

ADDENDUM EIGHT

RULES GOVERNING ATTORNEY DISCIPLINE IN THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Prefatory Statement

Nothing contained in these rules shall be construed to deny the U. S. Court of Appeals for the Eleventh Circuit (the Court) its inherent power to maintain control over proceedings conducted before it or to deny the Court those powers derived from statute, rules of procedure, or rules of court. References herein to a panel are to a three-judge panel of the Court who shall act by majority vote.

When alleged attorney misconduct is brought to the attention of the Court, whether by a judge of the Court, a lawyer admitted to practice before the Court, an officer or employee of the Court, or otherwise, the Court may dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the Court's Committee on Lawyer Qualifications and Conduct as hereinafter defined; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

RULE 1.

Standards for Professional Conduct

A. An act or omission of an attorney admitted to practice before the Court, committed individually or in concert with any other person or persons, that violates the Code of Professional Responsibility or Rules of Professional Conduct adopted by this Court, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. Except as otherwise provided by a specific rule of the Court, attorneys practicing before the Court shall be governed by the Federal Rules of Appellate Procedure, the Court's local rules, the American Bar Association Model Rules of Professional Conduct, and the rules of professional conduct adopted by the highest court of the state(s) in which the attorney is admitted to practice to the extent that those state rules are not inconsistent with the American Bar Association Model Rules of Professional Conduct, in which case the model rules shall govern.

B. Discipline for misconduct defined in these rules may consist of disbarment, suspension, reprimand, monetary sanctions (including payment of the costs of disciplinary proceedings), removal from district court Criminal Justice Act panels, removal from the Court's roster of attorneys eligible for practice before the Court and for appointment under the Criminal Justice Act, or any other sanction the Court may deem appropriate.

RULE 2.

Committee on Lawyer Qualifications and Conduct

A. The Court may appoint a standing committee consisting of nine members of the bar of the Court, three from each state of the circuit, to be known as the "Committee on Lawyer Qualifications and Conduct" (the Committee). Three of those first appointed shall serve a term of one year; three shall serve a term of two years; and the remainder and all thereafter appointed shall serve a term of three years. Each member shall serve until the member's successor is appointed. The Court may vacate any such appointment at any time. The Court shall designate one of the members to serve as chairman. A majority of the Committee shall constitute a quorum.

B. The purpose and function of the Committee is to conduct, on referral by the Court through the Chief Judge or the Chief Judge's designee (hereinafter the Chief Judge unless otherwise provided in these rules), investigations of alleged misconduct by any member of the bar of the Court, or any attorney appearing and participating in any proceeding before the Court; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; to conduct, on referral by the Court through the Chief Judge, inquiries and investigations of allegations of inadequate performance by an attorney practicing before the Court as hereinafter provided; and to submit written findings and recommendations to the Court for appropriate action. The members of the Committee, while serving in their official capacities, shall be considered representatives of the Court and as acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

C. The Court through the Chief Judge may refer to the Committee any accusation or evidence of misconduct that may constitute a violation of the disciplinary rules by any member of the bar with respect to any professional matter before the Court for such investigation, hearing, and report as the Court deems advisable. In addition to or instead of referring a disciplinary matter to the Committee, the Court through the Chief Judge may refer a complaint to the chief judge of the appropriate district court of the Eleventh Circuit for referral to that court's committee on lawyer qualifications and conduct. The Committee may refer disciplinary matters to an appropriate state bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively to conduct disciplinary proceedings, as provided in Rule 11., *infra*. The Court through the Chief Judge also may refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in the attorney's practice before the Court, as provided in Rule 8., *infra*. Under no circumstances may the Committee investigate or initiate proceedings concerning these matters without prior referral by the Court through the Chief Judge.

D. The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including, but not limited to, the power to compel the attendance of witnesses; to take or cause to be taken the deposition of witnesses; to order the production of books, records, or other documentary evidence; and any power prescribed elsewhere in these rules. The chairman, or in the chairman's absence each member of the Committee, shall have the power to administer oaths and affirmations to witnesses. The Committee may constitute itself into investigative panels, each investigative panel ordinarily consisting of the three members residing in the same state, for the purpose of investigating allegations of misconduct and inquiring into inadequate performance, and submitting written findings and recommendations to the Committee and to the Court. Hearings shall ordinarily be held before the Committee and not an investigative panel.

