Proposed Amendments to Local Rules

- **LR 16.5 Alternative Dispute Resolution and Mediated Settlement Conference**
  - Redline: pages 1-3
  - Final: pages 4-6

- **LR 49.1 Filing Documents Under Seal in Criminal Cases**

  Proposed new rule: pages 7-12

- **LR 83.5 Bar Admission**
  - Redline: pages 13-16
  - Final: pages 17-20

- **LR 83.6 Attorney Discipline**
  - Redline: pages 21-36
  - Final: pages 37-43

*Page numbers refer to those found in top right corner of this document.

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE

(a) Alternative Dispute Resolution.

(1) Purpose. The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) Authorization. The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) Administrator. ~~The Chief Magistrate Judge is~~The court will designate by administrative order the administrator of the court's alternative dispute resolution program.

(4) Neutrals. The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

(b) Mediated Settlement Conference. Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

(c) Other Dispute Resolution Processes.

(1) Mandatory Judicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration.

(2) Mandatory Nonjudicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before someone other than a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration. The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with such a process, but the court must not allocate any such

costs or expenses to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(3) Optional Processes. The court may offer civil litigants other alternative dispute resolution processes such as, for example, mediation, early neutral evaluation, minitrials, summary trials, and arbitration.

(d) Confidentiality of Dispute Resolution Communications.

(1) Definition. A "confidential dispute resolution communication" is any communication that is:

(A) made to a neutral during an alternative dispute resolution process; and

(B) expressly identified to the neutral as being confidential information that the party does not want communicated to any other person outside of the alternative dispute resolution process.

(2) Nondisclosure. A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process by anyone without the consent of the party that made the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012; amended ___, 2014]

2014 Advisory Committee's Note to LR 16.5

Local Rule 16.5(a)(3) has been amended to provide that the court will designate an administrator of the court's alternative dispute resolution program by administrative order, rather by local rule.

2012 Advisory Committee's Note to LR 16.5

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held "[w]ithin 45 days prior to trial." This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b))and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Tile 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE

(a) Alternative Dispute Resolution.

(1) Purpose. The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) Authorization. The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) Administrator. The court will designate by administrative order the administrator of the court's alternative dispute resolution program.

(4) Neutrals. The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

(b) Mediated Settlement Conference. Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

(c) Other Dispute Resolution Processes.

(1) Mandatory Judicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration.

(2) Mandatory Nonjudicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before someone other than a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration. The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with such a process, but the court must not allocate any such costs or expenses to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(3) Optional Processes. The court may offer civil litigants other alternative dispute resolution processes such as, for example, mediation, early neutral evaluation, minitrials, summary trials, and arbitration.

(d) Confidentiality of Dispute Resolution Communications.

(1) Definition. A "confidential dispute resolution communication" is any communication that is:

(A) made to a neutral during an alternative dispute resolution process; and

(B) expressly identified to the neutral as being confidential information that the party does not want communicated to any other person outside of the alternative dispute resolution process.

(2) Nondisclosure. A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process by anyone without the consent of the party that made the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012; amended ___, 2014]

2014 Advisory Committee's Note to LR 16.5

Local Rule 16.5(a)(3) has been amended to provide that the court will designate an administrator of the court's alternative dispute resolution program by administrative order, rather by local rule.

2012 Advisory Committee's Note to LR 16.5

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held "[w]ithin 45 days prior to trial." This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b))and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the

requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Tile 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."

Proposed Amendments – New LR 49.1

LR 49.1 FILING DOCUMENTS UNDER SEAL IN CRIMINAL CASES

(a) Application of Rule. This rule sets forth the procedure for filing documents under seal in a criminal case. The procedure for filing documents under seal in a civil case is set forth in X.XX. This rule does not apply to the redaction of personal identifiers under Fed. R. Crim. P. 49.1.

(b) Electronic Filing Required. All documents submitted in a criminal case — whether sealed or not — must be filed electronically in compliance with the Criminal ECF Guide.

(c) Documents Not Requiring a Motion to Seal.

(1) *Documents that must be filed under seal.* The following documents must be filed under seal and must not be unsealed except by court order:

(A) a document (other than an indictment) related to a grand-jury proceeding;

(B) an application for an order authorizing interception of oral, wire, or electronic communications issued pursuant to 18 U.S.C. §§ 2510-2522, documents filed in support of such an application, and an order granting or denying such an application;

(C) an application for an order authorizing a pen register or trap-and-trace device issued pursuant to 18 U.S.C. §§ 3121-3127, documents filed in support of such an application, and an order granting or denying such an application; and

(D) a document related to a juvenile proceeding.

(2) *Documents that may be filed under seal without court permission.* The following documents may be filed under seal without obtaining the court's permission and will be unsealed 7 days after the order for judgment and conviction or judgment of acquittal is entered:

(A) an application for a writ of habeas corpus ad testificandum, documents filed in support of such an application, and an order granting or denying such an application;

(B) an application for a subpoena duces tecum on behalf of a defendant, documents filed in support of such an application, and an order granting or denying such an application;

(C) an application for a subpoena under Fed. R. Crim. P. 17(c), documents filed in support of such an application, and an order granting or denying such an application;

(D) an application for an order to disclose tax returns and return information, documents filed in support of such an application, and an order granting or denying such an application;

(E) an application for an order authorizing travel by a defendant's appointed counsel, documents filed in support of such an application, and an order granting or denying such an application;

(F) an application for appointment of counsel for a subpoenaed witness, documents filed in support of such an application, and an order granting or denying such an application;

(G) a motion for withdrawal of counsel and documents filed in support of such a motion;

(H) a motion for appointment of a taint team to review privileged information and documents filed in support of such a motion;

(I) a motion for a downward departure and documents filed in support of such a motion;

(J) a motion for change of custody, documents filed in support of such a motion, and an order granting or denying such a motion;

(K) a motion to compel testimony of a witness upon grant of use immunity and documents filed in support of such a motion;

(L) a motion for review of *Brady/Giglio* materials and documents filed in support of such a motion; and

(M) letters, emails, and similar materials submitted in connection with a sentencing hearing.

