary matter be heard or reheard by them. Such a hearing or rehearing is not favored and ordinarily will not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance. Any such petition shall be filed within 30 days of the date of the panel's final order. The procedures governing a petition for rehearing or a combined petition/suggestion will otherwise be in accordance with the provisions of Federal Rules of Appellate Procedure 35 and 40 and Federal Circuit Rules 35 and 40.

#### **Rule 6. ~~Notification of Conviction or Discipline Imposed by Another Court~~ or an Agency**

(a) **Duty of Attorney to Notify.** An attorney who is a member of the bar of this court shall notify the Clerk in writing within 14 days of the member's (1) conviction of a serious crime, (2) disbarment or suspension by another court or by an agency, or (3) disbarment on consent or resignation from the bar of another court ~~while an investigation into an allegation of misconduct is pending. The Clerk shall refer all information to the Standing Panel.~~

~~(b) **Notification from Another Court.** The Clerk shall refer to the Standing Panel all information received from another court concerning a member's disbarment, suspension, or resignation or an agency while an investigation into an allegation of misconduct is pending. Upon receipt of such information, the Clerk shall follow the procedures set forth in Rule 7.~~

(b) **Notification from Another Court or Agency; Sua Sponte.** Upon receipt of a copy of a judgment, order, or other document demonstrating that a member of the bar of this court has been disbarred or suspended from the practice of law by another court or an agency, or has resigned while an investigation into an allegation of misconduct is pending, the Clerk shall follow the procedures set forth in Rule 7.

#### **Rule 7. Proceedings for Reciprocal Discipline or Conviction of Serious Crime**

(a) **Show Cause Order.** On notification of an attorney's disbarment or suspension by another court or agency, the Clerk shall issue a show cause order why the court should not impose the identical discipline. On notification of an attorney's conviction of a

serious crime or resignation from the bar of another court or agency while a misconduct investigation is pending, the Clerk shall issue a show cause order why disbarment should not be imposed.

**(b) Response.** Unless otherwise ordered, a response to a show cause order shall be due within 30 days. The response should be in an envelope marked “Direct to Chief Deputy Clerk” and should indicate the docket number of the matter. Any request for a hearing shall be included in a response. In any response, the attorney must (1) list all bars to which the attorney is admitted, including all bar numbers and other bar identification information and (2) list all cases pending before this court in which the attorney is involved.

**(bc) Uncontested Matter.** If an attorney does not object to the imposition of reciprocal discipline or does not respond to the show cause order, the Clerk may then issue a final order imposing such reciprocal discipline.

**(ed) Contested Matter.** If an attorney contests the imposition of reciprocal discipline, further proceedings shall be conducted in accordance with Rule 8.

**(de) Final Order and Further Review.** At the conclusion of a proceeding, the Standing Panel shall issue a final order in the matter. Any further review will be in accordance with Rule 5(fg).

## Rule 8. Contested Proceedings

**(a) No Request for a Hearing.** If an attorney does not request a hearing in response to a show cause order, then the panel shall prepare the record consisting of the show cause order, the response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney shall be given ~~the opportunity to notice that he or she may~~ inspect and copy the record at his or her expense ~~the record~~ and may file a supplemental response. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons. Any supplemental response shall be due within 14 days of the date of the notice concerning inspection and copying.

**(b) Request for Hearing.** On request by an attorney, the panel shall schedule a hearing. A hearing scheduled by a merits or motions panel will be an oral hearing. If a merits or motions panel determines that an evidentiary hearing is necessary, that panel shall refer the matter to the Standing Panel. In matters that have not been referred by a merits or motions panel, the Standing Panel shall determine whether a hearing is oral or evidentiary. An attorney shall be given at least 30 days' notice of the time, date, and place of a hearing.

~~(1) Except as provided below, an attorney shall be afforded an opportunity to inspect and copy at his or her expense all documents that the panel has obtained concerning the matter.~~(1) The record consists of the show cause order, the

response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney shall be given notice that he or she may inspect and copy the record at his or her expense. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons.

(2) The ~~record consists of the show cause order, the response, and any other documents obtained by the panel.~~

~~(3) The~~ Standing Panel may compel by subpoena the attendance of witnesses, including the attorney subject to the proceeding, and the production of documents.