E. Except as provided in Rule 13(C), unless and until otherwise ordered by the Chief Judge, all reports, records of proceedings, and other materials presented by the Court, the Committee, or any person to the Clerk of the Court (the Clerk) for filing shall be filed and maintained as sealed and confidential documents and shall be labeled accordingly by the Court, the Committee, or the person presenting such matters for filing.

RULE 3.

Disciplinary Proceedings

A(1). When misconduct or an allegation of misconduct that, if substantiated, may warrant discipline against an attorney admitted to practice before the Court comes to the attention of a judge of the Court, whether by complaint or otherwise, the judge may refer the matter to the Court through the Chief Judge for possible referral to the Committee for investigation and, if probable cause is found that the attorney has engaged in such misconduct, for initiation of formal disciplinary proceedings. In addition to or instead of referring the disciplinary matter to the Committee, the Court through the Chief Judge may refer the matter to the chief judge of the appropriate district court of the Eleventh Circuit for disposition.

A(2). The Court through the Chief Judge may, prior to referring the matter to the Committee, direct the Clerk to issue an order requiring the attorney to show cause within 14 days from the date of the order why the attorney should not be disciplined. Such order may further provide that if the attorney fails to file a verified response within the time allowed, the attorney shall be indefinitely suspended from practice before the Court.

The attorney's response to such order shall be verified by a signed declaration similar to the following: "I swear (or affirm) that all statements made herein, including those made in attachments which are incorporated herein by reference, are true and correct to the best of my knowledge, information, and belief." When an attorney is suspended upon failure timely to file a verified response the matter need not be referred to the Committee. If an attorney timely files a

verified response, the Clerk shall refer the matter to the Chief Judge, who shall determine whether to refer the matter to the Committee or take other appropriate action.

B(1). If the Committee concludes, after investigation, that no probable cause exists to believe that the attorney has engaged in misconduct, and, therefore, that a formal disciplinary proceeding should not be initiated, the Committee in a report filed with the Clerk shall recommend a disposition of the matter -- for example, that the Court dismiss the complaint, that further action on the complaint be deferred, or that other action be taken. The Committee's report and all material received or generated by the Committee in the course of its investigation shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

B(2). With respect to matters referred to the Committee under Rule 3(A)(2), if the Committee concludes, after investigation, that the attorney has demonstrated sufficient justification why discipline should not be imposed, the Committee in a report filed with the Clerk shall request the Court to close the matter with no discipline imposed, stating its reasons therefor.

C(1). If the Committee concludes, after investigation, that probable cause exists to believe that the attorney has engaged in misconduct, the Committee shall file with the Clerk a report of its investigation, stating with specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within 14 days after service of that order why the attorney should not be disciplined. The order to show cause, issued by the Chief Judge, shall set forth the particular misconduct for which the attorney is sought to be disciplined. A copy of the Committee's report and the order to show cause shall be served on the attorney as provided in Rule 12., infra. The attorney may file with the Clerk, within 14 days of service of the order to show cause, a written response thereto. After considering the attorney's response, if any, the Committee may request the Court to rescind the order to show cause. If the Committee does not request the Court to rescind the order to show cause, or if a panel of the Court convened by the Chief Judge denies the Committee's request that it rescind the order to show cause, the Committee shall hold a hearing on the matter, giving the attorney at least 14 days notice as provided in Rule 12., infra. All proceedings before the Committee shall be recorded and the record thereof made available to the attorney. Such proceedings, the record thereof, and all materials received or generated by the Committee shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

C(2). With respect to matters referred to the Committee under Rule 3(A)(2), if the Committee concludes, after investigation, that the attorney has failed to demonstrate sufficient justification why discipline should not be imposed, or if a panel of the Court convened by the Chief Judge denies the Committee's request that it rescind the order to show cause, the Committee shall hold a hearing on the matter, giving the attorney at least 14 days notice as provided in Rule 12., infra.

C(3). An attorney may waive a hearing before the Committee by agreeing to the imposition of specific discipline to be recommended by the Committee in a report filed with the Clerk pursuant to Rule 3(E). When an attorney waives a hearing pursuant to this rule, an order to show cause pursuant to Rule 3(F), infra, need not issue.