(d) Documents Requiring a Motion to Seal. A document that is not listed in LR 49.1(c) may not be filed under seal except by order of the court.

(1) *Motion to seal.* A party that seeks a court order sealing a document or a part of a document must file the following simultaneously:

(A) the document or the part of the document that the party asks to be sealed, which must be filed separately, and which must be filed temporarily under seal;

(B) a publicly filed motion that does not disclose the information filed temporarily under seal;

(C) a memorandum of law, which may be filed under seal, and which must include:

(i) a description of the information filed temporarily under sealed;

(ii) the docket-entry number of the temporarily sealed document;

(iii) an explanation of why the information should remain under seal;

(iv) an explanation of whether it is practicable to redact or further redact the document filed under seal — and, if so, a statement that a redacted or further redacted version of the document is being filed with the motion; and

(v) an explanation of the length of time that the party seeks to have the information sealed, including the specific date that the information may be unsealed;

(D) any affidavits, declarations, and exhibits in support of the motion, which may be filed under seal;

(E) if applicable, a redacted or further redacted version of the document filed temporarily under seal, which will be publicly filed if the motion to seal is granted, and which prominently identifies:

(i) that it is a redacted version of a sealed document; and

(ii) the docket-entry number of that sealed document; and

(F) a proposed order, which must not be filed on ECF but which must instead be emailed to chambers. The proposed sealing order must contain a specific date that the document must be unsealed.

(2) *Order granting motion to seal.* The order granting the motion to seal must direct the clerk to:

(A) unseal the document on a specific date; and

(B) if applicable, immediately unseal the redacted or further redacted version of the sealed document.

(3) *Procedure when motion to seal is denied.* If the court denies the motion to seal in whole or in part:

(A) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal. The notice must identify the docket-entry number of the temporarily sealed document.

(i) If the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) If the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(B) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.

(e) Sealed Multi-Defendant Indictments.

(1) *Duties of United States Attorney.* After filing a multi-defendant indictment under seal, the United States Attorney must, within 2 days after the initial appearance of any defendant, publicly file a redacted indictment that discloses the charges against that defendant.

(2) *Duties of Clerk.* After a multi-defendant indictment is filed under seal, the clerk must:

(A) unseal the case upon the earlier of the following:

(i) the filing of a redacted indictment disclosing the charges against any defendant by the United States Attorney; or

(ii) the entry of an order unsealing the case.

(B) unseal the original indictment after all defendants have made their initial appearances or 30 days after the sealed indictment was filed, whichever is earlier.

(f) Extending the Duration of Sealing. A party may move to extend the duration of the sealing of a document.

(1) *Motion to extend sealing.* A party that seeks a court order extending the duration of the sealing of a document must file the following at least 7 days before the document is scheduled to be unsealed:

(A) a publicly filed motion that does not disclose the information that is under seal;

(B) a memorandum of law, which may be filed under seal, and which must include:

(i) a description of the information that is under seal;

(ii) the docket-entry number of the sealed document;

(iii) an explanation of why the information should remain under seal for longer than provided by the applicable rule or court order; and

(iv) an explanation of the length of time that the party seeks to have the information maintained under seal, including the specific date that the information may be unsealed.

(C) any affidavits, declarations, and exhibits, which may be filed under seal; and

(D) a proposed order, which must not be filed on ECF but which must instead be emailed to chambers. The proposed order must contain a specific date that the document must be unsealed.

(2) *Pendency of motion to extend sealing.* The clerk must not unseal a document that is the subject of a pending motion to extend the duration of the sealing.

(3) *Order granting motion to extend sealing.* The order granting the motion to extend the duration of the sealing must direct the clerk to unseal the document on a specific date.

2014 Advisory Committee Note to LR 49.1

This new rule significantly changes the procedures governing the sealing of documents in criminal cases. It requires all documents – whether sealed or not – to be filed electronically in compliance with the Criminal ECF Guide.

The rule establishes separate procedures for two categories of documents: (1) documents that may be filed under seal without filing a motion to seal; and (2) documents that may be filed under seal only by filing a motion to seal. Documents not requiring a motion to seal are further divided into two subcategories: documents that *must* be filed under seal and documents that *may* be filed under seal without court permission.

If a motion to seal a document is required, the filing party must temporarily file the document under seal and simultaneously file a motion to seal. If the motion to seal is granted, the document may remain sealed until the date specified in the court order. If the court denies the motion to seal, the filing party may withdraw the temporarily sealed document by filing a notice to the clerk. A withdrawn document is not part of the record and will not be considered by the court unless it is refiled as a public document. If the document is not withdrawn 7 days after the motion to seal is denied, the temporarily sealed document will be unsealed and become part of the record.

The rule also provides procedures for when the United States Attorney files a multi-defendant indictment under seal. In such cases the United States Attorney must, within 2 days after the initial appearance of any defendant, publicly file a redacted indictment that discloses the charges against that defendant. The rule also details when the clerk must unseal a multi-defendant indictment.

