

ETHICS PROCEDURES IN THE FIFTH CIRCUIT

A presentation by Elizabeth A. Alston¹ at the seminar
CIVIL RIGHTS IN 2004: Why Can't We All Just Get Along?

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Ethics complaints against judges

Complaints against federal judges² are governed by the "Judicial Improvements Act of 2002." 28 U.S.C. §§ 351 - 364. Under the Act, any person may file a written complaint alleging that a judge has engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all duties of office by reason of mental or physical disability." § 351(a).

Complaints are filed with the clerk of court of appeals in the circuit in which the judge sits, through the clerk of the court.³ The clerk transmits the complaint to the chief judge of the circuit,⁴ simultaneously with its transmittal to the respondent judge. § 351(c). The chief judge is charged with the duty to "expeditiously review" such a complaint.

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²Federal judges, under this act, include circuit judges, district judges, bankruptcy judges, and magistrate judges. § 351(d).

³"In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint." §351(b).

⁴"[O]r, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term "chief judge"). §351(c).

In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

§ 352(a).

Under this “limited inquiry” procedure, the chief judge may request the respondent judge to make a written response to the complaint, which shall not be provided to the complainant unless authorized by the respondent. The chief judge (or a designee) may also speak with or write to the complainant and any other person with potential relevant knowledge, as well as review any relevant transcripts or documents. “The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.” *Id.*

After the foregoing “expeditious review” and optional “limited inquiry,” the chief judge may:

- dismiss the complaint based upon the following reasons:
 - it fails to conform with § 351(a),
 - it is directly related to the *merits* of a decision or procedural ruling,
 - it is frivolous, lacks “sufficient evidence to raise an inference that misconduct has occurred,” or its allegations are incapable of being established through investigation, or
 - if a “limited inquiry” has been conducted and it establishes that “the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence” [query how this is to be accomplished if the chief judge is prohibited from making findings of fact about any matter “reasonably in dispute”].
- conclude the proceeding if he or she finds:
 - that “appropriate corrective action” has been taken, or
 - that action is no longer necessary because of intervening events.

If any of the foregoing actions are taken, the complainant and respondent judge are provided with copies of the written order. § 352(b). If either the complainant or respondent are aggrieved by a final order, they may petition the judicial council of the circuit for its review. The denial of a petition for review by the judicial council is final and “shall not be judicially reviewable on appeal or otherwise.” § 352(c).⁵

Judicial councils for each federal judicial circuit are established by 28 U.S.C. § 332.⁶ The councils are charged with various administrative responsibilities, including a role in the processing of judicial disciplinary complaints within that circuit.⁷ The Rules Governing Complaints of Judicial Misconduct or Disability promulgated by the Judicial Council of the Fifth Circuit are attached, and can be accessed on the web at:

<http://www.ca5.uscourts.gov/documents/comprule.htm>.

Also see <http://www.informed.org/courts/JUDICIAL%20complaint%20form%20372.htm>, which contains a complaint form (also attached).

Most complaints are dismissed, and the most frequent ground for dismissing a complaint is that it is "directly related to the merits of a decision or procedural ruling." See

⁵A judicial council may refer a petition for review to a panel of at least 5 members of the council, at least 2 of whom are district judges. § 352(d).

⁶The Internal Operating Procedures of the Fifth Circuit state:

The judicial council . . . is composed of 19 judges - the chief circuit judge, nine circuit judges, and nine district judges. The chief circuit judge and the active circuit judge next in seniority serve permanent terms. All other council members serve for staggered three-year terms. The council meets on call of the chief circuit judge pursuant to statute.

⁷Judicial councils are not to be confused with judicial conferences of the circuits, which are authorized by 28 U.S.C. § 333. Judicial conferences may be called by the chief judge of the circuit “for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit.” Judicial councils have greater responsibilities and powers in the exercise of their functions.

www.uscourts.gov/judbus2000/tables/s22sep00.pdf.⁸ The complainant can petition to the circuit judicial council for review if the chief judge dismisses a complaint or concludes a proceeding.

