

## TITLE X. ATTORNEYS

### Rule 74. Admission to Practice\*

(a) Qualifications. An attorney of good moral character who has been admitted to practice before the Supreme Court of the United States, the highest court of any state, the District of Columbia, a territory or possession, any United States court of appeals, or any United States district court, and is in good standing therein, may be admitted to practice before this court.

(b) Procedure.

(1) An applicant for admission must file with the clerk a completed application, on the form shown in Form 10 of the Appendix of Forms, to be provided by the clerk.

(2) The applicant must be admitted either (A) on oral motion by a member of the bar of this court or of the Supreme Court of the United States, before a judge of this court who will administer the following oath:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor at law of this court uprightly and according to law, and that I will support the Constitution of the United States, so help me God.

or (B) on the filing of a certificate issued by a judge of or by the clerk of any of the courts specified in subdivision (a) of this rule, or by another official duly authorized to issue such certificates, dated within 90 days of the application stating that the applicant is a member of the bar of such court and is in good standing therein.

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\*An attorney admitted to practice before the United States Customs Court will be considered to be admitted to practice before the United States Court of International Trade.

(3) The applicant must pay to the clerk a fee of \$88, and will be entitled to a certificate of admission. The clerk, as trustee, must deposit the fee in a special account in a bank designated by the court and must make expenditures from the special account as directed by the court. This application fee is waived for all attorneys in the employ of the United States government.

(4) If the application is made pursuant to section (b)(2)(A), above, and the sponsoring attorney making the motion has not known the applicant for more than one year, then the application must also be submitted with a certificate issued by a judge of or by the clerk of any of the courts specified in subdivision (a) of this rule, or by another official duly authorized to issue such certificates, dated within 90 days of the application stating that the applicant is a member of the bar of such court and is in good standing therein.

(c) Admission of Foreign Attorneys. An attorney, barrister, or advocate who is qualified to practice at the bar of the court of any foreign state which extends a like privilege to members of the bar of this court may be specially admitted for purposes limited to a particular action. The applicant will not, however, be authorized to act as attorney of record. In the case of such an applicant, the oath will not be required and there will be no fee. Such admission will be granted only on motion of a member of the bar of this court.

(d) Pro Hac Vice Applications. An attorney who is eligible for admission to practice under subdivision (a) of this rule, and who has been retained to appear in a particular action by a legal services program may, on written application and in the discretion of the court, be permitted to specially appear and participate in the particular

action. A pro hac vice applicant must state under penalty of perjury (i) the attorney's residence and office address, (ii) the court to which the applicant has been admitted to practice and the date of admission thereof, (iii) that the applicant is in good standing and eligible to practice in said court, (iv) that the applicant is not currently suspended or disbarred in any other court, and (v) if the applicant has concurrently or within the year preceding the current application made any pro hac vice application to this court, the title and the number of each action wherein such application was made, the date of the application, and whether or not the application was granted. If the pro hac vice application is granted, the attorney is subject to the jurisdiction of the court with respect to the attorney's conduct to the same extent as a member of the bar of this court, and no application fee is required.

(e) Renewal Registration.

(1) In addition to the initial admission, there will be a renewal registration and a \$50 renewal registration fee. This fee and registration will be due on June 1, 2009 and every 5 years thereafter unless deferred by the court. Failure to remit this fee will result in the removal of the non-paying attorney from the court's bar roll, without prejudice to an application for admission as a new member. Should the payment of this renewal fee present a significant financial hardship, an attorney may request, via an application to the chief judge, that the registration fee be waived. Attorneys admitted in the year that this registration and renewal fee is collected and the year prior are exempt from the renewal requirement.

(2) Although government attorneys must submit their renewal registration, renewal registration fees are waived for all attorneys in the employ of the United States government.

(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) of this rule.

(2) Disciplinary Proceedings For Misconduct.

(A) 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)(i), (iii), or (iv).

(B) To initiate formal disciplinary proceedings, the chief judge will enter an order directing the attorney to show cause within 30 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.

(C) 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 an evidentiary hearing. If the attorney fails to appear when specifically so ordered by the judge in a 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.

(D) 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 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 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 may, on application of

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

(3) Attorneys Convicted of Crimes.

(A) On 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

(ii) an order directing the attorney to show cause within 30 days after service of the notice why the attorney should not be suspended by the court.

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) For purposes of any hearing requested 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.

(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 of such action. Failure to so inform the clerk will constitute misconduct.

(B) On 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

(ii) an order requiring the attorney to show cause within 30 days after service of the notice why the court should not impose the identical discipline.

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.

(5) Appointment of Disciplinary Counsel. If it becomes necessary to investigate, prosecute or defend disciplinary proceedings under this rule, the chief judge or the judge to whom the case is assigned, 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.

(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. 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.

(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.

(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.

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