The rule governs only the sealing of specific documents in a criminal case, not the sealing of an entire criminal case.

LR 83.5 BAR ADMISSION

(a) Members and Nonmembers.

(1) The court's bar consists of those attorneys admitted to practice before the court in accordance with LR 83.5(b) and (c) and who pay the clerk all admission fees the court prescribes. A member of the court's bar must promptly notify the clerk, in writing, of any change in the member's name, mailing address, law-firm affiliation, telephone number, or e-mail address.

(2) A person who is not a member of the court's bar may not appear or participate in a trial or hearing except as follows:

(A) on his or her own behalf, if the person is a party who may represent himself or herself;

(B) as permitted by LR 83.5(d) or (e); ~~or~~

(C) as permitted by Fed. R. Civ. P. 45(f); or

(D) by special permission of the court.

(b) Eligibility. An attorney who has been admitted to practice before the Supreme Court of Minnesota is eligible for admission to the court's bar.

(c) Procedure for Admission.

(1) Petition. An applicant for admission to the court's bar must file with the clerk a petition that includes:

(A) the applicant's residence and office addresses;

(B) a list of all courts before which the applicant has been admitted to practice;

(C) a description of the applicant's legal training and legal experience; and

(D) a certification that the applicant has read and is familiar with:

(i) the Federal Rules of Civil Procedure;

(ii) the Federal Rules of Criminal Procedure;

(iii) the Federal Rules of Evidence; and

(iv) the court's Local Rules.

(2) Fee and Supporting Documents. The petition must be accompanied by:

(A) payment of the admission fee established by the court; and

(B) certificates from two members of the court's bar stating:

(i) where and when they were admitted to practice before the court;

(ii) how long and under what circumstances they have known the petitioner; and

(iii) what they know of petitioner's character and legal experience.

(3) Motion. A member of the court's bar must move for the applicant's admission. The court will entertain a motion for the applicant's admission only after the clerk has examined the applicant's petition, has found that it complies with this rule, and has presented the petition to a judge.

(4) Oath. If the court grants a motion for an applicant's admission, the applicant must take an oath in open court:

(A) to support the Constitution and laws of the United States;

(B) to discharge faithfully the duties of a lawyer;

(C) to behave uprightly and according to law and the recognized standards of ethics of the profession; and

(D) to comply with the rules of professional conduct as adopted by this court.

(d) Nonresident Attorneys. An attorney who does not represent the United States or one of its officers or agencies, who resides outside of Minnesota, and who is not admitted to practice before the Supreme Court of Minnesota may be permitted to appear before the court pro hac vice only as follows:

(1) The nonresident attorney must be a member in good standing of the bar of a federal district court other than this court.

(2) The nonresident attorney must associate with an active member of the court's bar, in good standing, who must:

(A) participate in the preparation and presentation of the case;

(B) accept service of all papers; and

(C) be a Minnesota resident unless the court, upon motion, orders otherwise.

(3) A member of the court's bar must move for the nonresident attorney's admission pro hac vice. The motion must:

(A) be accompanied by payment of the admission fee established by the court;

(B) be made on the form supplied by the clerk for admission pro hac vice of attorneys other than attorneys for the United States; and, as required by the form,

(C) include:

(i) an affidavit signed by the member of the court's bar who will be associating with the nonresident attorney; and

(ii) an affidavit signed by the nonresident attorney.

(e) Government Attorneys. An attorney who represents the United States or any of its officers or agencies and who is not a member of the court's bar must move for admission on the form supplied by the clerk for the admission pro hac vice of attorneys for the United States. Such an attorney may be permitted to appear pro hac vice only as follows:

(1) An attorney who is a member in good standing of the bar of a federal court of appeals or a federal district court other than this court may, after filing the required form, represent the United States or any of its officers or agencies in this court.

(2) Any other attorney may represent the United States or any its officers or agencies in this court only if the attorney both files the required form and associates with an attorney from the United States Attorney's Office for the District of Minnesota. The associating attorney from the United States Attorney's Office for the District of Minnesota must:

(A) participate in the preparation and presentation of the case; and

(B) accept service on behalf of the United States of all papers.

[Adopted effective February 1, 1991; amended December 5th, 2008; amended January 31, 2011; amended May 9, 2011; amended , 2014]

2014 Advisory Committee's Notes to LR 83.5

Subsection (a)(2) was amended to comply with the 2013 amendments to Fed. R. Civ. P. 45.

2011 Advisory Committee's Note to LR 83.5

The language of LR 83.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (e) was changed to provide for the pro hac vice admission for attorneys representing the government who are not admitted to practice in a United States District Court.

LR 83.5 BAR ADMISSION

(a) Members and Nonmembers.

(1) The court's bar consists of those attorneys admitted to practice before the court in accordance with LR 83.5(b) and (c) and who pay the clerk all admission fees the court prescribes. A member of the court's bar must promptly notify the clerk, in writing, of any change in the member's name, mailing address, law-firm affiliation, telephone number, or e-mail address.

(2) A person who is not a member of the court's bar may not appear or participate in a trial or hearing except as follows:

(A) on his or her own behalf, if the person is a party who may represent himself or herself;

(B) as permitted by LR 83.5(d) or (e);

(C) as permitted by Fed. R. Civ. P. 45(f); or

(D) by special permission of the court.

(b) Eligibility. An attorney who has been admitted to practice before the Supreme Court of Minnesota is eligible for admission to the court's bar.

