



Notice of Proposed Amendments to Local Rules of Procedure, Appendix A: Rules of Discipline

The Rules of Discipline for attorneys practicing before the United States District Court, Southern District of Texas are proposed to be amended as indicated in the attachment to this Notice.

Written comments on the proposed amendments may be addressed to the Court by December 4, 2006, as follows:

Clerk, U.S. District Court
Attn: Rules of Discipline
Room 5401
P.O. Box 61010
Houston, TX 77208

Dated: November 1, 2006

Attach: Proposed Amended Rules of Discipline

APPENDIX A

RULES OF DISCIPLINE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Rule 1. *Standards of Conduct.*

- A. Lawyers who practice before this court are required to act as mature and responsible professionals, and the minimum standard of practice shall be the Texas Disciplinary Rules of Professional Conduct.
- B. Violation of the **Texas** Disciplinary Rules of Professional Conduct shall be grounds for disciplinary action, but the court is not limited by that code.

Rule 2. *Conviction of Crime.*

- A. A lawyer convicted of a felony **or a misdemeanor involving moral turpitude or controlled substance** shall promptly notify ~~the clerk of court~~ **this court in writing** and furnish to the clerk **of court** a certified copy of the judgment of conviction. A lawyer convicted of a felony shall immediately cease practicing before this court pending further action by the court.
- B. After the court has notice that a lawyer practicing before it has a ~~felony~~ conviction **described in Rule 2 (A)**, it will follow the due process procedure in these rules to determine whether discipline should be imposed on the lawyer.

Rule 3. *Discipline by Another Court.*

- A. A lawyer disciplined by another court in the United States shall promptly notify this court in writing and furnish to the clerk of the court a certified copy of the order of discipline. A lawyer suspended or disbarred by another court in the United States shall promptly notify the clerk of court in writing of that action and immediately cease to practice before this court. The lawyer will furnish a certified copy of the order of suspension or disbarment. A lawyer subjected to a published reprimand by a state bar shall notify the clerk of court, but may continue to practice, pending review by this court.
- B. A final adjudication in another court that the lawyer has been guilty of an offense leading to the action referred to in Rule 3A shall establish conclusively the conduct for the purposes of proceeding in this court unless the lawyer requests a hearing and carries the burden of showing that such prior action lacked due process.

Rule 4. *Disbarment by Consent or Resignation in Other Courts.*

- A. A lawyer who is disbarred or suspended by or on consent or agreement or who resigns from the bar of another court in the United States to avoid further discipline must advise the clerk of the action this court in writing and immediately cease to practice before this court. The lawyer shall furnish a certified copy of the disciplinary order or letter of resignation to the clerk.
- B. Upon request by the lawyer, the court will follow the due process procedure in

these rules to determine under what conditions the lawyer might continue to practice in this court.

Rule 5. *Charges of Misconduct Warranting Discipline.*

- A. Charges that any lawyer of this bar has engaged in conduct which might warrant disciplinary action shall be brought to the attention of the court by a writing addressed to the chief judge with a copy to the clerk of court.
- B. Upon receipt of a charge **that is not frivolous**, the chief judge **shall order the clerk to file the charge and randomly assign it** ~~refer any non-frivolous charge~~ to a district judge for review to determine whether further disciplinary proceedings should be held. The reviewing judge shall notify the charged lawyer of the charges made and give that lawyer an opportunity to respond. **If the charge is made by a bankruptcy judge or is one occurring in bankruptcy court, the clerk may assign the charge to a bankruptcy judge, who may serve as review judge. The chief judge may elect to forego the review procedures of this paragraph if, in the judgment of the chief judge, the information provided to the chief judge with the charge is sufficiently clear to warrant further disciplinary proceedings of paragraph 5 (C), et seq.**
- C. ~~If the reviewing judge determines that further disciplinary proceedings are warranted, the chief judge shall promptly designate one district judge of the court as the hearing judge.~~ **After review, the judge will, by written report, recommend to the chief judge whether further disciplinary proceedings should be heard and the**

charges to be heard. If further proceedings are recommended, the chief judge shall order further hearings to be held before a district judge, who may have been the review judge.

