

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ORDER AMENDING LOCAL RULES

Appropriate Public Notice and an opportunity to comment having been given pursuant to Rule 83, Federal Rules of Civil Procedure, and pursuant to a majority vote of the active judges of this court,

IT IS ORDERED that the Rules for Lawyer Disciplinary Enforcement of the United States District Court for the Eastern District of Louisiana are amended to read as attached, effective February 1, 2011.

New Orleans, Louisiana, this 2nd day of February, 2011.



SARAH S. VANCE, CHIEF JUDGE

RULES FOR LAWYER DISCIPLINARY ENFORCEMENT
OF THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA
RULES FOR LAWYER DISCIPLINARY ENFORCEMENT**

1. General Provisions and Standards

- 1.1. Jurisdiction. This court has disciplinary jurisdiction over any lawyer admitted to practice before this court.
- 1.2. Adoption of Louisiana Rules of Professional Conduct. The Louisiana Rules of Professional Conduct of the Supreme Court of the State of Louisiana (“Rules of Professional Conduct”) apply to all lawyers admitted to practice before this court.
- 1.3. Default Application of Federal Rules of Civil Procedure. Unless otherwise provided by these rules, all procedures in disciplinary actions, including discovery, are governed by the Federal Rules of Civil Procedure and this court’s local rules.
- 1.4. No Effect on Power of Court to Control Proceedings. Nothing contained in these Rules restricts this court in exercising the power to maintain control over proceedings, such as contempt proceedings.

2. Grounds for Discipline. The court *en banc* may impose discipline upon a lawyer authorized to practice before this court if it finds clear and convincing evidence that one or more of the following circumstances exist:

- 2.1. The lawyer has committed “misconduct” as defined in the Louisiana Rules of Professional Conduct.
- 2.2. The lawyer has been convicted of a serious crime in any court of the United States or any of its territories, commonwealths, or possessions, or any state of the United States, or the District of Columbia. The term “serious crime” includes (1) a felony, or (2) any other crime that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.
- 2.3. The lawyer has been disciplined by any court of the United States or any of its territories, commonwealths, or possessions; or any state of the United States or the District of Columbia.

3. Commencement of Proceedings

- 3.1. By Voluntary Resignation. A member of the bar may submit his or her voluntary resignation, disbarment or the imposition of other discipline by written request filed with the clerk of court. Once filed, such request must be assigned a miscellaneous number and a copy forwarded to the Chief Judge and the Lawyers

Disciplinary Committee. The Lawyers Disciplinary Committee must thereafter process the request in the same manner as it would process a complaint.

- 3.2. By Complaint. Disciplinary proceedings under these Rules may be commenced by the filing of a complaint with the clerk of court asserting the alleged grounds for discipline, and if applicable, any judgment of conviction or any order of another court imposing discipline.
 - 3.2.1. Who May File a Complaint. Any person may file a disciplinary complaint in writing with the clerk of court.
 - 3.2.2. Complaints Against Lawyers Convicted of a Felony or Subjected to Discipline. A lawyer who has been convicted of a felony or subjected to public discipline in any jurisdiction must promptly inform the clerk of court of such action. The clerk of court must file a complaint against any lawyer who has been convicted of a felony or subjected to public discipline in any jurisdiction.
 - 3.2.3. Notice to Respondent, Court and Lawyer Disciplinary Committee. The clerk of court must assign a Miscellaneous Action Number to the complaint, and forward a copy of the complaint and attachments to the lawyer named in the complaint (“respondent”), to the Chief Judge and to the Lawyer Disciplinary Committee. The clerk must send the complaint to the respondent via email, and also serve the complaint via United States certified mail, return receipt requested.
 - 3.2.4. Response to Complaint by Respondent. Within 14 days of service of the complaint, the respondent must file with the clerk of court a written response to the complaint. The clerk of court must forward the response to the Chief Judge and to the Lawyer Disciplinary Committee. If the respondent fails timely to respond, the clerk of court must notify the Chief Judge and the Lawyer Disciplinary Committee.
4. Report and Recommendation by Lawyer Disciplinary Committee. The Lawyer Disciplinary Committee assists the court with the administration of lawyer disciplinary enforcement. Among other duties, the committee reviews disciplinary complaints, makes recommendations to the court regarding the disposition of complaints and, when directed by the court, prosecutes complaints.
 - 4.1. Committee. The Lawyer Disciplinary Committee consists of seven (7) members of the bar appointed by the court *en banc*.
 - 4.1.1. Term. Each committee member serves at the pleasure of the court. However, the term of each committee member is normally three (3) years. The terms of the members of the committee are staggered so that no more than two (2) members are replaced each year.