If the complaint is not dismissed or concluded by the procedures set forth above, the chief judge “shall promptly:”

- appoint a special committee to investigate the facts and allegations of the complaint, consisting of the chief judge and “equal numbers of circuit and district judges of the circuit,”
- provide the committee with certified copies of the complaint and any other “documents pertaining thereto” to the committee members, and
- provide written notice to the complainant and the respondent judge of this action.

§ 353(a).

The special committee is to investigate the facts alleged in the complaint and “expeditiously” file a “comprehensive” written report with findings and a recommendation with the circuit’s judicial council. The council may conduct any additional investigation it considers necessary. The council is directed to take such action “as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit . . .” § 353(c).

Upon receipt of the special committee’s report, the judicial council:

- may conduct any additional investigation which it considers to be necessary,
- may dismiss the complaint, or
- if the complaint is not dismissed, “shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.”

§ 354(a)(1). Note that the goal is the “administration of the business of the courts,” *not* the

⁸See newest “Table, Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364, During the 12-Month Period Ending September 30, 2003,” attached.

administration of justice, a determination of the propriety of the judge's conduct, or the judge's fitness as a judge. Those issues are dealt with in another section, described below.

"Possible actions" which may be taken by the judicial council include:

- a cessation of the assignment of cases to the respondent judge "on a temporary basis for a time certain,"
- private censure or reprimand of the respondent judge, and
- public censure or reprimand of the respondent judge.

§ 354(a)(2)(A).

If the respondent judge is an Article III judge "appointed to hold office during good behavior," the council may take the additional possible actions:

- certify the disability of a judge pursuant to § 372(b), and
- request that the judge voluntarily retire.

§ 354(a)(2)(B). The judicial council may not, under any circumstances, order an Article III judge's removal from office. § 354(a)(3)(A).

If the respondent judge is a magistrate judge, the council may also direct the chief judge of the respondent's district court to "take such action as the judicial council considers appropriate." § 354(a)(2)(C). The removal of a magistrate judge from office is governed by § 631, and the removal of a bankruptcy judge from office is governed by § 152. § 354(a)(3)(B).

Written notice of any action taken by the judicial council under § 354(a) shall be provided "immediately" to the complainant and the respondent judge. Under § 354(b)(1), the judicial council has the discretion to refer any complaint, along with the record and its recommendations for appropriate action, to the Judicial Conference of the United States. The Judicial Conference is established by 28 U.S.C. § 331. It is presided over by the

Chief Justice of the United States, and is charged with certain administrative oversight responsibilities relating to the business of the federal courts.

If the judicial council determines based upon its investigation of a complaint, or “on the basis of information otherwise available” to it, that an Article III judge “may” have engaged in conduct:

- which constitutes ground for impeachment under article II of the Constitution, or
- “which, in the interest of justice, is not amenable to resolution by the judicial council,” then

the council *shall* promptly “certify such determination to the Judicial Conference of the United States. § 354(b)(2).

The judicial council shall promptly provide written notification to the complainant and the respondent judge of any referral or certification to the Judicial Conference “unless contrary to the interests of justice.” § 354(b)(3).

The Judicial Conference is empowered to take such action by majority vote as the judicial council could have taken under § 354(a)(1)(C) and (2). § 355(a). If the Judicial Conference determines that impeachment “may” be warranted, it “shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary.” § 355(b)(1). Upon receipt of such a determination, the “Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.” *Id.*

If a judge has received a felony conviction and exhausted all means of obtaining direct review thereof, or the delays therefor have expired, the Judicial Conference “may” transmit to the House of Representatives a determination that “consideration of impeachment may be warranted.” § 355(b)(2).

