

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

LOCAL RULES OF
DISCIPLINARY
ENFORCEMENT

with amendments through December 1, 2018

District Judges

Chief Judge Tanya Walton Pratt
Senior Judge Sarah Evans Barker
Senior Judge Richard L. Young
Senior Judge Jane E. Magnus-Stinson
Judge James R. Sweeney II
Judge James P. Hanlon
Judge Matthew P. Brookman

Magistrate Judges

Magistrate Judge Tim A. Baker
Magistrate Judge Mark J. Dinsmore
Magistrate Judge Mario Garcia
Magistrate Judge Kellie M. Barr
Magistrate Judge M. Kendra Klump
Magistrate Judge Crystal S. Wildeman

Clerk of Court Kristine L. Seufert

LOCAL RULES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
RULES OF DISCIPLINARY ENFORCEMENT

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Definitions

The following definitions apply in these rules.

(1) "Order of discipline" means an order entered against an attorney by the Indiana Supreme Court, a similar disciplinary authority of another state, or another court, including but not limited to orders:

- (A) revoking or suspending an attorney's license or admission before a court to practice law,
- (B) placing an attorney on probation,
- (C) reprimanding an attorney for misconduct,
- (D) requiring an attorney to make restitution,
- (E) placing an attorney on inactive status in lieu of discipline, or
- (F) demonstrating other conduct which would constitute a violation of these rules.

(2) "State" means any state of the United States, the District of Columbia, or any territory, commonwealth, or possession of the United States.

(3) "Serious crime" means:

- (A) a felony, or
- (B) a crime, a necessary element of which, as determined by the statutory or common law definition of the crime in the jurisdiction of the conviction, involves interference with the administration of justice; false swearing; misrepresentation; fraud; willful failure to file income tax returns; willful failure to pay income tax; deceit; bribery; extortion; misappropriation; theft; or an attempt, conspiracy, or solicitation of another to commit a serious crime.

Rule 1 - Rules of Professional Conduct

The Rules of Professional Conduct adopted by the Indiana Supreme Court, as amended from time to time, apply to members of the bar of the court and attorneys who practice in the court. A violation of those rules is grounds for discipline in the court.

Rule 2 - Disciplinary Proceedings

(a) Allegations of Attorney Misconduct

When misconduct or allegations of misconduct that, if substantiated, would warrant discipline of an attorney who is a member of the bar of the court or has practiced in the court come to the attention of a judicial officer, including a bankruptcy judge or a magistrate judge, whether by complaint or otherwise, the judicial officer may refer the matter to the Chief Judge. The Chief Judge may then refer the matter to one or more of the following:

- (1) the Indiana Attorney Disciplinary Commission for investigation and prosecution,
- (2) another disciplinary authority having jurisdiction over the attorney,
- (3) the Department of Justice or other law enforcement agency, or
- (4) recruited counsel for investigation and the formulation of a recommendation for further action.

(b) Recruited Investigating and Prosecuting Counsel

(1) Investigating counsel may not recommend a disposition other than dismissal of the proceeding without first notifying the respondent in writing of the substance of the matter and affording the respondent an opportunity to be heard.

(2) Investigating counsel will have the authority to request documents, interview witnesses, and consult experts. On request of investigating counsel, the Clerk will issue subpoenas commanding the presence of witnesses, and/or production of designated documents or electronic records.

(3) Unless otherwise ordered, investigating counsel will within 60 days of appointment submit to the Chief Judge a recommendation for disposition of the matter, whether by institution of a formal disciplinary proceeding, dismissal, admonition, deferral, or other resolution, setting forth the reasons therefor.

(4) If the Chief Judge or his or her designee determines the matter should be resolved by a formal disciplinary proceeding, the Chief Judge or designee may appoint recruited counsel to prepare and file a complaint and to prosecute the matter.

(5) In accordance with Local Rule 87(d)(3), counsel accepting recruitment to investigate or prosecute allegations of attorney misconduct pursuant to this rule may request relief from any Order of Recruitment issued pursuant to Local Rule 87.