- 4.1.2. Quorum. The quorum necessary for the committee to act consists of five (5) members of the committee
 - 4.1.3. Majority Required to Act. The committee may act only by vote of a majority of committee members actually participating in any meeting or vote.
 - 4.1.4. Recusal. If any committee member is recused, the court may appoint an *ad hoc* committee member to serve for the recused member if another member is necessary for the committee to obtain a quorum.
 - 4.1.5. Meetings. The committee may meet or act in person, by telephone or by email. Proxy voting is prohibited.
 - 4.2. Committee Report and Recommendation. Within 35 days after service of the complaint, the Lawyer Disciplinary Committee must send a confidential recommendation to the Chief Judge regarding disposition of the complaint.
 - 4.2.1. Distribution to Court. The Chief Judge must distribute the recommendation to the court *en banc*.
 - 4.2.2. Recommendations. The committee may recommend that the court: (a) dismiss the complaint; (b) impose summary discipline; (c) conduct a hearing on the complaint; or (d) take other appropriate action. The court is not bound by the committee's recommendation.
5. Evaluation by *En Banc* Court. After considering the report and recommendation of the Lawyer Disciplinary Committee, the court *en banc* may:
 - 5.1. dismiss the complaint,
 - 5.2. impose summary discipline,
 - 5.3. docket the matter for hearing, or
 - 5.4. take such other action the court deems appropriate.
6. Matters Resolved Summarily
 - 6.1. Proposed Summary Discipline. If, after reviewing the report of the Lawyer Disciplinary Committee, the court *en banc* concludes that summary disciplinary action is warranted, the court must specify the summary discipline in an order that the clerk of court must serve upon the respondent. The order must require the respondent to show cause within 14 days after service why the proposed summary disciplinary sanction should not be imposed. The clerk of court must send the order to the respondent by email and serve the respondent by certified mail, return receipt requested, along with a copy of the document(s) upon which the

disciplinary proceedings are based, such as the complaint, the judgment of conviction, or the disciplinary order or judgment of another court.

6.2. Response by Complainant. Within 14 days after service of the proposed summary discipline, the respondent must file a written response with the clerk of court either (a) accepting the imposition of the proposed summary discipline, or (b) requesting that the matter be docketed for hearing.

6.2.1. Acceptance or Failure to Respond. If the respondent accepts the proposed summary discipline, or fails to respond, the court may impose the proposed summary discipline.

6.2.2. Objection. If the respondent objects to the proposed summary discipline, the *en banc* court may docket the matter for hearing.

7. Matters Docketed for Hearing

7.1. Docketing and Allotment. If the court *en banc* determines that a hearing should be held, the clerk of court must randomly allot the matter to one of the judges of the court. If a matter is allotted to the judge who filed the complaint, the clerk of court must reallocate the matter to another judge.

7.2. Appointment of Lawyer Disciplinary Committee as Prosecutor. In disciplinary proceedings docketed for hearing, the court must appoint the Lawyer Disciplinary Committee to investigate and prosecute the matter. The Lawyer Disciplinary Committee must designate one or more of its members, or another lawyer, to prosecute the action.