Queries: What is the standard of proof utilized by the judicial council or the Judicial

Conference that impeachment “may” be warranted? Is it less than a preponderance of evidence? Is it less than a reasonable likelihood? Is it a one-third likelihood? This “may” language is probably inserted to provide appropriate deference to the House of Representatives to make the final determination, however, it does not provide any traditional proof standard for the council or the Conference to apply in making their recommendations. Does it provide the respondent judge with the appropriate measure of procedural due process?

A complainant or a respondent judge “aggrieved” by action taken by the judicial council may petition the Judicial Conference for review. § 357(a). The Judicial Conference’s actions are final and conclusive and are not judicially reviewable except as provided in this section and § 352(c). § 357(c).

Interestingly, “[n]o person shall be granted the right to intervene or to appear as amicus curiae in [a judicial disciplinary] proceeding before a judicial council or the Judicial Conference.” § 359(b). Unless and until the Clerk of the House of Representatives must make public a referral of a matter from the Judicial Council, all records relating to judicial disciplinary investigations are confidential, with only a few specific exceptions.⁹ § 360(a).

⁹Disclosure may be made “to the extent that—

(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

(continued...)

If a complaint against a respondent judge is finally dismissed, the judicial council “may recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.” § 361.

Ethics complaints against lawyers

Fifth Circuit

Fifth Circuit Rule 46.2, “Suspension or Disbarment,” pertains to lawyer discipline, and states:

In addition to FED. R. APP. P. 46(b), attorneys may be suspended or removed from the roll of attorneys permitted to practice before this court if the appropriate law licensing authority withdraws or suspends the attorney’s license to practice law, or the license to practice lapses.

...
I.O.P. Fed. R. App. P. 46(b) and (c) govern the procedures followed to invoke disciplinary action against any member of the bar of this court for failure to comply with the rules of this court, or for conduct unbecoming a member of the bar.

Rule 46, sections (b) and (c) provide:

(b) Suspension or Disbarment.

⁹(...continued)
§ 360(b) provides:

(b) Public availability of written orders.--Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

District Courts

In the district courts, lawyer discipline is governed by local rule. The disciplinary rules of the district courts of the Fifth Circuit vary greatly in their form, content, and the nature and extent of the due process afforded.

U.S.D.C. - Eastern District of Louisiana

The Eastern District's Local Civil Rule 83.2.10E, "Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Louisiana," contains a comprehensive procedural treatment of disciplinary actions with an obvious concern for procedural due process issues. The Local Civil Rule is confusingly divided into sections which are also called "Rules." By operation of Rule I, Part D (also cited as LR83.2.4E), the Eastern District adopts the Rules of Professional Conduct adopted by the Supreme Court

of the State of Louisiana, “as hereafter may be amended from time to time by the Louisiana Supreme Court, except as otherwise provided by a specific rule of the courts.” As some federal district courts in other states utilize the A.B.A. Model Rules of Professional Conduct for their disciplinary actions, rather than the local states’ disciplinary rules, this clarification is significant.¹⁰

Disciplinary proceedings are instituted in the Eastern District upon an attorney’s conviction of a serious crime (as defined in Rule II, Part B). Upon filing of a certified judgment of conviction (whether the result of a *nolo contendere* plea or otherwise), the court enters an order suspending the lawyer from practice before it. Rule III, Part E.1. Once all appeals from the conviction are concluded, a majority of the active judges will determine, *en banc*, the final discipline to be imposed in the disciplinary proceeding based on the conviction. Rule III, Part E.2. If the lawyer’s conviction is reversed, he or she will be reinstated as a member of the district bar.

Complaints of attorney convictions of other types of crimes (the “non-serious” ones), as well as complaints regarding attorney misconduct unrelated to criminal convictions, are referred to the court *en banc* for a decision by majority vote of the active judges of the action to be taken. Rule III, Part A.4. If the judges vote to pursue the complaint, it is randomly allotted to an active judge of the court. Rule III, Part A.5. The active judges may vote that, even if true, the allegations do not merit discipline, or, that the allegations should be handled in another forum such as by the Office of Disciplinary Counsel of the Louisiana Attorney Disciplinary Board. Rule III, Part A.4.