(c) Procedure for Admission.

(1) Petition. An applicant for admission to the court's bar must file with the clerk a petition that includes:

(A) the applicant's residence and office addresses;

(B) a list of all courts before which the applicant has been admitted to practice;

(C) a description of the applicant's legal training and legal experience; and

(D) a certification that the applicant has read and is familiar with:

(i) the Federal Rules of Civil Procedure;

(ii) the Federal Rules of Criminal Procedure;

(iii) the Federal Rules of Evidence; and

(iv) the court's Local Rules.

(2) Fee and Supporting Documents. The petition must be accompanied by:

(A) payment of the admission fee established by the court; and

(B) certificates from two members of the court's bar stating:

(i) where and when they were admitted to practice before the court;

(ii) how long and under what circumstances they have known the petitioner; and

(iii) what they know of petitioner's character and legal experience.

(3) Motion. A member of the court's bar must move for the applicant's admission. The court will entertain a motion for the applicant's admission only after the clerk has examined the applicant's petition, has found that it complies with this rule, and has presented the petition to a judge.

(4) Oath. If the court grants a motion for an applicant's admission, the applicant must take an oath in open court:

(A) to support the Constitution and laws of the United States;

(B) to discharge faithfully the duties of a lawyer;

(C) to behave uprightly and according to law and the recognized standards of ethics of the profession; and

(D) to comply with the rules of professional conduct as adopted by this court.

(d) Nonresident Attorneys. An attorney who does not represent the United States or one of its officers or agencies, who resides outside of Minnesota, and who is not admitted to practice before the Supreme Court of Minnesota may be permitted to appear before the court pro hac vice only as follows:

(1) The nonresident attorney must be a member in good standing of the bar of a federal district court other than this court.

(2) The nonresident attorney must associate with an active member of the court's bar, in good standing, who must:

(A) participate in the preparation and presentation of the case;

(B) accept service of all papers; and

(C) be a Minnesota resident unless the court, upon motion, orders otherwise.

(3) A member of the court's bar must move for the nonresident attorney's admission pro hac vice. The motion must:

(A) be accompanied by payment of the admission fee established by the court;

(B) be made on the form supplied by the clerk for admission pro hac vice of attorneys other than attorneys for the United States; and, as required by the form,

(C) include:

(i) an affidavit signed by the member of the court's bar who will be associating with the nonresident attorney; and

(ii) an affidavit signed by the nonresident attorney.

(e) Government Attorneys. An attorney who represents the United States or any of its officers or agencies and who is not a member of the court's bar must move for admission on the form supplied by the clerk for the admission pro hac vice of attorneys for the United States. Such an attorney may be permitted to appear pro hac vice only as follows:

(1) An attorney who is a member in good standing of the bar of a federal court of appeals or a federal district court other than this court may, after filing the required form, represent the United States or any of its officers or agencies in this court.

(2) Any other attorney may represent the United States or any its officers or agencies in this court only if the attorney both files the required form and associates with an attorney from the United States Attorney's Office for the District of Minnesota. The associating attorney from the United States Attorney's Office for the District of Minnesota must:

(A) participate in the preparation and presentation of the case; and

(B) accept service on behalf of the United States of all papers.

[Adopted effective February 1, 1991; amended December 5th, 2008; amended January 31, 2011; amended May 9, 2011; amended ___, 2014]

2014 Advisory Committee's Notes to LR 83.5

Subsection (a)(2) was amended to comply with the 2013 amendments to Fed. R. Civ. P. 45.

2011 Advisory Committee's Note to LR 83.5

The language of LR 83.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (e) was changed to provide for the pro hac vice admission for attorneys representing the government who are not admitted to practice in a United States District Court.

LR 83.6 ATTORNEY DISCIPLINE

~~**(a) Attorneys Convicted of Crimes.**~~

~~(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.~~

~~(2) The term "serious crime" shall include any felony or any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."~~

~~(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.~~

~~(4) Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.~~

~~(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted,~~

including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

(1) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States; promptly inform the Clerk of this Court of such action. Unless otherwise ordered by this Court, any such attorney who has been temporarily or permanently prohibited from practicing law by order of any other court, whether by suspension, revocation, or disbarment, shall automatically forfeit his or her right to practice law before this Court during the same period that such attorney has been prohibited from practicing law by such other court. The Clerk of Court shall send a written notice to the attorney, together with a copy of this section of the Local Rules, informing the attorney of the forfeiture of his or her right to practice law before this court; but, any failure or delay with regard to the sending of such notice shall not affect the automatic forfeiture provisions of this section.

(2) If an attorney who has been prohibited from practicing law by order of some other court believes that he or she should not be required to forfeit his or her right to practice law before this Court, then such attorney may petition this Court seeking relief from the automatic forfeiture provision of subsection (b)(1). Any such petition shall be made in writing and shall be delivered to the Chief Judge of this Court. Such petition shall fully set forth the reason(s) that the relief requested should be granted. The petition shall also include a copy of the complete record of the disciplinary proceedings from the court that disciplined the attorney -- to the extent that such materials are reasonably available to the petitioning attorney.

(3) Within 7 days after the Chief Judge receives a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the matter shall be set for hearing before one or more Judges of this Court, unless the petitioning attorney consents to having the hearing conducted at some mutually convenient later date. Within 7 days after such hearing has been completed, the Court shall rule on the petition by granting or denying the relief sought, or by entering any other order that may be deemed appropriate. If the Court should fail to take any required action within the time periods prescribed by this subsection, for any reason not attributable to the petitioning attorney, then the petitioning attorney shall retain his or her right to practice law before this Court until the Court does take such required action.