- D. The hearing judge will give at least 14 days notice to the charged lawyer of the time of the hearing, the charges ~~made~~ and the right to counsel at the hearing. The hearing shall be held **on the record** in open court as a miscellaneous proceeding. ~~under~~ Rule 1101(d)(3), Federal Rules of Evidence **applies**, ~~reported~~, and all witnesses **shall be** sworn.
- E. In the hearing of charges before the hearing judge, the prosecution shall be by an attorney specially appointed by the hearing judge. Costs of the prosecutor and fees allowed by the hearing judge may be paid from the Attorney Admissions Fund.
- F. **The hearing judge shall file his judgment, providing a copy to the chief judge and the lawyer.** If the hearing judge determines that disciplinary action should be taken, the judge shall **make findings of violations and order** ~~send a confidential~~ report to the court recommending either permanent disbarment, a suspension, ~~for a~~ **time**; a written or oral reprimand and whether such should be public or private **with such conditions as the judge may order.** ~~The court shall act by a majority vote based on the record established at the hearing.~~
- G. ~~If the membership in the Southern District Bar of the lawyer being disciplined was not current at the time of the court order imposing discipline, the order may include that the lawyer shall not reapply for admission except under such~~

~~conditions as the court may impose.~~ The decision of the hearing judge is final, except that, within 10 days, the lawyer may appeal the judgment by filing a notice of appeal. A panel of three district judges of the court, randomly assigned, will hear the appeal. The appeal shall be on the record developed at the hearing. Facts found by the hearing judge are not reviewable unless clearly erroneous. The law determined by the hearing judge is reviewable de novo. The decision of the panel is final. There is no en banc review.

- H. If the membership in the Southern District Bar of the lawyer being disciplined was not current at the time of the court order imposing discipline, the order may include that the lawyer shall not reapply for admission except under such conditions as the court may impose.

Rule 6. *Reinstatement.*

- A. ~~Any lawyer who is suspended by this court is automatically reinstated at the end of the period of suspension or upon satisfying the chief judge that any special condition of suspension has been met.~~ A suspended or disbarred lawyer must apply to this court for reinstatement before resuming practice before this court. A lawyer who has been suspended may apply for reinstatement before or after the end of his term of suspension. The term of suspension includes all conditions and periods of suspension, including probated and inactive suspension.
- A lawyer who has been disbarred may ~~not~~ apply for reinstatement ~~until at least~~ but not before five years from the effective date of the disbarment.

- B. All petitions for reinstatement shall be ~~delivered to the chief judge~~ **filed with the clerk of the court** who will promptly refer the petition to **the Attorney Admissions Committee** for its ~~a hearing judge~~. ~~The hearing judge may appoint counsel as provided in Rule 5E or investigate the application without counsel. The hearing judge will make a recommendation on the petition to the chief judge for action by the court.~~ **The chief judge may make the final decision of the court on the petition.**
- C. Petitions for reinstatement shall be accompanied by an advance cost deposit in an amount to be set by the court to cover anticipated costs of the proceeding.
- D. No petition for reinstatement may be filed within one year following an adverse ruling on a previous petition.

Rule 7. *Lawyers Specially Admitted.*

An appearance by a lawyer before the court, by writing, or in person, confers disciplinary jurisdiction upon the court under these rules.

Rule 8. *Service of Papers.*

Service of papers under these rules shall be by personal service or by first class mail addressed to the respondent or respondent's attorney.

Rule 9. *Special Duties of the Clerk.*

- A. In addition to all other duties assigned, the clerk shall collect advance cost deposits

and place them in the Attorney Admissions Fund. These sums shall be maintained by the clerk as trustee and administered by the court for expenses incurred under these rules and not on behalf of the United States.

- B. Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas.

Rule 10. *Inherent Power of Judges.*

The existence of these rules shall not limit the power of district judges to exercise their inherent powers over lawyers who practice before them, and the chief judge shall have the right to designate another district judge, to serve under these rules in the place of the chief judge.

Rule 11. *Effective Date.*

These rules are effective immediately; all pending disciplinary matters will be concluded under these rules; and the rules effective July 17, 1995 are superseded by them.