

Proposed Amendments to Rule 74

Rule 74 is amended as follows:

TITLE X. -ATTORNEYS

Rule 74. -Admission to Practice

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(f) Attorney Discipline.

(1) Definitions. For purposes of this Rule:

(A) "serious crime" is any felony or lesser crime that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects, or any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime;"

(B) "discipline" will include:

(i) disbarment, suspension, probation, public reprimand, private admonition or transfer to inactive status, and

(ii) by stipulation or on court order, assessment of the costs of the proceedings, including, but not limited to, the fees and expenses of disciplinary counsel and staff, costs of investigations, service of process, witness fees and stenographic services.

(C) "misconduct" will include:

(i) acts or omissions, individually or in concert with any other person or persons, that violate or attempt to violate the rules of the bar of the state in which an attorney is licensed to practice. If the attorney is licensed to practice in more than one jurisdiction, the rules to be applied will be those of the admitting jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction will be applied to that conduct.

(ii) violation of subdivision (e)(3)(A) **and/or** (f)(4)(A) of this rule.

(2) Disciplinary Proceedings For Misconduct.

(A) **A complaint alleging misconduct by a member of the bar of the Court of International Trade may be filed by any member of the bar of the Court of International Trade, any judge of the Court, or member of the public. A complaint initiated by a member of the bar of the Court of International Trade or of the public must be in the form of a signed and dated letter identifying the subject attorney and describing the alleged misconduct in detail. The complaint may be submitted by mail, express courier, or other means of physical delivery properly addressed to the Clerk of the Court.**

(B) On filing of a complaint alleging that an attorney admitted to practice before the court has engaged in misconduct, the clerk must refer the matter to the chief judge who may:

- (i) determine that the complaint merits no further action;
- (ii) forward a copy of the complaint to the attorney and request a response within a time certain;
- (iii) initiate formal disciplinary proceedings; or
- (iv) take other appropriate action.

Failure to file a response to the complaint will constitute an admission of its factual allegations. Where the attorney files a response to the complaint, the chief judge may take any of the actions in ~~section (4)(A)(f)(2)(B)(i), (iii), or (iv)-~~ **subdivision (4)(A)(f)(2)(B)(i), (iii), or (iv)-) of this rule.**

(C) To initiate formal disciplinary proceedings, the chief judge will enter an order directing the attorney to show cause within ~~30~~**35** days after service of the order why the attorney should not be disciplined. If the attorney fails to respond timely to the order to show cause, the chief judge will enter a further order imposing appropriate discipline.

(D) If the attorney files a response to the order to show cause, the chief judge will assign the matter to a single judge (other than a complainant judge) ~~for~~. **On the written request of the attorney made to the judge assigned to the disciplinary proceeding or on the judge's own accord, the judge to whom the disciplinary proceeding has been assigned may**

order an evidentiary hearing: **at a time and place designated by the judge.** If the attorney fails to appear when specifically so ordered by the judge ~~in a~~ **assigned the** disciplinary proceeding, the attorney will be deemed to have admitted the factual allegations which were to be the subject of such hearing and/or stipulated to any motion or recommendation to be considered at such hearing. Disciplinary proceedings for misconduct will be conducted as in any civil action before the court. The court's decision must be based on clear and convincing evidence and supported by written findings of fact and conclusions of law.

~~(E) Disciplinary proceedings for misconduct will be public in any action which the chief judge assigns to a single judge, provided however, that prior to such assignment, the chief judge~~ **A disciplinary proceeding for misconduct will be confidential unless (1) the attorney subject to the proceeding makes a written request for a public proceeding, (2) the proceeding is based on the conviction by another court of a serious crime, or (3) the chief judge or assigned judge determines that a public proceeding is in the public interest. The chief judge or the single judge assigned to the disciplinary proceeding** may, for good cause, authorize the clerk to produce, disclose, release, inform, report or testify regarding any information, reports, investigations, documents, evidence or transcripts in the clerk's possession. ~~In order to~~ **To** protect the interests of a complainant, witness, third-party, or the attorney, the chief judge, or the single judge ~~to whom any action has been assigned~~ **to the**

disciplinary proceeding may, on application of any person and for good cause, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential.