Upon receiving a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the Chief Judge may, for good cause shown, temporarily suspend the automatic forfeiture provision and allow the petitioning attorney to continue to practice law before this Court pending the Court's final ruling on the petition. In the absence of such temporary relief, the automatic forfeiture provision of subsection (b)(1) shall remain in effect pending the Court's final ruling on the petition.

(4) A petition seeking relief from the automatic forfeiture provisions of subsection (b)(1), shall not be granted unless the petitioning attorney has demonstrated, or this Court finds, that on the face of the record upon which the discipline by another court is predicated it clearly appears:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) that the imposition of the same discipline by this Court would result in grave injustice; or

(D) that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such order as it deems appropriate.

(5) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in any other Court of the United States.

(6) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts.

(1) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

(2) Any attorney admitted to practice before this Court shall, 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, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

(d) Standards for Professional Conduct.

(1) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

(2) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the 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. The Minnesota Rules of Professional Conduct adopted by the Supreme Court of Minnesota as amended from time to time by that

Court are adopted by this Court except as otherwise provided by specific rules of this Court.

(e) Disciplinary Proceedings.

(1) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(2) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of counsel should be awaited before further action by this Court is considered or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

(3) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent- attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include the form certification of all Courts before which the respondent-attorney is admitted to practice, as specified in Form 1 appended to these Rules.

(4) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of at least two Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this circuit. The respondent-attorney shall execute the certification of all Courts before

which that respondent attorney is admitted to practice, on the form specified, and file the certification with his or her answer.

(f) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(1) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(A) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(B) the attorney is aware that there is presently pending an investigation or a proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true; and

(D) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

(2) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

(3) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceedings except upon order of this Court.

(g) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended for six months or less shall 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 six months or disbarred may not resume practice until reinstated by order of this Court.

(2) Time of Application Following Disbarment. 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 disbarment.

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or if there are less than three Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals of this circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating clear and convincing evidence of the moral qualifications, competency, and learning in the law required for admission to practice law before this Court, and that resumption of the practice of law will not be detrimental to the integrity and standing of the bar, or to the administration of justice, or subversive to the public interest.

(4) Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(5) Deposit for Costs of Proceeding. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court, to cover anticipated costs of the reinstatement proceeding.

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the attorney, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to

parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(7) Successive Petitions. No petition for reinstatement under 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. No more than two petitions for reinstatement may be filed.

(h) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(i) 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 respondent-attorney at the address shown in the most recent registration. Service of any other papers or notices required by this rule shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the registration statement or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(j) Appointment of Counsel. Whenever counsel is to be appointed pursuant to this rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court may instead refer the matter to the Minnesota Lawyers Professional Responsibility Board for appropriate investigation, prosecution or other proceedings. If the Board for any reason declines appointment, or if such referral is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney. This provision, however, does not apply to counsel of the Minnesota Lawyers Professional Responsibility Board. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

~~**(k) Duties of the Clerk.**~~

~~(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.~~

~~(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.~~

~~(3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of this Court shall, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.~~

~~(4) The Clerk of this Court shall, likewise, promptly notify the~~**(a) Required Conduct.** An attorney who is admitted to the court's bar or who otherwise practices before the court must comply with the Minnesota Rules of Professional Conduct, which are adopted as the rules of this court. An attorney commits misconduct by failing to comply with the Minnesota Rules of Professional Conduct.

(b) Available Discipline. The court may discipline any attorney who is admitted to the court's bar or who otherwise practices before the court. Such discipline may include, but is not limited to, disbarment, suspension, public reprimand, private admonition, monetary sanctions, or restitution. This rule does not limit the court's inherent, statutory, or other authority to control its proceedings, including through civil or criminal contempt proceedings.

(c) Duty to Report. An attorney must promptly report the following in writing to the clerk:

(1) Discipline. Disbarment, suspension, public reprimand, or other public discipline imposed by any other court or jurisdiction. The attorney's report must include a certified copy of the judgment or order imposing the discipline.

(2) Conviction of a Crime. Any guilty plea to or conviction of committing, attempting to commit, conspiring to commit, or soliciting or aiding another to commit:

(A) any crime punishable by incarceration for more than one year; or

(B) any crime that includes as a necessary element:

- interference with the administration of justice;
- perjury;
- false swearing;
- misrepresentation;
- fraud;
- willful extortion;
- misappropriation; or
- theft.

(d) Automatic Discipline.

(1) Reciprocal Discipline. Unless the court orders otherwise, an attorney who has been temporarily or permanently prohibited from practicing before any other court or jurisdiction automatically forfeits the right to practice before this court for the same period.

(2) Criminal Acts. Unless the court orders otherwise, an attorney who pleads guilty to or has been convicted of a crime set forth in LR 83.6(c)(2) automatically forfeits the right to practice before this court.

(e) Court-Initiated Discipline.

(1) Appointment of Investigatory Counsel. A judge who becomes aware that an attorney may have committed misconduct may appoint investigatory counsel to investigate and advise the judge as to whether to initiate disciplinary proceedings. In the order appointing investigatory counsel, the judge must describe the scope of investigatory counsel's duties. The attorney under investigation must cooperate with investigatory counsel. Investigatory counsel must provide the judge with a written report containing a recommendation as to whether the judge should initiate disciplinary proceedings.