(c) Institution of Formal Disciplinary Proceedings

(1) The case will be filed as a miscellaneous case and will be sealed until further order of the Chief Judge or designee or until an order imposing discipline is entered, whichever occurs first.

(2) The Chief Judge will then assign a Panel of one or more judges to hear and determine the matter. The judicial officer who made the request for discipline or before whom the conduct giving rise to the request took place may not be assigned. If the alleged misconduct occurred in relation to a bankruptcy proceeding, the Panel will include at least one bankruptcy judge. If the alleged misconduct occurred in relation to a magistrate judge's proceeding, the Panel will include at least one magistrate judge. The most senior active district judge assigned will preside and has the authority to resolve issues of procedure and evidence.

(d) Response

The respondent must answer the complaint within 21 days of service of the complaint. The answer must

- (1) specifically admit or deny each factual allegation in the complaint and,
- (2) state specific facts on which the respondent relies, including all other material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the complaint that are relevant to the charges of misconduct.

If the respondent fails to answer pursuant to this subsection, the Panel, in its discretion, may accept the allegations set forth in the complaint as true.

(e) Request or Order for Hearing

A hearing will be scheduled by order of the Panel upon request of the respondent or at the Panel's discretion. The Panel must give the respondent 21 days' written notice of the date and location of the hearing and notice of the respondent's rights pursuant to Rule 2(g)(1).

(f) Discovery.

The Panel may order prehearing discovery for good cause shown.

(g)Hearing.

(1) The respondent has the right to be represented by counsel at the hearing, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.

(2) The presiding judge may authorize a party to subpoena witnesses or documents for the hearing for good cause shown.

(3) Witnesses must testify under oath. The judicial officer who initiated the referral may be called as a witness at the hearing at the Panel's discretion.

(4) The conduct giving rise to the request for discipline must be proven by clear and convincing evidence.

(5) The respondent's failure to appear at the hearing may be grounds for discipline.

(6) The hearing will be recorded.

(7) The respondent may move the court to close the hearing to the public.

(h)Decision

Decision is by a majority of the Panel or the assigned judge if the Panel consists of a single district judge. The Panel may order suspension, disbarment from practice in this court, or any other remedy or sanction deemed appropriate, including costs and attorneys' fees. The Panel will prepare a written order including findings and disposition of the disciplinary charges, which will be a public record if discipline other than a private reprimand is imposed.

(i) Applicable Rules of Procedure

Except as otherwise specifically provided in these rules, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure, and the Federal Rules of Appellate Procedure do not apply to proceedings pursuant to these rules.

(j) Conditional Admission of Misconduct

A respondent against whom formal charges have been made may, with the consent of prosecuting counsel, tender to the Panel a Conditional Admission of misconduct in exchange for a stated form of discipline. A Conditional Admission shall be approved or rejected by the Panel. If the stated form of discipline is rejected by the Panel, the admission may be withdrawn, in which case it may not be used against the respondent in any subsequent proceedings.

(k) Required Notice of Suspension or Disbarment

Within 14 days after service of an order suspending or disbaring an attorney pursuant to this rule, the respondent must:

(1) Send a copy of the order to the Indiana Supreme Court, the licensing authority of any other state in which the respondent is licensed to practice law, and the clerk of every other federal court in which the respondent is admitted to practice.

(2) In every matter in which the respondent is representing a client in litigation affected by the disciplinary action, send a copy of the order of discipline to all parties and other persons entitled to notice of matters in the litigation.

(3) Notify each of the respondent's clients in all matters potentially affected by the disciplinary action of the following:

- (i) the nature and duration of the discipline;
- (ii) the effective date of the discipline;
- (iii) the attorney's inability to act as an attorney in the court after the effective date of the discipline;
- (iv) the location and identity of the custodian of the client's files and records, which will be made available to the client or to substitute counsel;
- (v) that the client may wish to seek legal advice and counsel elsewhere, but, if the attorney was a member of a law firm, the firm may continue to represent the client with the client's express written consent; and
- (vi) the address to which all correspondence to the attorney may be addressed.