7.3. Hearing. The allotted judge must conduct the hearings and all other necessary proceedings in the disciplinary action.

7.4. Findings and Recommendations by Allotted Judge. At the conclusion of all necessary proceedings, the judge must submit written findings and recommendations to the court *en banc* for determination of the disciplinary sanctions, if any, to be imposed.

7.5. Dismissal or Imposition of Discipline by *En Banc* Court. After consideration of the allotted judge's findings and recommendations, the court *en banc* must enter an order either dismissing the complaint or imposing appropriate discipline. The clerk of court must notify the respondent of the court's action by email, and also serve the respondent by certified mail, return receipt requested.

8. Disciplinary Sanctions.

8.1. Available Sanctions. The court *en banc* may impose the following disciplinary sanctions, among others: disbarment, suspension, public reprimand, private

admonition, monetary sanctions, restitution, probation and such other sanctions as the court deems appropriate.

8.2. Reciprocal Disciplinary Sanctions. As to a lawyer subjected to public discipline in any other jurisdiction, the court *en banc* typically will impose a concurrent, reciprocal sanction with that imposed by the other jurisdiction unless:

8.2.1. The lawyer was deprived of due process by the lack of proper notice or the opportunity to be heard; or

8.2.2. The evidence supporting the misconduct charges was so questionable that the court should not accept as final the finding of misconduct.

9. Post-Discipline Procedures

9.1. Payment of Fees and Costs

9.1.1. Fees of Prosecution Counsel. On completion of his/her services in any disciplinary or other matter under these Rules, counsel designated by the Lawyer Disciplinary Committee to prosecute any disciplinary action may file a motion with the clerk of court seeking an award of reasonable fees and costs, to be paid from the court's Disciplinary Enforcement Fund. In awarding fees, the court must apply the hourly rates applicable to lawyers representing indigent defendants in the court.

9.1.2. Assessment of Fees and Costs. The court may assess attorney's fees and costs of any disciplinary proceeding against the respondent. The respondent must remit any such funds to the clerk of court for deposit into the court's Disciplinary Enforcement Fund.

9.2. Notification of Disbarment or Suspension

9.2.1. Respondent's Notice to Clients. Within 21 days from entry of the order of suspension or disbarment, the lawyer so suspended or disbarred or assuming inactive status must notify by certified mail, return receipt requested, each of the clients the lawyer represents in this court of the fact that the lawyer cannot continue to represent them.

9.2.2. Respondent's Affidavit. Within 28 days from entry of the order of suspension or disbarment, or from the date of a notice given to assume inactive status, the lawyer must file with the clerk of court an affidavit stating that the lawyer has fully complied with these rules. The affidavit must set forth the lawyer's residence or other address to which subsequent communications may be addressed. The lawyer must maintain records evidencing the lawyer's compliance with this Rule.

- 9.3. Reinstatement. A suspended or disbarred lawyer may practice before the court only after the court has ordered that the lawyer be reinstated to practice.
- 9.3.1. Time for Filing. Sixty (60) days before the expiration of the period of suspension imposed in the order of suspension, the suspended lawyer may file a motion for reinstatement. A lawyer who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the date of the disbarment, unless the disbarment was based upon a disbarment by the Louisiana Supreme Court or a court of another jurisdiction, in which case, a motion for reinstatement may be filed at any time after readmission of the applicant to such other court.
- 9.3.2. Filing of Motion. The respondent must file a motion for reinstatement with the clerk of court. The clerk must refer the motion to the section of court to which the disciplinary proceeding had previously been allotted, and if none, to a randomly allotted section of the court. The court may refer any motion for reinstatement to the Lawyer Disciplinary Committee for investigation and for a recommendation.
- 9.3.3. Summary Reinstatement. After considering a motion for reinstatement, the court may summarily reinstate a lawyer.
- 9.3.4. Reinstatement After Hearing. A motion for reinstatement that the court declines to grant summarily must be docketed for hearing. At the hearing on the motion, the applicant has the burden of demonstrating, by clear and convincing evidence, that the lawyer has the competence, character and fitness required for readmission to practice law before this court. The judge must submit written findings and recommendations to the court. Final determination of the application for reinstatement must be made by the court *en banc*.
- 9.3.5. Costs of Reinstatement. The court may order a lawyer seeking reinstatement to pay a nonrefundable advance deposit in an amount to be set by the court. The advance will be applied to the final costs, including any counsel fees, of the reinstatement proceeding. Costs must be assessed to and paid by the applicant upon conclusion of such proceeding, whether favorable or unfavorable to the applicant.
- 9.3.6. Conditions of Reinstatement. If the court finds the lawyer is unfit to resume the practice of law, the court must deny the motion. If the court finds the lawyer fit to resume the practice of law, the court must reinstate the applicant. Reinstatement may be conditioned upon the payment of all or part of the costs of the proceedings; upon the making of partial or complete restitution to parties harmed by the applicant whose conduct led