The judge to whom the case is allotted appoints counsel to investigate the matter, and the order of appointment contains a description of the alleged misconduct. Rule III,

¹⁰See, e.g., *McKinney v. McMeans*, 147 F.Supp.2d 898 (U.S.D.C. - W.D. Tenn. May 14, 2001):

Generally, federal law has adopted the ethical rules promulgated by the Supreme Court in which the federal court sits or announced by the national profession and embodied in the ABA Model Rules of Professional Conduct and the ABA Code of Professional Responsibility. See *Cole v. Ruidoso Mun. Schs.*, 43 F.3d 1373, 1383 (10th Cir.1994); *In re Dresser Indus., Inc.*, 972 F.2d 540, 543, 544 (5th Cir.1992).

Part B.1. A copy of the order, and the complaint or judgment instigating the matter, is served by mail upon the respondent-attorney. Rule III, Part B.2. These notice provisions are broader (and arguably fairer) than those provided by Louisiana Supreme Court Rule XIX governing state lawyer disciplinary proceedings. During the investigative stage of these proceedings, *both* the attorney appointed to investigate for the court, as well as counsel for or the respondent-attorney, have the power to apply to the allotted judge to direct the clerk to issue subpoenas and subpoenas duce tecum. Rule III, Part B. 5. In contrast, in the Louisiana state disciplinary system, the Office of Disciplinary Counsel can require the issuance of subpoenas during the investigative stage without any application for authority. The respondent-attorney or his/her counsel does not have subpoena power during the investigative stage.

After an “expedited” investigation, appointed counsel delivers a report to the allotted judge, and may include a recommendation for or against institution of disciplinary action with reasons therefor. The court is not required to act in accordance with any such recommendations. Rule III, Part B.6.

If the judge believes that disciplinary action may be warranted, he or she issues a show cause order to the respondent-attorney. Rule III, Part C.1. If an issue of fact is raised by the respondent-attorney’s pleadings in answer to the order, or if the attorney wishes to be heard in mitigation, a hearing is scheduled. Rule III, Part C.3. Failure to timely file a written response to the show cause order is grounds for the entry of an order of disbarment or suspension. Rule III, Part C.4.

Following due proceedings, the allotted judge makes written findings and recommendations to be submitted to the court *en banc* for its consideration and determination of the final discipline, if any, to be taken. Rule III, Part D.1.

Attorneys admitted to practice in the Eastern District have the obligation to promptly notify the clerk of court of any public disciplinary action taken against them in another U. S. jurisdiction. Rule III, Part G.1. The filing of a certified or exemplified copy of a judgment or order evidencing the fact that the said attorney has been disciplined by another court institutes an Eastern District disciplinary proceeding according to the procedures outlined above. Rule III, Part G.2. A final adjudication in another court that an attorney has been

guilty of misconduct establishes conclusively the misconduct for purposes of a disciplinary proceeding in the Eastern District, unless the respondent-attorney demonstrates, and the court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated, it clearly appears that:

- a. The attorney was deprived of due process by the lack of proper notice or the opportunity to be heard; or
- b. There was such an infirmity of truth establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject.

Rule III, Part G.4. and 5.

“The cost and expense of any disciplinary proceeding, including counsel’s fees as determined by the court, may be assessed to and shall be paid by the respondent-attorney.” Rule III, H

U.S.D.C. - Middle District of Louisiana

By operation of LR83.2.4M, the Middle District also adopts the Rules of Professional Conduct adopted by the Supreme Court of the State of Louisiana, “as hereafter may be amended from time to time by the Louisiana Supreme Court, except as otherwise provided by a specific rule of the courts.”