(2) Disciplinary Proceedings. A judge who becomes aware that an attorney may have committed misconduct may initiate disciplinary proceedings as follows:

(A) Order to Show Cause. The judge must issue an order to show cause as to why the respondent-attorney should not be disciplined for the alleged misconduct. The order must describe the alleged misconduct.

(B) Assignment. The chief judge must assign a judge to preside over the disciplinary proceeding. The judge who issued the order to show cause must not be assigned to preside over the disciplinary proceeding.

(C) Hearing; Appointment. The assigned judge must promptly schedule a hearing, appoint disciplinary counsel to prosecute the matter, and provide notice of the hearing and appointment to the respondent-attorney. An attorney who served as investigatory counsel may serve as disciplinary counsel.

(D) Disciplinary Counsel. Disciplinary counsel may introduce evidence, call witnesses (including the respondent-attorney), and cross-examine any witness called by the respondent-attorney.

(E) Respondent-Attorney. The respondent-attorney must have the opportunity to be heard. The respondent-attorney may be represented by counsel. The respondent-attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by disciplinary counsel.

(F) Rules of evidence. The Federal Rules of Evidence do not apply to any disciplinary proceeding.

(3) Written Findings and Discipline. The assigned judge must issue written findings as to whether the alleged misconduct has been proven by clear and convincing evidence and, if so, what discipline will be imposed.

(4) Record. Any hearing conducted under this rule must be recorded. All records related to any disciplinary proceeding must be sealed. If the court imposes any form of public discipline, all files and records related to the disciplinary proceeding must be unsealed unless the court orders otherwise.

(f) Temporary Suspension. The chief judge or his or her designee may temporarily suspend or restrict an attorney's right to practice before this court pending a final determination in a disciplinary proceeding if the chief judge receives:

(1) evidence establishing probable cause to believe that an attorney has committed misconduct; and

(2) evidence establishing that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

(g) Reinstatement. An attorney who has been suspended or disbarred from practicing before this court may file a petition for reinstatement with the clerk.

(1) Assignment. The chief judge must assign a judge to consider the petition.

(2) Timing.

(A) A disbarred attorney must not petition for reinstatement within five years of disbarment.

(B) If an attorney's petition for reinstatement is denied, the attorney must not again file a petition for reinstatement within one year after the denial or such longer period ordered by the court.

(3) Standard for Reinstatement. To be reinstated, the petitioner must establish by clear and convincing evidence that:

(A) the petitioner has the moral qualifications, competence, and learning in the law required for admission to the court's bar;

(B) the petitioner has satisfied all conditions required for reinstatement to the court's bar; and

(C) the petitioner's resumption of the practice of law will not damage the integrity of the court's bar, the administration of justice, or the public interest.

(4) Disposition of Petition. After reviewing the petition for reinstatement, the assigned judge may grant or deny the petition or set the matter for hearing.

(5) Hearing.

(A) Appointment of investigatory counsel. The assigned judge may appoint investigatory counsel to investigate whether the petitioning attorney should be reinstated. The petitioning attorney must cooperate with investigatory counsel.

(B) Petitioning attorney. The petitioning attorney must have the opportunity to be heard. The petitioning attorney may be represented by counsel. The petitioning attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by investigatory counsel.

(C) Investigatory counsel. Investigatory counsel may introduce evidence, call witnesses (including the petitioning attorney), and cross-examine any witness called by the petitioning attorney.

(D) Rules of evidence. The Federal Rules of Evidence do not apply to any reinstatement proceeding.

(6) Records. Unless the court orders otherwise, all records relating to a petition for reinstatement must be publicly filed. Any reinstatement hearing must be recorded.

(h) Fees and costs of counsel. The court must make arrangements for payment of fees and costs incurred by investigatory or disciplinary counsel.

(1) Disciplinary Proceedings. The court may assess investigatory or disciplinary counsel's fees and costs against an attorney if the court finds that the attorney committed misconduct by clear and convincing evidence.

(2) Reinstatement Proceedings. The court may assess investigatory counsel's fees and costs against an attorney petitioning for reinstatement, whether the petition is granted or denied.

(i) Duties of the Clerk.

(1) Service.

(A) The following must be served personally or by registered or certified mail:

(i) Notice of reciprocal discipline imposed under LR 83.6(d)(1);

(ii) Notice of automatic forfeiture under LR 83.6(d)(2); and

(iii) A show-cause order issued under LR 83.6(e)(2)(A).

(B) All other documents issued by the court must be served as provided by Fed. R. Civ. P. 5(b).

(2) Notice of discipline. If any form of public discipline is imposed by this court on an attorney who is admitted to practice before another court or jurisdiction, the clerk must promptly notify that other court or jurisdiction of the discipline. The notice must include a copy of the disciplinary order and the last known address of the attorney.

(3) Notice to ABA National ~~Discipline~~*Lawyer Regulatory Data Bank*~~, operated by~~. The clerk must promptly notify the American Bar ~~Association,~~Association's National Lawyer Regulatory Data Bank of any order imposing any form of public discipline ~~upon any attorney admitted to practice before this Court~~.