~~(2)~~**(3)** Attorneys Convicted of Crimes.

(A) ~~(A)~~ On **An attorney who is a member of the bar of this Court must notify the clerk of the court in writing within fourteen (14) days after the member's conviction of a serious crime. Failure to so inform the clerk will constitute misconduct.**

~~(A)~~**(B) On notice by the attorney or on the** filing of a certified copy of a judgment of conviction demonstrating that an attorney admitted to practice before the court has been convicted of a serious crime in another court, the clerk of the court must serve a notice to the attorney containing:

~~(i) a copy of the judgment of conviction; and~~

(i) an order directing the attorney to show cause within ~~30~~**35** days after service of the notice why the attorney should not be suspended by the court.; **and**

(ii) where the attorney has not provided notice pursuant to subdivision (f)(3)(A) of this rule, a copy of the judgment of conviction.

The clerk must serve the notice regardless of the circumstances of the conviction or the pendency of an appeal. If the attorney fails timely to file a response to the notice, the clerk must promptly enter an order of

suspension, pending further action by the court. If the attorney files a response to the notice, the clerk must refer the matter to the chief judge for assignment to a single judge.

(~~B~~C) For purposes of any hearing **ordered by the single judge to whom the disciplinary proceeding was assigned or requested by the attorney** on an attorney's response to the notice from the clerk, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime and the sole issue in any hearing will be the nature and extent of the discipline to be imposed by the court, provided that a final order of discipline will not be entered until all appeals from the conviction are concluded.

~~(3)~~(4) Discipline Imposed By Other Courts.

(A) On any change in an attorney's status or public disciplinary action taken in any other jurisdiction in which an attorney is admitted to practice, an attorney admitted to practice before the court must ~~promptly~~ inform the clerk of the court **in writing within fourteen (14) days** of such action. Failure to so inform the clerk will constitute misconduct.

(B) ~~On~~ **On notice by the attorney or the** filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before the court has been disciplined by another court, resigned with charges pending before the bar of another court, or transferred to inactive status,

the clerk of the court must serve a notice to the attorney containing:

~~(i) a copy of the judgment or order; and~~

(i) an order requiring the attorney to show cause within ~~30~~**35** days after service of the notice why the court should not impose the identical discipline—; **and**

(ii) when the attorney has not provided notice pursuant to subdivision (f)(4)(A) of this rule, a copy of the judgment or order.

If the attorney fails timely to file a response to the notice, the clerk must enter an order imposing the identical discipline in the court. If the attorney files a response to the notice from the clerk, the clerk must refer the matter to the chief judge for assignment to a single judge for formal disciplinary proceedings.

(C) A final adjudication in another court that an attorney has committed misconduct will conclusively establish the misconduct. However, if the attorney's response demonstrates that:

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

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could

not, consistent with its duty, accept as final the conclusion on that subject;

(iii) the imposition of the same discipline by the court would result in injustice; or

(iv) the misconduct established is deemed by the court to warrant different discipline, the court will enter an appropriate order.

If the discipline imposed in the other court has been stayed, any reciprocal discipline imposed in the court will likewise be deferred until the stay is lifted or expires.

~~(4)~~**(5)** Appointment of Disciplinary Counsel. If it becomes necessary to investigate, prosecute or defend disciplinary proceedings under this rule, the chief judge or the **single** judge ~~to whom the case is assigned~~ **to the disciplinary proceeding**, may appoint one or more members of the bar of the court to serve as counsel. Once appointed, counsel may not resign except on leave of court. On good cause shown, disciplinary counsel may cause subpoenas to issue, returnable before the judge presiding over the disciplinary matter.