An attorney admitted to practice in the Middle District, who has been suspended or disbarred by another court or bar association, or who has been convicted of any felony, shall give written notice of such action to the clerk of court. LR83.2.10M. “Pending any appeal of the conviction, suspension or disbarment, a member of the bar may be suspended from further practice before this court. Any member of the bar of this court may be disbarred or otherwise disciplined after such hearing as the court may in each particular instance direct, but any member of this bar who has been disbarred or dropped, or hereafter may be disbarred or dropped, from the Bar of the State of Louisiana, or any other state or country, or from the bar of any court of the United States, shall be dropped from the bar of this court and his/her name stricken from the roll.” *Id.*

U.S.D.C. - Western District of Louisiana

By operation of LR83.2.4W, the Western District adopts the Rules of Professional Conduct adopted by the Supreme Court of the State of Louisiana, “as hereafter may be amended from time to time by the Louisiana Supreme Court, except as otherwise provided by a specific rule of the courts.”

The disciplinary rules of the Middle District may seem lacking in detail or the provisions for notice and hearing, but they are an improvement over the situation in the Western District. There, the only mention of lawyer disciplinary rules pertain to the adoption of the substantive Rules of Professional Conduct adopted by the Louisiana Supreme Court.

U.S. District Courts - Northern and Southern District of Mississippi

Uniform Locals Rule 83.1(c), “Discipline and Reinstatement,” provide:

(1) Original Discipline. The court may, after thirty days notice and an opportunity to show cause to the contrary, and after hearing, if requested, censure or reprimand any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules, the Mississippi Rules of Professional Conduct, or any other rule of the court. If the conduct or failure to comply is found to be flagrant, the court may, after notice, opportunity to show cause, and hearing as provided above, revoke or suspend the attorney's admission to practice before the court. Such action by the court shall be reported by the clerk of court to the executive director of the Mississippi Bar, or the appropriate official of the bar of any non-resident attorney admitted to practice in this court.

If the court finds that the conduct complained of affords reasonable grounds for more stringent disciplinary action, including suspension or disbarment, the matter shall, in the case of a member of the Mississippi Bar, be referred to the Mississippi Bar for such action as is appropriate under the provisions of Miss. Code Ann. §§ 73-3-301, *et seq.* (1972), or subsequent amendments. If the attorney is not a member of the Mississippi Bar, the matter shall be

referred to the appropriate disciplinary authority of the bar of which he or she is a member.

Nothing herein shall be construed to limit the inherent disciplinary power of this court, including the power of a district judge to immediately suspend a member of the bar convicted of a felony in a case heard before him.

(2) Reciprocal Discipline. When it is shown to the court that any member of its bar has been suspended or disbarred from practice by any other court of record, the member shall be subject to suspension or disbarment by the district court. The disciplinary action shall be initiated by a show-cause order issued by the court, notifying the attorney that disciplinary proceedings have been commenced, describing the disciplinary proceedings conducted in the other jurisdiction, and requesting that the member appear and show cause why he or she should not be suspended or disbarred from practice before the district court. The member shall be afforded thirty days within which to show cause why he or she should not be suspended or disbarred; the time for response may be extended by the court for proper reason. The member's response to the show-cause order shall be limited to claims of (i) lack of procedural due process in the original proceedings, and (ii) lack of substantial evidence to support the factual findings. Upon response to the show-cause order, and after hearing, if such is requested, or upon expiration of the period allowed for response if no response is made, the court may enter an appropriate order in which it may impose discipline, including, but not limited to, the same discipline as was administered by the other jurisdiction. Lack of procedural due process in the original proceeding shall not preclude original disciplinary action by the court, as provided in subparagraph (1) hereof.

(3) Reinstatement. No application for relief from suspension or reinstatement after disbarment will be considered by this court unless the applicant can show that he or she is an attorney in good standing with the Mississippi Bar or with the jurisdiction in which he or she may have been disbarred. Any attack upon the denial of such readmission or relief from suspension shall be limited to claims of (i) lack of procedural due process in the reinstatement proceeding of the other jurisdiction, and (ii) lack of substantial evidence to support the factual findings. Upon the applicant's showing of good standing, the court may vacate or continue the disbarment or suspension, or diminish the suspension, as may be appropriate.