D. Attorney misconduct shall be established by clear and convincing evidence. Except as otherwise ordered by the Court or provided in these rules, the Committee, in receiving evidence, shall be guided by the spirit of the Federal Rules of Evidence. The attorney, personally or through counsel, shall have the right to confront and cross-examine all witnesses appearing before the Committee and to present witnesses or other evidence. The Committee may require the attorney to testify or otherwise to make under oath specific and complete disclosure of all matters material to the alleged misconduct, subject to any privilege or right against such disclosure the attorney may assert pursuant to federal or state law.

E. Upon completion of a disciplinary proceeding, the Committee shall file with the Clerk the record of that proceeding and the Committee's report to the Court. The report shall include the Committee's findings of fact regarding the alleged misconduct and its recommendation as to whether the attorney should be found guilty of misconduct and disciplined. A copy of the report and recommendations shall be served on the attorney as provided in Rule 12., infra.

F. Upon receipt of the Committee's finding that misconduct warranting discipline occurred, a panel of the Court convened by the Chief Judge shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be accepted and implemented. After considering the attorney's response, the panel may adopt, modify, or reject the Committee's finding or take other appropriate action as provided in Rule 1.B., supra.

RULE 4.

Attorneys Convicted of Crimes

A. When an attorney admitted to practice before the Court has been convicted in a court of the United States or the District of Columbia or of a state, territory, commonwealth, or possession of the United States (another court) of a serious crime as defined in this rule, the Clerk, upon receipt of a copy of the judgment of such conviction, shall issue and serve on the attorney as provided in Rule 12., infra, an order to show cause why the attorney should not be disbarred. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disbarred. The order shall further state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee with instructions to initiate a disciplinary proceeding; provided, however,

that the panel shall not disbar the attorney or refer the matter to the Committee until any direct appeal from the attorney's conviction has been concluded and the conviction becomes final.

B. The term "serious" crime shall include any felony, or any attempt, conspiracy, or solicitation of another to commit a felony, and any lesser crime an essential element of which, as determined by the statutory or common-law definition of such crime in the jurisdiction in which it occurred, involves false swearing, misrepresentation, fraud, deceit, dishonesty, bribery, extortion, misappropriation, or theft.

C. An attorney suspended or disbarred pursuant to the provisions of this rule shall be reinstated immediately upon the filing with the Clerk of proof that the attorney's conviction has been set aside; such reinstatement, however, shall not terminate any disciplinary proceeding that has been initiated pursuant to this rule.

RULE 5.

Discipline Imposed By Other Courts

A. When an attorney admitted to practice before the Court has been suspended or disbarred by another court, the attorney shall file a copy of the judgment or order imposing such discipline with the Clerk. Upon receipt of a copy of such judgment or order, whether from the attorney or another source, the Clerk shall issue and serve on the attorney as provided in Rule 12., infra, an order to show cause why the Court should not discipline the attorney in the same manner. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disciplined accordingly. The order further shall state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee; provided, however, that the panel shall not suspend or disbar the attorney or refer the matter to the Committee until any stay of discipline granted by a court having jurisdiction has been lifted.

B. A determination by another court that an attorney has engaged in misconduct shall establish such conduct conclusively for purposes of a disciplinary proceeding pursuant to these rules, unless the attorney demonstrates and the Court is satisfied that:

1. the procedure used to make such determination was so lacking in notice or opportunity to be heard as to constitute a deprivation of the attorney's due process rights; or

2. the proof was so insufficient that the Court, consistent with its duty, could not accept as final the conclusion of the other court that the attorney engaged in such misconduct.

C. Discipline imposed by another court, whether suspension or disbarment, shall likewise be imposed by this Court unless the attorney demonstrates and the Court is satisfied that:

1. the imposition of the same discipline by the Court would result in grave injustice; or
2. the misconduct warrants substantially different discipline by the Court.

D. The Court at any time may direct the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

RULE 6.

Disbarment on Consent or Resignation in Other Courts

A. When an attorney admitted to practice before the Court has been disbarred on consent or has resigned from the bar of another court pending an investigation of allegations of misconduct, the attorney promptly shall inform the Clerk in writing of such disbarment on consent or such resignation.

B. Upon receipt of written notice, whether from the attorney or another source, that an attorney admitted to practice before the Court has been disbarred on consent or has resigned from the bar of another court pending an investigation of allegations of misconduct, the Clerk shall issue and serve on the attorney as provided in Rule 12., infra, an order to show cause why the Court should not disbar the attorney. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disbarred. The order shall further state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee.

RULE 7.

Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. An attorney admitted to practice before the Court who is the subject of an investigation or of a pending proceeding involving allegations of misconduct may consent to disbarment by filing with the Clerk an affidavit stating that the attorney freely and voluntarily consents to disbarment by the Court.

B. Upon the Clerk's receipt of such affidavit, a panel of the Court convened by the Chief Judge shall enter an order disbaring the attorney.

C. The order disbaring the attorney on consent shall be a matter of public record. The affidavit required pursuant to the provisions of this rule, however, shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

RULE 8.

Attorney Competency and Incapacity

A. When it appears that an attorney, for whatever reason, is failing to perform at an adequate level of competency necessary to protect the interests of the attorney's client (a competency matter), a panel of the Court convened by the Chief Judge may take any remedial action that it deems appropriate, including but not limited to referral of the attorney to appropriate institutions and professional personnel for assistance in raising the attorney's level of competency. The panel, through the Chief Judge, may also refer the matter to the Committee for investigation and recommendation.

B. A competency matter is not a disciplinary matter and thus shall not implicate the formal procedures described elsewhere in these rules. Upon referral of a competency matter, the Committee may conduct a preliminary inquiry and may request an informal meeting with the attorney to discuss the circumstances relating to the referral.

C. If, after conducting a preliminary inquiry, including meeting with the attorney if it elects to do so, the Committee determines that further action is not warranted, the Committee shall so notify the attorney and the referring panel and the matter shall be considered terminated unless the referring panel otherwise directs.

D. If the Committee determines, with or without a preliminary inquiry, that the matter warrants formal action, the Committee may recommend to the attorney in writing that steps be taken to improve the quality of the attorney's professional performance and may recommend that specific

actions be taken to effect such improvement. Upon receipt of the Committee's recommendation, the Clerk shall forthwith serve it upon the attorney as provided in Rule 12., infra. The attorney may file a written response to the Committee's recommendation with the Clerk within 14 days of such service, seeking review or revocation of the Committee's recommendation or suggesting alternatives thereto. If the attorney does not file such a response, the Committee's recommendation shall become the decision of the Committee. If the attorney does file such a response, the Committee may modify, revoke, or adhere to its recommendation, and that determination shall become the decision of the Committee. Upon receipt of the Committee's decision, the Clerk shall forthwith serve it upon the attorney as provided in Rule 12., infra. If the attorney agrees to comply with the Committee's decision, the Committee shall report to the referring panel that the attorney has agreed to its resolution of the matter. The Committee may monitor the attorney's compliance with its decision and may request the assistance of the Court to ensure such compliance.

E. If the attorney objects to the Committee's decision, the attorney may file a written response with the Clerk within 14 days of service of the decision. The referring panel shall consider the Committee's decision and the objection of the attorney and may adopt, modify, or reject the Committee's decision or take other appropriate action.

F. If the Committee finds that there is a substantial likelihood that the attorney's continued practice of law before the Court may result in serious harm to the attorney's clients, it may recommend that, pending compliance with its decision, the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continued practice before the Court. The referring panel may take any action that it deems appropriate with respect to the Committee's recommendation.

G. All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a competency matter shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

H. Nothing contained in this rule or any action taken pursuant to this rule shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these rules. Disciplinary proceedings shall occur separately from competency proceedings held pursuant to this rule.

RULE 9.

Reinstatement After Disbarment or Suspension

A. An attorney suspended for 90 days or less shall be reinstated by the Clerk at the end of the suspension period upon filing with the Clerk an affidavit of compliance with the provisions of the suspension order. An attorney suspended for more than 90 days or disbarred may not resume the practice of law before the Court until reinstated by order of the Court. An attorney who has been

disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

B. A petition for reinstatement filed by a suspended or disbarred attorney pursuant to this rule shall be filed with the Clerk and referred to the Chief Judge of the Court. If an attorney's suspension or disbarment in this Court was reciprocally imposed pursuant to Rule 5, supra, and the attorney has been reinstated to practice in the other court, the Chief Judge may grant the petition if deemed appropriate. In other circumstances, the Chief Judge may submit a petition to a panel of the Court or may refer a petition to the Committee. When a petition is referred to it, the Committee shall schedule a hearing, giving at least 14 days notice as provided in Rule 12., infra.

C. At the hearing the petitioner shall have the burden of establishing by clear and convincing evidence that the petitioner has the moral qualifications, competency, and learning in the law required for admission to practice before the Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest. The petitioner, personally or through counsel, shall have the right to present witnesses or other evidence. The Committee may require the petitioner to testify or otherwise to make under oath specific and complete disclosure of all matters material to the petition for reinstatement, subject to any privilege or right against such disclosure the petitioner may assert under federal or state law.