~~(5)~~**(6)** Readmission/Reinstatement.

(A) On filing of a petition for readmission by a disbarred attorney or reinstatement by a suspended attorney, the clerk must refer the matter to the chief judge for consideration or for assignment to a single judge for ~~hearing and determination.~~ **determination and, on the request of the attorney or when ordered by the chief judge or by the single judge to**

whom the action is assigned, hearing. The petition must demonstrate by clear and convincing evidence that:

(i) the attorney has the requisite character and fitness to practice law; and

(ii) the relief requested will not be detrimental to the integrity and standing of the bar of the court or the administration of justice, or subversive to the public interest.

The court may provide for readmission or reinstatement on appropriate terms and conditions.

(B) No petition for readmission or reinstatement will be filed within one year following an adverse decision on a petition for readmission or reinstatement filed by or on behalf of the same attorney.

~~(6)~~**(7)** Service of Disciplinary Notices and Orders. The clerk must serve notices or orders issued under this rule by mailing a copy by certified mail, restricted to the addressee, return receipt requested, and by first class mail, to the last known address of the attorney. Every attorney admitted to practice before the court must timely inform the clerk of the court of any change of address.

~~(7)~~**(8)** Duties of the Clerk. If it appears that an attorney who has been disciplined for misconduct by the court is admitted to practice law before another court, the clerk must serve the clerk of such other court a certified copy of the order of discipline, as well as the last known office and residence address of the attorney. The clerk must likewise notify the National Lawyer Regulatory Data

Bank of the American Bar Association when an attorney admitted to practice before this court has been disciplined.

PRACTICE COMMENT: Pursuant to Rule 75, government attorneys who appear on behalf of the United States must now be admitted to practice before the court. However, because attorneys in the employ of the United States government are exempt from admission fees, they will not receive a certificate upon their admission to the U.S. Court of International Trade because the court incurs an expense in printing these certificates. If a U.S. government attorney would like a certificate, a request can be submitted to the court's attorney admissions section, along with a check in the amount of \$88.

PRACTICE COMMENT: Matters relating to representations made to the Court of International Trade in pleadings, motions, and other papers bearing the signature of the attorney should be addressed under Rule 11. The Court's Rules include other specific instances in which an attorney may be subject to sanctions. Those include the failure to consult with other parties (Rule 7(f)), failure to comply with a scheduling order (Rule 16(f)), failure to cooperate in discovery (Rule 37), and others. Rule 74 is not intended to apply to circumstances addressed in a more specific Rule.

Disciplinary actions under Rule 74(f) are limited to those circumstances where an attorney is alleged to have engaged in conduct that would violate the rules of professional conduct in a jurisdiction or by a court in which the attorney is licensed or admitted to practice. These are serious violations of expected professional conduct that bring into question whether the attorney is of good moral character and should otherwise continue to practice before the Court of International Trade.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Mar. 25, 1998, eff. July 1, 1998; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; Mar. 27, 2012, eff. May 1, 2012; Dec. 23, 2016, eff. Feb. 1, 2017; Mar. 23, 2021, eff. May 3, 2021; Dec. 12, 2023, eff. Jan. 22, 2024.); _____, eff. _____.)

Advisory Committee Note

The Committee reviewed the corresponding discipline rules of the Court of Federal Claims (CFC Rule 83.2), the Federal Circuit Attorney Discipline Rules, and Southern District of New York Local Civil Rule 1.5. Based on this review, the Committee recommended amendments to Court of International Trade Rule 74(f) to:

- Provide that hearings are available upon the request of the concerned attorney or when ordered by the judge presiding over the matter;

- Ensure that disciplinary hearings are made public only when requested by the attorney involved or when in the interests of the public;
- Require that attorneys convicted of a serious crime report the conviction to the clerk of the court;
- Clarify how complaints are made; and
- Make several technical corrections.