These rules, deferring “more stringent disciplinary action” to the state licensing the offending lawyer, are consistent with the general principle that the state courts preside over lawyer admission and licensure proceedings. This principle is also evident in the fact that

no other disciplinary sanction is available in Mississippi federal district courts other than suspension or disbarment. Other corrective actions, such as reprimands, admonitions, probation monitoring, and disability proceedings, are left to the jurisdiction of the Mississippi Bar and the Mississippi Supreme Court.¹¹

U.S.D.C. - Southern District of Texas

Appendix A to the local rules of the Southern District contain the Rules of Discipline, which provide:

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 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 shall promptly notify the clerk of court and furnish to the clerk 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, 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 suspended or disbarred by another court in the United States

¹¹The Uniform Local Rules of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi, Rule 2, provides that “[t]he The admission and conduct of attorneys is regulated by Rule 1, Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi.” Presumably this now means Rule 83.1.

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 on consent or resigns from the bar of another court in the United States to avoid further discipline must advise the clerk of the action and immediately cease to practice before this court. The lawyer shall furnish a certified copy of the disciplinary order 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, the chief judge shall 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.

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.

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 in open court as a miscellaneous proceeding under Rule 1101(d)(3), Federal Rules of Evidence, reported, and all witnesses 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. If the hearing judge determines that disciplinary action should be taken, the judge shall 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. 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.

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.

B. Any lawyer who has been disbarred may not apply for reinstatement until at least five years from the effective date of his disbarment.

C. Petitions for reinstatement shall be delivered to the chief judge who will promptly refer the petition to 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.

D. 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.

E. 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.

U.S.D.C. - Eastern District of Texas

Lawyer disciplinary rules for the Eastern District are found at Local Rule AT-1, "Attorney Discipline," which provides:

(a) Generally. The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this bar.

(b) Disciplinary Action Initiated in Other Courts.

(1) A member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements or voluntary resignation unrelated to a disciplinary proceeding or problem.

(2) When it is shown to the court that a member of its bar has been either disbarred or suspended, the clerk shall enter an order for the court, effective ten days after issuance unless sooner modified or stayed, disbaring or suspending the member from practice in this court upon terms and conditions identical to those set forth in the order of the other court.

(c) Conviction of a Crime. A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.

(d) Disciplinary Action Initiated in This Court.

(1) Grounds for Disciplinary Action. This court may, after the member has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any member of its bar:

- (A) for conduct unbecoming a member of the bar;
- (B) for failure to comply with these local rules or any other rule or order of this court;
- (C) for unethical behavior;
- (D) for inability to conduct litigation properly; or
- (E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) Disciplinary Procedures.

(A) When it is shown to a judge of this court that a member of this bar has engaged in conduct which might warrant disciplinary action, the judge receiving the information shall bring the matter to the attention of the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the court will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing if

requested or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(B) At any hearing, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

(e) Notification of Disciplinary Action. Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the Fifth U.S. Circuit Court of Appeals and the National Discipline Data Bank operated by the American Bar Association.

(f) Reinstatement. Any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

U.S.D.C. - Northern District of Texas

Lawyer disciplinary rules for the Northern District are separately enumerated in civil and criminal cases. For civil cases, Local Rule 83.8 applies, "Loss of Membership and Discipline of Attorneys," and in criminal cases, Local Rule 57.8 applies. Both state:

- a. Loss of Membership. A member of the bar of this court is subject to suspension or disbarment by the court under the following circumstances:
 1. if for any reason other than nonpayment of dues, failure to meet continuing legal education requirements, or voluntary resignation unrelated to a disciplinary proceeding or problem, an attorney loses, either temporarily or permanently, the right to practice law before:
 - A. the courts of the State of Texas;

