

RULE 83.3
ATTORNEYS-RULES OF DISCIPLINARY ENFORCEMENT

(As amended December 1, 2009)

(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 as provided in subsection (i) of this rule. 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 and 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 an 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 one or more Judges of 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) Action Taken by Other Courts or Tribunals

(1) Any attorney admitted to practice before this Court shall, upon being subjected to discipline or upon being found incapacitated from continuing practice by reason of mental infirmity or addiction to drugs or intoxicants 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, or by any other duly authorized tribunal, promptly inform the Clerk of this Court of such action.

(2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disbarred or suspended from the practice of law 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, or by any other duly authorized tribunal, this Court, in its discretion, may enter an order immediately suspending that attorney from practice in this Court. Upon suspension, the Court shall forthwith issue a notice directed to the attorney containing:

- (A) a copy of any order entered by this Court suspending the attorney from practice;
- (B) a copy of the judgment or order from the other court or tribunal; and
- (C) an order to show cause directing that the attorney inform this Court within 14 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Paragraph 5 hereof that the imposition of the identical discipline or finding of incapacity by the Court would be unwarranted and the reasons therefor.

(3) In cases other than an immediate suspension under section (b)(2), upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disciplined or found incapacitated by another court, or by any other duly authorized tribunal, this Court shall forthwith issue a notice directed to the attorney containing:

- (A) a copy of the judgment or order from the other court or tribunal; and
- (B) an order to show cause directing that the attorney inform this Court within 14 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Paragraph 5 hereof that the imposition of the identical discipline or finding of incapacity by the Court would be unwarranted and the reasons therefor.

(4) In the event the action imposed in the other jurisdiction has been stayed there, any reciprocal action taken by this Court shall be deferred until such stay expires.

(5) Upon the expiration of 10 days from service of the notice issued pursuant to the provisions of Paragraphs (b)(2) and (b)(3) above, this Court shall impose the identical discipline or make the identical finding of incapacity unless the respondent-attorney demonstrates, or this Court finds, that the record in the other jurisdiction clearly shows:

(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 or incapacity 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 or the making of the same finding by this Court would result in grave injustice; or

(D) that the conduct at issue is deemed by this Court to warrant substantially different action.

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

(6) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct or found incapacitated shall establish conclusively the misconduct or incapacity for purposes of any proceeding under this Rule in this Court.

(7) This Court may at any stage appoint counsel to prosecute proceedings undertaken under this Rule.

(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 or incapacity 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 or incapacity is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

(d) Standards for Professional Conduct

This Court adopts as its standard for professional conduct the Maine Rules of Professional Conduct adopted by the Supreme Judicial Court of Maine, as amended from time to time by that Court.

(e) Disciplinary and Other Proceedings

(1) When misconduct or allegations of misconduct or incapacity which, if substantiated, would warrant discipline or other corrective action against 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 proceeding or the formulation of such other recommendation as may be appropriate, including proceedings before the Grievance Commission under Maine Bar Rule 7.1, or proceedings before the Maine Supreme Judicial Court under Maine Bar Rule 7.2, or proceedings under Maine Bar Rule 7.3(e).

(2) Should counsel conclude after investigation and review that a formal 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 the 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 therefore.

(3) To initiate formal proceedings, counsel shall upon a showing of probable cause obtain leave of this Court to file a complaint against the respondent-attorney. If leave of the Court is obtained, the complaint and summons shall be promptly served as provided in subsection (i) of this rule.

(4) The respondent-attorney shall file an answer to the complaint within 20 days of service. If any issue of fact is raised in the answer or if the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided however, that if the proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before another Judge of this Court, or, if there is no Judge of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals.

(f) Disbarment on Consent While Under Investigation of Allegations of Misconduct or Incapacity

(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 or incapacity 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 a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline or for the finding of incapacity, 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 formal proceedings were held the attorney could not successfully contest the allegations.

(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 proceeding except upon order of this Court.

(g) Reinstatement

(1) After Disbarment or Suspension. An attorney suspended for three 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 of suspension and after retaking the attorney's oath. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court, which shall require the retaking of the attorney's oath.

(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 the disbarment.

(3) Hearing on Application. Petitions for reinstatement by an attorney suspended for more than three months or disbarred shall be filed with the Chief Judge of the Court. Upon receipt of the petition, the Chief Judge shall refer the petition to counsel and assign the matter for hearing before one or more Judges of this Court, provided however, that if the disciplinary or other proceeding that led to the suspension or disbarment was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before one or more other Judges of this Court, or, if there are not Judges of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals. Within 30 days after referral, the Judge or Judges assigned to the matter shall schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that petitioner no longer has any incapacity and possesses the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's 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 of 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, a judgment of reinstatement shall enter, provided that the judgment may include such conditions as the Court deems necessary to protect the public interest as well as making 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.

(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.

(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 Complaint, Papers and Other Notices

Upon the filing of a complaint instituting a disciplinary proceeding, the Clerk shall forthwith issue a summons and deliver the summons and a copy of the complaint to the U. S. Marshal for service in the manner provided in Fed. R. Civ. P. 4(d)(1) or, if such service cannot be made, by registered or certified mail addressed to the respondent-attorney at the attorney's last-known address. The summons shall direct the respondent-attorney to serve an answer within twenty (20) days after service. An order of suspension shall be served in the same manner as a summons and complaint instituting a disciplinary proceeding. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the attorney's last known address; 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 these Rules, this Court shall appoint as counsel Bar Counsel to the Board of Overseers of the Bar of the State of Maine. If Bar Counsel declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as

counsel one or more members of the Bar of this Court, provided, however, that for good cause the respondent-attorney may move to disqualify an attorney so appointed. 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.

(1) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline or found incapacitated 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 any person who is a member of the bar of any other court is convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court, the Clerk of this Court shall transmit to the 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 National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(l) Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, including but not limited to proceedings for contempt under Title 18 United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.