~~**(l) Jurisdiction.** Nothing contained in this rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.~~

[Adopted effective February 1, 1991; amended December 18, 1997; amended December 1, 2009; amended _____, 2014]

2014 Advisory Committee's Note to LR 83.6

The revised rule carries forward many of the former rule's provisions, now reorganized and clarified. The revised rule specifies the rights of an attorney who is the subject of court-initiated disciplinary proceedings or who seeks reinstatement to the court's bar. The revised rule also more clearly explains the role of investigatory and disciplinary counsel in disciplinary and reinstatement proceedings. Finally, the revised rule provides new authority to the chief judge to temporarily suspend or restrict an attorney's right to practice when the chief judge finds probable cause to believe that the attorney has committed misconduct and finds that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

1991 Advisory Committee's Note to LR 83.6

The following preface preceded the text of former D.Minn. Local Rule 1(F) (1987), which was the predecessor of LR 83.6. The Advisory Committee adopts it as its Note to LR 83.6:

Statement of Need for Adopting a Rule of Disciplinary Enforcement

Membership in good standing in the bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.

It is the duty of every attorney admitted to practice before a Court of the United States to conform at all times with the standards imposed upon members of the bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, this rule provides for the appointment of the state disciplinary agency whenever appointment of counsel is required hereunder and such appointment is appropriate.

In order to be admitted to practice in the United States District Court for the District of Minnesota, an attorney must demonstrate membership in good standing before the Minnesota Supreme Court. Consequently, for the purposes of admitting attorneys to practice before this Court, it may and does rely upon the standards for admission of the State Supreme Court. Insofar as discipline of admitted attorneys is concerned, however, the Supreme Court of the United States has held that revocation of a license to

practice by state or other Courts may not automatically be relied upon by the Courts of the United States. *Theard v. United States*, 354 U.S. 278 (1957). In Theard, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the attorney's underlying conduct warranted the discipline imposed. *Id.* at 282. For that reason, if there is to be effective discipline within the federal system, effective and appropriate procedures must be developed. This rule is proposed to achieve that purpose as well as to achieve uniformity of procedure by the various federal courts.

LR 83.6 ATTORNEY DISCIPLINE

(a) Required Conduct. An attorney who is admitted to the court's bar or who otherwise practices before the court must comply with the Minnesota Rules of Professional Conduct, which are adopted as the rules of this court. An attorney commits misconduct by failing to comply with the Minnesota Rules of Professional Conduct.

(b) Available Discipline. The court may discipline any attorney who is admitted to the court's bar or who otherwise practices before the court. Such discipline may include, but is not limited to, disbarment, suspension, public reprimand, private admonition, monetary sanctions, or restitution. This rule does not limit the court's inherent, statutory, or other authority to control its proceedings, including through civil or criminal contempt proceedings.

(c) Duty to Report. An attorney must promptly report the following in writing to the clerk:

(1) Discipline. Disbarment, suspension, public reprimand, or other public discipline imposed by any other court or jurisdiction. The attorney's report must include a certified copy of the judgment or order imposing the discipline.

(2) Conviction of a Crime. Any guilty plea to or conviction of committing, attempting to commit, conspiring to commit, or soliciting or aiding another to commit:

(A) any crime punishable by incarceration for more than one year; or

(B) any crime that includes as a necessary element:

- interference with the administration of justice;
- perjury;
- false swearing;
- misrepresentation;
- fraud;
- willful extortion;

- misappropriation; or
- theft.

(d) Automatic Discipline.

(1) Reciprocal Discipline. Unless the court orders otherwise, an attorney who has been temporarily or permanently prohibited from practicing before any other court or jurisdiction automatically forfeits the right to practice before this court for the same period.

(2) Criminal Acts. Unless the court orders otherwise, an attorney who pleads guilty to or has been convicted of a crime set forth in LR 83.6(c)(2) automatically forfeits the right to practice before this court.

(e) Court-Initiated Discipline.

(1) Appointment of Investigatory Counsel. A judge who becomes aware that an attorney may have committed misconduct may appoint investigatory counsel to investigate and advise the judge as to whether to initiate disciplinary proceedings. In the order appointing investigatory counsel, the judge must describe the scope of investigatory counsel's duties. The attorney under investigation must cooperate with investigatory counsel. Investigatory counsel must provide the judge with a written report containing a recommendation as to whether the judge should initiate disciplinary proceedings.

(2) Disciplinary Proceedings. A judge who becomes aware that an attorney may have committed misconduct may initiate disciplinary proceedings as follows:

(A) Order to Show Cause. The judge must issue an order to show cause as to why the respondent-attorney should not be disciplined for the alleged misconduct. The order must describe the alleged misconduct.

(B) Assignment. The chief judge must assign a judge to preside over the disciplinary proceeding. The judge who issued the order to show cause must not be assigned to preside over the disciplinary proceeding.

(C) Hearing; Appointment. The assigned judge must promptly schedule a hearing, appoint disciplinary counsel to prosecute the

matter, and provide notice of the hearing and appointment to the respondent-attorney. An attorney who served as investigatory counsel may serve as disciplinary counsel.

(D) Disciplinary Counsel. Disciplinary counsel may introduce evidence, call witnesses (including the respondent-attorney), and cross-examine any witness called by the respondent-attorney.

(E) Respondent-Attorney. The respondent-attorney must have the opportunity to be heard. The respondent-attorney may be represented by counsel. The respondent-attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by disciplinary counsel.

(F) Rules of evidence. The Federal Rules of Evidence do not apply to any disciplinary proceeding.

(3) Written Findings and Discipline. The assigned judge must issue written findings as to whether the alleged misconduct has been proven by clear and convincing evidence and, if so, what discipline will be imposed.

(4) Record. Any hearing conducted under this rule must be recorded. All records related to any disciplinary proceeding must be sealed. If the court imposes any form of public discipline, all files and records related to the disciplinary proceeding must be unsealed unless the court orders otherwise.