- B. the highest court of any other state or the District of Columbia; or
 - C. any federal court; or
2. if an attorney fails to maintain the right to practice law before the highest court of at least one state or the District of Columbia, unless the member's failure to maintain such right results from nonpayment of dues or failure to meet continuing legal education requirements.
- b. Grounds for Disciplinary Action. A presiding judge, after giving opportunity to show cause to the contrary, may take any appropriate disciplinary action against a member of the bar for:
- 1. conduct unbecoming a member of the bar;
 - 2. failure to comply with any rule or order of this court;
 - 3. unethical behavior;
 - 4. inability to conduct litigation properly;
 - 5. conviction by any court of a felony or crime involving dishonesty or false statement; or
 - 6. having been publicly or privately disciplined by any court, bar, court agency or committee.
- c. Appeal of Disciplinary Action. An attorney who is suspended or disbarred under LR 83.8(b) shall have the right to petition the chief judge of this court for relief. The petition must be filed within 10 days after the discipline is ordered. The chief judge shall have absolute discretion as to what, if any, further action will be taken in respect to the matter.
- d. Reporting by Members. Any member of the bar of this court who has:
- 1. lost or relinquished, temporarily or permanently, the right to practice in any court of record;
 - 2. been disciplined, publicly or privately, by any court, bar, court agency, or committee; or
 - 3. been convicted of a felony or crime involving dishonesty or false statement,

shall promptly report such fact in writing to the clerk, supplying full details and copies of all pertinent documents reflecting, or explaining, such action.

- e. Unethical Behavior. The term "unethical behavior," as used in this rule, includes any conduct that violates any code, rule, or standard of professional conduct or responsibility governing the conduct of

attorneys authorized to practice law in the State of Texas.

- f. Readmission. An attorney applying for readmission to the bar of this court must submit an application for readmission, together with the following materials:
 - 1. a full disclosure concerning the attorney's loss or relinquishment of membership in the bar of this court; and
 - 2. all information required by subsection (d) of this rule concerning facts that occurred prior to the date of application for readmission.

- g. Appointment of Counsel. A presiding judge shall have the right to appoint any member of the court's bar to assist in the handling of any proceeding contemplated by or resulting from this rule. An attorney appointed under this rule shall perform as requested unless relieved from doing so. An attorney desiring relief from appointment must move for such relief, which will be granted only upon a showing of good cause.

- h. Reciprocal Discipline.
 - 1. A member of the bar who is subject to suspension or disbarment under LR 83.8(a) must be given written notice by the chief judge, or by a district judge designated by the chief judge, that the court intends to suspend or disbar the member. The notice must identify the ground for imposing reciprocal discipline and provide the member an opportunity to show cause, within the time prescribed by the notice, why the member should not be suspended or disbarred.
 - 2. If the member does not respond to the notice, or responds but does not oppose reciprocal discipline, the chief judge or a designee district judge may enter an appropriate order after the prescribed time for a response expires or the response is received.
 - 3. If the member responds and, in whole or in part, opposes reciprocal discipline, the chief judge, or a district judge designated by the chief judge, must designate three district judges to hear the matter. The decision of a majority of the three-judge panel concerning the appropriate discipline shall be the final ruling of this court.

U.S.D.C. - Western District of Texas

In the Western District, Local Rules AT-1 and AT- * apply.

Rule AT-1, "Admission and Discipline of Attorneys," provides, in pertinent part:

(i) Any attorney admitted to practice in this Court will be referred to the committee of the division wherein the attorney practices for appropriate review, investigation, and recommendation if said attorney:

- (1) is convicted of a felony offense in any state or federal court;
- (2) has his or her license to practice law in any jurisdiction suspended, revoked, or otherwise limited by any appropriate disciplinary authority;
- (3) resigns his or her license to practice law in any state or federal district specified in his or her application;
- (4) represents a client in such a fashion as to raise a serious question concerning the need to improve the quality of the attorney's professional performance; or
- (5) presents an impediment to the orderly administration of justice and/or integrity of the Court.