(l) Affidavit of Compliance

Within 14 days after service of an order suspending or disbaring an attorney from practice in this court pursuant to this rule, the respondent must file an affidavit with the Clerk certifying compliance with Rule 2(k). The affidavit must include as an appendix copies of the disclosure notices required pursuant to Rule 2(k).

(m) Duties of Disciplined Attorneys

All attorneys disbarred or suspended pursuant to these rules must comply in full with Indiana Attorney Admission and Discipline Rule 23(26) with respect to any matter pending in the courts of the Southern District of Indiana.

Rule 3 - Apparent Impairment or Disability

(a) Report and Investigation

Any person, including a judicial officer of the court, a member of the bar of this State, or any bar association of this State, may submit a written affidavit upon information and belief to the court suggesting that an attorney is suffering from a condition that materially and adversely affects a person's judgment, memory, or reactions, or otherwise interferes with work performance and the rendering of legal services in a manner consistent with the Rules of Professional Conduct. The court may appoint counsel pursuant to Rule 2(b).

(b) Proceedings

The matter will proceed pursuant to the procedures in Rules 2(b) through 2(m).

Rule 4 - Immediate Emergency Suspension

(a) Issuance of Order

If any district judge observes conduct prejudicial to the effective and expeditious administration of the business of the courts and such conduct suggests a referral pursuant to Rule 2, 3, or 5 is appropriate and gives rise to the possibility of immediate or irreparable harm to the integrity or effectiveness of the judicial process, or to clients or future clients, that judge may in addition to making the referral issue an order immediately suspending the attorney from practice before the court, pending resolution of any investigation. If any magistrate or bankruptcy judge observes such conduct, that judge may refer the matter to the Chief Judge of the district or bankruptcy court for issuance of an immediate suspension order.

(b) Relief from Immediate Suspension Order

The attorney suspended shall have fourteen (14) days after entry of the order to file a motion for dissolution or modification of the order. If no such motion is filed, the suspension may remain in place until resolution of any proceeding pursuant to Rule 2, 3, or 5.

(c) Notice to Court

Any judge who issues an order of immediate emergency suspension shall provide a copy of the order to all judicial officers and the Clerks of the District and Bankruptcy

Courts, and shall also provide copies of any subsequent order dissolving or modifying the suspension.

(d) Notice in Pending Cases

The Clerks of the District and Bankruptcy Courts will docket the order in all pending cases in which the attorney had entered an appearance or was serving as counsel of record and, if directed by the judge issuing the order, send a copy of the order to the parties represented by the attorney in each case.

Rule 5 - **Reciprocal Discipline**

(a) Discipline Imposed by Other Jurisdictions

(1) Any attorney admitted to practice before the court must, upon being subjected to an order of discipline by any other court of the United States or the District of Columbia, or by a court of any State, promptly inform the Clerk of such action.

(2) Upon notice of a judgment or order demonstrating that an attorney admitted to practice before the court is subject to an order of discipline in another jurisdiction, other than by censure or reprimand, the court will issue an order to show cause directing that the attorney inform the court within 28 days of any claim by the attorney that justice requires that identical discipline not be imposed.

(3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in the court shall be deferred until such stay expires.

(4) Upon the expiration of 28 days from service of the notice issued pursuant to subsection (2) above, the court will impose the identical discipline unless the court finds that justice requires otherwise.

(b) Disbarment on Consent or Resignation in Other Courts

(1) Any attorney admitted to practice before the court must, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the bar of any State, while an investigation into allegations of misconduct is pending, promptly inform the Clerk of such disbarment on consent or resignation.

(2) Any attorney admitted to practice before the court who is disbarred on consent or resigns from the bar of any other court of the United States or the District of Columbia, or from the bar of any State while an investigation into allegations of misconduct is pending, will be stricken from the roll of attorneys admitted to practice before the court upon notice to the court of the relevant judgment or order.