D. Upon completion of the hearing, the Committee shall file with the Clerk the Committee's report to the Court. The report shall include the Committee's findings of fact regarding the petitioner's fitness to resume the practice of law and its recommendation regarding whether or not the petitioner should be reinstated. A copy of the report and recommendation shall be served on the petitioner as provided in Rule 12., infra. The Committee's report and all material received or generated by the Committee in the course of its proceedings shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

E. If, after considering the Committee's report and recommendation, a panel of the Court convened by the Chief Judge finds that the petitioner is unfit to resume the practice of law, the panel shall dismiss the petition. If, after considering the Committee's report and recommendation, the panel finds that the petitioner is fit to resume the practice of law, the panel shall reinstate the petitioner. The panel's order may condition reinstatement upon the petitioner paying all or part of the costs of the proceedings and making partial or complete restitution to all parties harmed by the petitioner's conduct that led to the suspension or disbarment. Further, if the petitioner has been suspended for five or more years, or disbarred, the panel may condition reinstatement upon the petitioner furnishing proof of competency and learning in the law. Such proof may include certification by the bar examiners of a state or other jurisdiction that the petitioner successfully completed an examination for admission to practice subsequent to the date of suspension or disbarment. Reinstatement may be subject to any conditions that the panel in its discretion deems appropriate.

F. No petition for reinstatement filed pursuant to this rule shall be filed within one year following an adverse judgment on a petition for reinstatement filed by the same person.

G. Petitions for reinstatement filed pursuant to this rule shall be accompanied by a deposit in an amount sufficient to cover anticipated costs of the reinstatement proceeding. The Court through the Chief Judge, in consultation with the Committee, shall set and may periodically adjust the amount of such deposits.

RULE 10.

Attorneys Specially Admitted

Whenever an attorney applies for admission to the bar of the Court or is admitted for purposes of a particular proceeding pursuant to 11th Cir. R. 46-3 (including admission pro hac vice), the attorney thereby confers disciplinary jurisdiction upon the Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding that may constitute a violation of the Code of Professional Responsibility and Rules of Professional Conduct adopted by the Court as provided in Rule 1., supra.

RULE 11.

Special Counsel

A. Whenever pursuant to these rules the Court directs or the Committee requests appointment of special counsel to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, a panel of the Court convened by the Chief Judge may appoint as special counsel any active member of the bar of the Court, the disciplinary agency of the highest court of any state in which the attorney is admitted to practice, or any other disciplinary agency having jurisdiction.

B. The Court, acting in its administrative capacity, may allocate from time to time certain monies from its nonappropriated fund account to support the operations of the Committee, including payment of any expenses incurred by the Committee and of any fees authorized to be paid to Special Counsel pursuant to these rules.

RULE 12.

Service of Papers and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court. Service of any other paper or notice required by these rules shall be deemed to have been made if such paper or notice is mailed by first-class mail to the attorney at the address shown on the roll of attorneys admitted to practice before the Court, or to the attorney's counsel at the address indicated in the most recent pleading or document filed by such counsel in the course of any proceeding pursuant to these rules.

RULE 13.

Additional Duties of the Clerk

A. When informed that an attorney admitted to practice before the Court has been convicted of a serious crime as defined in Rule 4., supra, the Clerk promptly shall obtain and file with the Court a copy of the judgment of such conviction.

B. When informed that an attorney admitted to practice before the Court has been disciplined by another court, the Clerk promptly shall obtain and file with the Court a copy of the judgment or order imposing such discipline.

C. Whenever it appears that an attorney who has been disbarred, suspended, or publicly reprimanded by the Court is admitted to practice law in another jurisdiction or before another court, the Clerk shall, within 14 days of such public discipline transmit to the disciplinary authority in such other court or jurisdiction, as well as to the disciplined attorney as provided in Rule 12., supra, a copy of this Court's order imposing public discipline. A copy of an order imposing discipline other than disbarment, suspension, or public reprimand shall not be transmitted to the disciplinary authority in such other court or jurisdiction unless so ordered by the Court.

D. The Clerk promptly shall notify the National Discipline Data Bank of the American Bar Association of any order imposing public discipline on an attorney admitted to practice before the Court.