Promptly after receipt of such reference, the chairperson of the committee will advise the attorney that the referral has been made. An initial screening subcommittee, consisting of one or more members of the full committee, chosen by the chairperson, will be formed. The subcommittee may request the attorney meet with it informally to explain the circumstances which gave rise to the reference, and may conduct such preliminary inquiry as it deems advisable.

If after the inquiry the subcommittee determines further attention is not needed, it will so notify the referring judge and the committee's responsibility will end. The referring judge may then take such action, if any, as appropriate. If the initial screening subcommittee determines that the matter warrants further action, it will notify and furnish the attorney with a copy of the subject matters which the subcommittee intends to refer to the full committee. In addition, it will advise the chairperson who will then initiate a review by the full committee or a quorum, as defined in this rule. Ten days after notice to the attorney, the committee may pursue such inquiries it deems appropriate including scheduling a hearing with the attorney present and shall thereafter make its recommendation in writing. The attorney will be advised of the recommendation, in writing, and will be given the opportunity to respond, to seek revision or revocation, and/or to suggest alternatives to the recommendation. The committee, after receiving

the response, may modify, amend, revoke or adhere to its original recommendation and will thereafter notify the attorney and the referring judge of its final recommendation. The referring judge may then take such action, if any, that is appropriate.

It will be the obligation of any attorney who is a member of the bar of this district to cooperate with the committee so that it may effectively comply with its responsibilities under this rule. If an attorney refuses to meet with the committee, refuses to furnish it with an explanation of the circumstances which gave rise to any referral, or otherwise refuses to cooperate with the committee, the committee will advise the presiding judge(s) of the division wherein the attorney practices and the Chief Judge of this Court. Thereafter, the Chief Judge may take such action, if any, as appropriate or refer the matter to the presiding judge of the division in which the lawyer practices.

Any attorney of the bar of this Court who is subject to a reference under this rule or who is asked by the committee to furnish it with relevant information concerning any requirement of this rule will regard it to be an obligation as an officer of the court to cooperate fully with the committee. In addition, any attorney who is convicted of a felony offense in any state or federal court; has his or her license to practice law suspended, revoked, or otherwise limited by any appropriate disciplinary authority; or resigns his or her license to practice law in any state or federal bar specified in the lawyer's application to be a member of the bar of this Court must notify the Clerk of this Court of such action immediately and the Clerk shall, in turn, notify the presiding judge(s) of the divisions wherein the attorney practices.

(j) All records of the committee pertinent to the implementation and administration of this rule will be kept confidential to ensure the flow of information to the committee, frankness in reporting, and preventing recriminations against sources of information, unless the Court orders otherwise. If the attorney in question files a written request with the committee to make the matter one of public record, then the entire record will be presented to the Chief Judge of the district of the division for an appropriate determination.

(k) When any judge of this district receives a recommendation from the committee regarding any member of the bar of the Western District of Texas and the circumstances warrant, the judge shall forward a copy of the committee's records and the Court's action regarding any attorney to the appropriate disciplinary authority of any bar that authorizes the attorney to practice law.

Index of Attachments

1. Table, Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364, During the 12-Month Period Ending September 30, 2003. <http://www.uscourts.gov/judbus2003/tables/s22.pdf>.
2. Judicial Council of the Fifth Circuit's Rules Governing Complaints of Judicial Misconduct or Disability. <http://www.ca5.uscourts.gov/documents/comprule.htm>.
3. Form, Judicial Council of the Fifth Circuit's Complaint of Judicial Conduct or Disability. <http://www.informed.org/courts/JUDICIAL%20complaint%20form%20372.htm>.
4. New Louisiana Rule of Professional Conduct 8.3(b), effective May 29, 2004.