UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF LOUISIANA

RULES FOR

LAWYER DISCIPLINARY ENFORCEMENT

Proposed Revised Rules
October 12, 2016

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

1. General Provisions.

   1.1. Jurisdiction. This court (referred to herein as the "court" or the "*en banc* court") has jurisdiction over disciplinary proceedings for 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 *en banc* 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.

   1.5. Service. When service of any pleading, order, notice, or other document is directed by these rules to be made by United States certified mail, return receipt requested, such service is deemed to have been made on the day the document is mailed to the lawyer named in the complaint ("respondent") at the lawyer's most recent address in the Roll of Attorneys maintained by the clerk of court or mailed to counsel of record for respondent in the disciplinary proceedings.

2. Self-Reporting Requirement. 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 and provide the clerk of court a copy of the conviction or order of another court imposing discipline.

3. 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:

   3.1. Misconduct. The lawyer has committed "misconduct" as defined in the Rules of Professional Conduct;

   3.2. Serious Crime. 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.

3.3. Reciprocal Discipline. 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.

4. Commencement of Proceedings. Disciplinary proceedings may be commenced by any of the following means:

4.1. By Voluntary Submission to Discipline. A member of the bar may submit his or her voluntary resignation or request for disbarment or the imposition of other discipline, by written request filed with the clerk of court. Once filed, such submission must be assigned a miscellaneous number and a copy forwarded to the Chief Judge and the Lawyer Disciplinary Committee. The clerk of court and the Lawyer Disciplinary Committee must thereafter process the submission in the same manner as they would process a complaint in a disciplinary proceeding under these Rules.

4.2. By Complaint Filed With the Clerk of Court. Disciplinary proceedings under these Rules must be commenced by filing a written complaint with the clerk of court asserting the alleged grounds for discipline. Any person may file a disciplinary complaint with the clerk of court.

4.3. By the Clerk of Court's Filing of a Complaint Upon Receipt of Notice of Conviction of a Serious Crime or Public Discipline. Upon receipt of a notice of conviction of a serious crime or public discipline in another jurisdiction, the clerk of court must file a complaint against the lawyer named in the notice.

4.4. Notice to Respondent, Court and Lawyer Disciplinary Committee. The clerk of court must assign a Miscellaneous Action Number to every disciplinary proceeding. In the event a single complaint is filed against more than one lawyer, the clerk of court must assign a Miscellaneous Action Number with respect to each lawyer named in the complaint. The clerk of court must forward a copy of the complaint and attachments to the respondent, to the Chief Judge, and to the Lawyer Disciplinary Committee. The clerk must send the complaint and attachments to the respondent via email, and also serve the complaint and attachments via United States certified mail, return receipt requested.

4.5. Response to Complaint by Respondent. Within 14 days of service of the complaint and attachments, 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.

5. 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 and makes recommendations to the court regarding the disposition of complaints. The committee may conduct a limited investigation prior to making a recommendation to the court, including non-compulsory (a) interviews and (b) requests for documents. The Committee may also request additional documents from the original jurisdiction imposing discipline, if applicable.

5.1. Committee Proceedings. The Lawyer Disciplinary Committee consists of twelve (12) members of the bar appointed by the *en banc* court.

5.1.1. Term. Each committee member serves at the pleasure of the court. However, the term of each committee member is usually three (3) years. The terms of the members of the committee must be staggered so that no more than four (4) members are replaced each year. Members may serve no more than two full terms.

5.1.2. Quorum. The quorum necessary for the committee to act consists of seven (7) members of the committee.

5.1.3. Majority Required to Act. The committee may act only by vote of a majority of committee members actually participating in any meeting or vote.

5.1.4. Recusal. Any committee member who has an actual or perceived conflict of interest in a matter must give notice to the Chief Judge of his or her voluntary recusal. In the event there is not a voluntary recusal, the court may order that a committee member be recused from a matter if the court determines there is an actual or perceived conflict of interest. The court may appoint *ad hoc* members of the Lawyer Disciplinary Committee to serve for the recused member or members if additional members are necessary for the committee to obtain a quorum.

5.1.5. Meetings. The committee must meet or act in person, by telephone or by email. Proxy voting is prohibited.

5.2. Committee Recommendation. Within 35 days after the clerk of court sends the complaint to the Lawyer Disciplinary Committee, unless the time is extended by the Chief Judge, the Lawyer Disciplinary Committee must send an internal report making a confidential recommendation to the Chief Judge regarding disposition of the complaint. The Lawyer Disciplinary Committee may consider the complaint and response, the record of the original jurisdiction imposing discipline, if applicable, and any materials obtained through the investigation by the Lawyer Disciplinary Committee.

5.2.1. Recommendations. The committee must recommend that the court: (a) dismiss the complaint; (b) impose discipline without a hearing (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.

5.2.2. Distribution to Court. The Chief Judge must distribute the Lawyer Disciplinary Committee's recommendation to the court *en banc*.

6. Matters Resolved by Summary Discipline

6.1. Proposed Summary Discipline. The *en* banc court may propose that summary discipline be imposed in any disciplinary proceeding.