(f) Temporary Suspension. The chief judge or his or her designee may temporarily suspend or restrict an attorney's right to practice before this court pending a final determination in a disciplinary proceeding if the chief judge receives:

(1) evidence establishing probable cause to believe that an attorney has committed misconduct; and

(2) evidence establishing that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

(g) Reinstatement. An attorney who has been suspended or disbarred from practicing before this court may file a petition for reinstatement with the clerk.

(1) Assignment. The chief judge must assign a judge to consider the petition.

(2) Timing.

(A) A disbarred attorney must not petition for reinstatement within five years of disbarment.

(B) If an attorney's petition for reinstatement is denied, the attorney must not again file a petition for reinstatement within one year after the denial or such longer period ordered by the court.

(3) Standard for Reinstatement. To be reinstated, the petitioner must establish by clear and convincing evidence that:

(A) the petitioner has the moral qualifications, competence, and learning in the law required for admission to the court's bar;

(B) the petitioner has satisfied all conditions required for reinstatement to the court's bar; and

(C) the petitioner's resumption of the practice of law will not damage the integrity of the court's bar, the administration of justice, or the public interest.

(4) Disposition of Petition. After reviewing the petition for reinstatement, the assigned judge may grant or deny the petition or set the matter for hearing.

(5) Hearing.

(A) Appointment of investigatory counsel. The assigned judge may appoint investigatory counsel to investigate whether the petitioning attorney should be reinstated. The petitioning attorney must cooperate with investigatory counsel.

(B) Petitioning attorney. The petitioning attorney must have the opportunity to be heard. The petitioning attorney may be represented by counsel. The petitioning attorney may testify,

introduce evidence, call witnesses, and cross-examine any witness called by investigatory counsel.

(C) Investigatory counsel. Investigatory counsel may introduce evidence, call witnesses (including the petitioning attorney), and cross-examine any witness called by the petitioning attorney.

(D) Rules of evidence. The Federal Rules of Evidence do not apply to any reinstatement proceeding.

(6) Records. Unless the court orders otherwise, all records relating to a petition for reinstatement must be publicly filed. Any reinstatement hearing must be recorded.

(h) Fees and costs of counsel. The court must make arrangements for payment of fees and costs incurred by investigatory or disciplinary counsel.

(1) Disciplinary Proceedings. The court may assess investigatory or disciplinary counsel's fees and costs against an attorney if the court finds that the attorney committed misconduct by clear and convincing evidence.

(2) Reinstatement Proceedings. The court may assess investigatory counsel's fees and costs against an attorney petitioning for reinstatement, whether the petition is granted or denied.

(i) Duties of the Clerk.

(1) Service.

(A) The following must be served personally or by registered or certified mail:

(i) Notice of reciprocal discipline imposed under LR 83.6(d)(1);

(ii) Notice of automatic forfeiture under LR 83.6(d)(2); and

(iii) A show-cause order issued under LR 83.6(e)(2)(A).

(B) All other documents issued by the court must be served as provided by Fed. R. Civ. P. 5(b).

(2) Notice of discipline. If any form of public discipline is imposed by this court on an attorney who is admitted to practice before another court or jurisdiction, the clerk must promptly notify that other court or jurisdiction of the discipline. The notice must include a copy of the disciplinary order and the last known address of the attorney.

(3) Notice to ABA National Lawyer Regulatory Data Bank. The clerk must promptly notify the American Bar Association's National Lawyer Regulatory Data Bank of any order imposing any form of public discipline.

[Adopted effective February 1, 1991; amended December 18, 1997; amended December 1, 2009; amended _____, 2014]

2014 Advisory Committee's Note to LR 83.6

The revised rule carries forward many of the former rule's provisions, now reorganized and clarified. The revised rule specifies the rights of an attorney who is the subject of court-initiated disciplinary proceedings or who seeks reinstatement to the court's bar. The revised rule also more clearly explains the role of investigatory and disciplinary counsel in disciplinary and reinstatement proceedings. Finally, the revised rule provides new authority to the chief judge to temporarily suspend or restrict an attorney's right to practice when the chief judge finds probable cause to believe that the attorney has committed misconduct and finds that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

1991 Advisory Committee's Note to LR 83.6

The following preface preceded the text of former D.Minn. Local Rule 1(F) (1987), which was the predecessor of LR 83.6. The Advisory Committee adopts it as its Note to LR 83.6:

Statement of Need for Adopting a Rule of Disciplinary Enforcement

Membership in good standing in the bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.

It is the duty of every attorney admitted to practice before a Court of the United States to conform at all times with the standards imposed upon members of the bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, this rule provides for the appointment of the state disciplinary agency whenever appointment of counsel is required hereunder and such appointment is appropriate.

In order to be admitted to practice in the United States District Court for the District of Minnesota, an attorney must demonstrate membership in good standing before the Minnesota Supreme Court. Consequently, for the purposes of admitting attorneys to practice before this Court, it may and does rely upon the standards for admission of the State Supreme Court. Insofar as discipline of admitted attorneys is concerned, however, the Supreme Court of the United States has held that revocation of a license to practice by state or other Courts may not automatically be relied upon by the Courts of the United States. *Theard v. United States*, 354 U.S. 278 (1957). In Theard, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the attorney's underlying conduct warranted the discipline imposed. *Id.* at 282. For that reason, if there is to be effective discipline within the federal system, effective and appropriate procedures must be developed. This rule is proposed to achieve that purpose as well as to achieve uniformity of procedure by the various federal courts.