(43) During an evidentiary hearing, an attorney shall be afforded an opportunity to cross-examine any witnesses called by the Standing Panel and to introduce evidence in defense or mitigation.

(54) A hearing shall be recorded on tape unless an attorney arranges to have a reporting service present at his or her own expense.

(c) **Reciprocal Disciplinary Matter.** Notification that an attorney has been disbarred or suspended by another court or agency shall establish that the conduct in fact occurred and that the discipline was appropriate unless an attorney shows that:

(1) the procedure was so lacking in notice or opportunity to be heard that it constituted a deprivation of due process; or

(2) there was such an infirmity of proof establishing the misconduct that it gave rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on the matter; or

(3) the imposition of the same discipline by this court would result in grave injustice; or

(4) the misconduct established is deemed by this court to warrant substantially different discipline.

(d) **Conviction of a Serious Crime.** Notification of a conviction of a serious crime shall be conclusive evidence of the commission of that crime for purposes of these disciplinary proceedings. If an attorney notifies the court that a conviction has been vacated or reversed, the ~~panel~~Standing Panel shall promptly review the matter.

## Rule 9. Reinstatement

(a) **After Reciprocal Disbarment or Suspension.** If disbarment by this court was based on a disbarment by another court or agency or a suspension was directed to run concurrently

with a suspension ordered by another court or agency, then an attorney shall be eligible for reinstatement when the original discipline is lifted or expires. An attorney must submit an affidavit notifying this court of the action of the court that imposed the original discipline. The Clerk shall refer an attorney's notification affidavit to the Standing Panel. Unless otherwise ordered, the Clerk shall issue an order reinstating the attorney within 14 days after reference to the Standing Panel.

(b) **After Disbarment.** An attorney who has been disbarred as a result of misconduct before this court may not apply for reinstatement until the expiration of five years from the effective date of the disbarment.

(c) **After Suspension.**

(1) An attorney who has been suspended with automatic reinstatement as a result of misconduct before this court may file an affidavit of compliance with the suspension order after the suspension period has expired. The Clerk shall issue an order reinstating the attorney within 14 days.

(2) An attorney who has been suspended conditioned on applying for reinstatement as a result of misconduct before this court may file an application after the suspension period expires.

(d) **Application for Reinstatement.** The Clerk shall refer an application for reinstatement to the Standing Panel. Any request for a hearing shall be included in an application.

(1) The Standing Panel may issue an order granting an application or, if no hearing is requested, may issue an order denying an application.

(2) If the Standing Panel is not satisfied initially that reinstatement is appropriate and a hearing is requested, the Standing Panel shall schedule a hearing. The Standing Panel shall decide whether a hearing shall be oral or evidentiary. At a hearing the applicant has the burden of showing that he or she has the moral qualifications, competency, and learning in the law required for readmission and that the resumption of practice will not be detrimental to the integrity and standing of the bar or to the administration of justice.

(3) At the conclusion of a proceeding, the Standing Panel shall issue a final order. Further review shall be in accordance with Rule 5(fg).

(e) **Successive Application.** A successive application for reinstatement may not be filed until one year has elapsed after an adverse decision on an earlier application.

## **Rule 10. Access to Information**

(a) **Confidentiality during Proceedings.** An ongoing disciplinary proceeding shall be confidential (1) unless the attorney subject to the proceeding requests that it be made a

public record or (2) except to the extent that a panel may disclose the subject matter and status of a proceeding if the proceeding is based on a conviction of a serious crime, or an allegation that has become generally known to the public, or there is a need to notify another person or entity to protect the public, the legal profession, or the administration of justice.

- (b) **Confidentiality upon Issuance of a Final Order.** A final order issuing a private reprimand or imposing no discipline and the record of those proceedings shall be confidential unless the attorney subject to the proceeding requests that it be made a public record. If other discipline is imposed, a final order and the record shall be made a public record at the time of issuance of a final order. However, a panel may issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney.

### **Rule 11. Effective Date**

These rules shall become effective ~~July 15, 1997.~~\_\_\_\_\_.