to the suspension or disbarment; and other conditions deemed proper by the court. If the lawyer has been suspended or disbarred, or has voluntarily assumed inactive status for five years or more, reinstatement may be conditioned upon the furnishing of proof of competency, character and fitness to practice law, which proof may include certification by the Bar Examiners of the State or other admitting jurisdiction of the lawyer's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. The judgment must require appropriate evidence of satisfaction of any conditions of reinstatement imposed and must fix the time at which the reinstatement is effective.

9.3.7. Successive Applications. No motion for reinstatement under this Rule may be filed within one year following an adverse ruling on a motion for reinstatement.

10. Miscellaneous Provisions

10.1.1. Service. When service upon any respondent of any pleading, order, notice, or other document is directed by these Rules to be made by mail, such service is deemed to have been made on the day that the letter is mailed to the respondent at the respondent's most recent address in the Roll of Attorneys.

10.2. Confidentiality. Complaints of misconduct and other records of disciplinary proceedings, except orders imposing public discipline, must not be made public except upon order of the court. All disciplinary proceedings must be heard in chambers, unless the respondent requests a hearing in open court.

10.3. Interim Suspension for Threat of Harm

10.3.1. Grounds. The court *en banc* may immediately suspend a lawyer from practice if there is clear and convincing evidence that the lawyer:

10.3.1.1. has committed a serious violation of the Rules of Professional Conduct, and

10.3.1.2. presents a substantial threat of serious harm to the court or to any person.

10.3.2. Commencement of Interim Suspension Proceedings. Interim suspension proceedings commence through the filing of a petition with the clerk of court requesting that the court suspend a lawyer from practice pending further orders of the court. Any person may file such a petition. The petition must include any supporting evidence (including any order of interim suspension issued by another court). The clerk of court must provide actual notice to the lawyer that a petition for immediate interim

suspension has been filed. The clerk must notify the lawyer via email, and in addition, serve the lawyer by certified mail, return receipt requested. If actual notice cannot be given, the clerk of court must certify in writing the efforts that have been made to provide actual notice.

- 10.3.3. Immediate Interim Suspension. The court *en banc* must consider the petition for interim suspension. After considering the evidence filed with the clerk of court by the petitioner and any response filed by the respondent, the court *en banc* may:
- 10.3.3.1. immediately suspend the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing the harm;
 - 10.3.3.2. order the lawyer to show cause why the court should not issue an immediate interim suspension; or,
 - 10.3.3.3. order such other action as it deems appropriate.
- 10.3.4. Motion for Dissolution of Interim Suspension. A lawyer suspended on an interim basis may move to dissolve or to modify the order of suspension. The motion must be accompanied by a brief setting forth specific reasons why the suspension should be dissolved or modified, and any supporting evidence. The court *en banc* must dissolve an order of interim suspension unless there is clear and convincing evidence that the grounds for interim suspension still exist.

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