(c) Administrative Suspension and Reinstatement

An attorney admitted to practice before the court who is suspended from the bar of the State of Indiana for

(1) nonpayment of the Annual Registration Fee required by Rule 23, Section 21, of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Disciplinary Commission and Proceedings; or

(2) failing to complete the yearly or Educational Period requirements required by Rule 29, Section 10, of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Mandatory Continuing Legal Education, will be automatically suspended from practice before the court without any action by the court other than written notice to the attorney. Upon receipt of notice that the attorney has been reinstated to the bar of the State of Indiana, the attorney will be automatically reinstated to the bar of the court.

Rule 6 - Criminal Pleas and Convictions

(a) Automatic Suspension

Upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or nolo contendere, an attorney admitted to practice before this court who is charged with a serious crime is automatically suspended from practice in this court without further action of the court, regardless of the pendency of an appeal. On receipt of written notice of the above, the court will enter an order suspending the attorney. The suspension will continue until after final disposition of an appeal of the conviction, proceedings on remand after an appeal, and any disciplinary investigation and proceeding based on the conduct that resulted in the conviction. Nothing in this section modifies the application of Rule 2 to attorneys automatically suspended pursuant to this section.

(b) Other Crimes

Charges, pleas, or guilty verdicts related to a crime not qualifying as a serious crime pursuant to these rules may be considered as provided in Rules 2, 3, 4, and 5.

(c) Obligation to Report Conviction

An attorney admitted to practice before the court must, on being convicted of a serious crime, immediately inform the Clerk by any method described in Section 8(a). If the conviction was in this court, the attorney must notify all other jurisdictions in which the attorney is admitted to practice. An attorney knowingly violating this provision may, on notice and after hearing, be found guilty of criminal contempt.

Rule 7 - **Reinstatement**

(a) Automatic Reinstatement

Unless otherwise ordered, an attorney suspended for three months or less will be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of the court pursuant to section (3) below.

(b) Reinstatement Following Discipline Pursuant to Rules 2, 3, 4, 5, and 6

(1) When the court has suspended or disbarred an attorney pursuant to Rule 5 and the attorney is not eligible for automatic reinstatement, the attorney may apply for reinstatement by filing in the court an affidavit that the jurisdiction that entered the order of discipline on which the court based its discipline has reinstated the attorney.

(2) When the court has suspended or disbarred an attorney pursuant to Rule 2, 3, 4, or 6, the attorney may apply for reinstatement by filing an application for reinstatement.

(3) The court may condition reinstatement on —

- (i) payment of all or part of the costs of the disciplinary and reinstatement proceedings in the court and may impose any of the conditions of reinstatement imposed in the other jurisdiction, or such other conditions as are warranted.
- (ii) partial or complete restitution to the persons harmed by the misconduct that led to disbarment or suspension.

- (iii) if the disbarment or suspension from practice in this court has been for five years or more, certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice after the date of disbarment or suspension.
- (iv) any other condition the court deems appropriate in the circumstances.

(c) Time of Application for Reinstatement

(1) A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(2) Successive Petitions. No petition for reinstatement pursuant to this rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule 8 - Service, Clerk's Duties, and Other Authority

(a) Service Pursuant to these Rules

Service of a complaint instituting an original formal disciplinary proceeding or an order to show cause why reciprocal discipline should not be imposed will be made by personal service, regular mail, certified mail, overnight delivery, or ECF transmittal. Service of papers on an attorney pursuant to this rule may be to the address of the attorney shown on the court's roll of attorneys. Service by mail is complete upon mailing.

(b) Duties of the Clerk

When the court convicts an attorney of a serious crime or enters an order of discipline against an attorney, the Clerk will promptly notify the National Lawyer Regulatory Data Bank operated by the American Bar Association.

(c) Other Authority

Nothing in this rule abridges the court's power to control proceedings before it, including but not limited to the power to initiate and adjudicate proceedings for contempt pursuant to Title 18 of the United States Code, 11 U.S.C. § 105(a), Fed. R. Crim. P. 42, or Fed. R. Bankruptcy P. 9020.