6.2. Materials Considered. If the proceeding is commenced by the clerk of court receiving notice of discipline in another jurisdiction, in determining whether to impose summary discipline the court may consider the complaint filed by the clerk of court with attachments and the response with attachments, all or a portion of the record of the original jurisdiction imposing discipline, and the recommendation of the Lawyer Disciplinary Committee including any materials obtained through the Lawyer Disciplinary Committee's investigation. In all other cases, the court may consider the complaint filed by the clerk of court with attachments and the response with attachments, and the recommendation of the Lawyer Disciplinary Committee including any materials obtained through the Lawyer Disciplinary Committee's investigation.

6.3. Evaluation by *En Banc* Court. After consideration of the materials set forth above, the *en banc* court must:

6.3.1. Dismiss the complaint,

6.3.2. Impose summary discipline,

6.3.3. Docket the matter for hearing, or

6.3.4. Take such other action as the court deems appropriate.

6.4. Proposed Summary Discipline Order. In proceedings in which the court *en banc* proposes that summary disciplinary action be imposed, the court must specify the proposed summary discipline in an order to be served by the clerk of court upon the respondent. The order proposing summary discipline 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 order on 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.

6.5. Response by Complainant. Within 14 days after service of a proposed summary discipline order, 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.

6.5.1. 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. The clerk of court must send the respondent the *en banc* court's order imposing summary discipline by email, and also serve the respondent with a copy of the order imposing summary discipline by certified mail, return receipt requested.

6.5.2. Objection. If the respondent objects to the proposed summary discipline, the matter must be docketed for a hearing.

7. Matters Docketed for Hearing

7.1. Docketing. In disciplinary proceedings docketed for hearing, the clerk of court must send notice of the hearing to the respondent by email, and also serve the notice of the hearing on the respondent by U.S. certified mail, return receipt requested.

7.2. Allotment. The clerk of court must randomly allot each Miscellaneous Action Number to one of the judges of the court for the holding of a hearing. To promote judicial economy, conserve judicial resources, and avoid potential forum shopping and conflicting court rulings, the Chief Judge may direct that multiple actions involving the same subject matter or operative facts be randomly allotted to a single judge. If a matter is allotted to the judge who filed the complaint based upon conduct occurring in a matter to which the judge is assigned, the clerk of court must reallot the matter to another judge.

7.3. Appointment of Lawyer Disciplinary Committee as Prosecutor. In disciplinary proceedings docketed for hearing, the court must appoint the Lawyer Disciplinary Committee to prosecute the matter, including conducting formal discovery, filing and responding to pre-hearing and post-hearing motions, and otherwise assisting in preparing for the hearing as ordered by the allotted judge. The Lawyer Disciplinary Committee must designate one or more of its members to prosecute the action. In the event there are insufficient appropriate members of the Lawyer Disciplinary Committee to prosecute the action, the *en banc* court must appoint ad hoc members to the Lawyer Disciplinary Committee to prosecute the action.

7.4. Hearing. The allotted judge must handle all pre-hearing motions and conduct the hearing in the disciplinary action. In the event the misconduct is related to pending litigation, the allotted judge has the discretion to stay the disciplinary proceeding until such time as appropriate for the disciplinary proceeding to resume.

7.5. Consent Judgments – Reciprocal Discipline. In the event the public discipline in another jurisdiction was based on a consent agreement and the *en banc* court determines reciprocal discipline is appropriate, but the respondent objects to reciprocal discipline in this court, the matter must be set for hearing and any

conditional admissions made in connection with the consent agreement may be used against the respondent.

7.6. Consent Judgments – Not Reciprocal Discipline. In the event the public discipline in another jurisdiction was based on a consent agreement and this court concludes a different sanction is justified, the matter must be set for hearing and any conditional admissions made in connection with the consent judgment may not be used against the respondent.

7.7. Report by Allotted Judge. At the conclusion of a hearing, the allotted judge must submit an internal report to the court *en banc*.

7.8. Dismissal or Imposition of Discipline by *En Banc* Court. After the allotted judge's report is submitted to the *en banc* court, the matter will be reallotted to the Chief Judge. All motions filed thereafter must be submitted to and decided by the Chief Judge. After consideration of the record, including but not limited to the complaint and the response, the information received from a jurisdiction that has imposed discipline, the Lawyer Disciplinary Committee's recommendation and the results of its limited investigation, the transcript of the hearing and any exhibits admitted into the record, and the allotted judge's internal report, the *en banc* court must determine whether a violation occurred and, if so, the disciplinary sanctions, if any, to be imposed and enter its order and findings either dismissing the complaint or imposing appropriate discipline. The clerk of court must send the respondent the *en banc* court's order by email, and also serve the respondent with a copy of the *en banc* court's order by certified mail, return receipt requested.

8. Available Sanctions. The court *en banc* may impose the following disciplinary sanctions: disbarment or suspension from practice before this court, public reprimand, private admonition, monetary sanctions, restitution, probation and such other sanctions as the court deems appropriate.

