



United States District Court
DISTRICT OF MINNESOTA

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. Unless otherwise ordered by the court, the court and all parties must file all orders and pleadings in an investigatory proceeding under seal on ECF.

(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.

(G) **Record.** The court and all parties must file all orders and pleadings in a disciplinary proceeding under seal on ECF. Any hearing conducted under this rule must be recorded. 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.

(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. The court must file its written findings under seal on ECF. If the court imposes any form of public discipline, the court's written findings 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 May 14, 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.