9. Post-Discipline Procedures

9.1. Payment of Expenses

9.1.1. Expenses of Prosecution Counsel. Counsel designated by the Lawyer Disciplinary Committee or by the court to prosecute any disciplinary action must serve without compensation but upon completion of his or her services may file a motion with the Chief Judge seeking reimbursement of reasonable out-of-pocket expenses, to be paid from the court's Attorneys' Registration and Disciplinary Fund.

9.1.2. Assessment of Expenses. The court may assess expenses of any disciplinary proceeding against the respondent. The respondent must remit any such funds to the clerk of court per Rule 11 (c) of the Federal Rules of Civil Procedure.

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 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 the representation.

9.2.2. Respondent's Affidavit. Within 28 days from entry of the order of suspension or disbarment, 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 should be addressed. The lawyer must maintain records evidencing the lawyer's compliance with the notice requirements of 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 for Reinstatement. The respondent must file a motion for reinstatement with the clerk of court.

9.3.3. Summary Reinstatement. After considering a motion for reinstatement, the *en banc* court may summarily reinstate a lawyer.

9.3.4. Reinstatement After Hearing. If the *en banc* court declines to grant a motion for reinstatement summarily, the matter must be docketed for hearing. The court may refer any motion for reinstatement to the Lawyer Disciplinary Committee for investigation and recommendation. The clerk of court must refer the motion for reinstatement to the section of court to which the disciplinary proceeding was previously allotted, and if none, to a randomly allotted section of the court 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 allotted judge must submit an internal report to the *en banc* court. Final determination of the application for reinstatement must be made by the *en banc* court.

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 expenses 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 *en banc* court finds the lawyer is unfit to resume the practice of law, the court must deny the motion. If the *en banc* 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 expenses 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, 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. Confidentiality. All disciplinary proceedings must be conducted under seal, unless the respondent requests a hearing in open court. Notwithstanding the foregoing, a complainant or respondent is not prohibited from making public any documents or information in that person's possession unless otherwise prohibited by law.

10.1.1. Complaints of misconduct and other records of disciplinary proceedings may not be made public by the clerk of court, the court or the Lawyer Disciplinary Committee prior to the *en banc* court's issuance of an order and reasons imposing discipline, except upon order of the *en banc* court.

10.1.2. In the event the *en banc* court issues an order and reasons imposing public discipline, the documents filed in the official record of this court must be made public by the clerk of court no sooner than 20 days thereafter. A respondent may, for good cause shown, file a motion requesting sealing or redaction of the record within 19 days following the order and reasons imposing public discipline.

10.1.3. In the event the *en banc* court issues an order and reasons imposing an interim suspension in a proceeding instituted under Section 11.2 hereof, the complaint with attachments and any response may not be made public by the clerk of court, the court or the Lawyer Disciplinary Committee. Upon request, the *en banc* court must determine no sooner than 20 days thereafter whether any documents filed in the official record of an interim suspension proceeding will be made public. Provided, if a request is made for the records to be made public, a respondent may within 19 days following the request, and for good cause shown, file a motion requesting sealing or redaction of the record.

10.2. Interim Suspension for Threat or Harm

10.2.1. Commencement of Interim Suspension Proceedings. Interim suspension proceedings must be commenced by filing a written complaint with the clerk of court asserting the grounds for interim suspension and requesting that the court suspend the lawyer from practice pending further orders of the court. Any person may file a complaint for interim suspension with the clerk of court. The petitioner must attach to the petition any supporting evidence (including any order of interim suspension issued by another court). The clerk must attempt to provide actual notice to the respondent that a complaint for interim suspension has been filed and that the lawyer has seven days to file a response by sending the complaint and attachments to the respondent via email and serving the complaint and attachments upon respondent via email and certified mail, return receipt requested. Provided, if actual notice cannot be given, the clerk of court must certify in writing the efforts that have been made to provide actual notice to the respondent.

10.2.2. Grounds. The *en banc* court may issue an order imposing an interim suspension from practice before this court upon determining there is clear and convincing evidence the lawyer:

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

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

10.2.3. Immediate Interim Suspension. The *en* banc court may consider the complaint and attachments filed with the clerk of court and any response and attachments filed by the respondent to determine whether the requirements for an interim suspension have been met. If so, the *en banc* court must:

10.2.3.1. immediately suspend the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing

the harm, as set forth herein;

10.2.3.2. order the lawyer to show cause by a date and time certain why the court should not issue an immediate interim suspension and, if the lawyer is unable to do so on the date and time specified, immediately suspend the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing the harm, as set forth herein; or,

10.2.3.3. take such other action as it deems appropriate.

10.2.4. Service of the Order of Interim Suspension. The clerk must attempt to provide actual notice to the respondent that an order of interim suspension has been issued by sending the order to the respondent via email and serving the order upon respondent via email and certified mail, return receipt requested. Provided, if actual notice of the issuance of the order cannot be given, the clerk of court must certify in writing the efforts that have been made to provide actual notice to the respondent.

10.2.5. Motion for Dissolution of Interim Suspension. A lawyer suspended on an interim basis may move the *en banc* court to dissolve or to modify the order of interim 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 *en banc* court must dissolve an order of interim suspension unless there is clear and convincing evidence that the grounds for interim suspension still exist.

* * * END * * *