

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

DISCIPLINARY RULES



Effective
January 1, 2004

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The following Disciplinary Rules and Procedures are hereby adopted to be effective January 1, 1997, provided, however, that the procedures set forth herein shall be applied to all disciplinary actions now pending or hereinafter initiated.

Note: The local disciplinary rules shall be cited “LDR ___.”

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Rules of Discipline

LDR 1 - Disciplinary Jurisdiction of Court.

Any attorney admitted to practice law before this Court or any attorney specially admitted for a particular proceeding is subject to the disciplinary jurisdiction of this Court.

Nothing herein contained shall be construed to deny this Court such powers as are necessary for it to maintain control over proceedings before it, such as contempt power.

LDR 2 - Grounds for Discipline.

An attorney may be subject to disciplinary action as set forth in these Rules for any of the following causes occurring within or outside the District of the Northern Mariana Islands:

- (a) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his or her conduct as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action.

Upon such conviction, however, the judgment and sentence shall be conclusive evidence at a disciplinary hearing of his or her violation of the statute upon which it is based. A disciplinary hearing, as provided in Rule 10 of these Rules, shall be had to determine (1) whether moral turpitude was in fact an element of the crime committed by the respondent attorney, and, if so, (2) the disciplinary action recommended to result therefrom.

- (b) Willful disobedience or violation of a court order directing the attorney to do or cease doing an act which he or she ought to in good faith do or forbear.
- (c) Violation of his or her oath or duties as an attorney.

- (d) Willfully appearing without authority as an attorney for a party to an action or proceeding.
- (e) Misrepresentation or concealment of a material fact made in his or her application for admission to the bar, or for reinstatement, or in support thereof.
- (f) Suspension, disbarment, or other disciplinary sanction by competent authority in any state, federal, territorial, commonwealth, or foreign jurisdiction.
- (g) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.
- (h) Any acts or omissions by an attorney which violate the Model Rules of Professional Conduct of the American Bar Association as adopted in 1983 and as thereafter amended or judicially construed.

LDR 3 - Types of Discipline.

Discipline may consist of:

- (a) Disbarment; or,
- (b) Suspension for a period not exceeding five (5) years; or
- (c) Public censure; or
- (d) Private reprimand.

LDR 4 - Complaints.

- (a) All complaints concerning violations of these Rules shall be filed with the Chief Judge, and shall remain confidential and under seal unless and until the Disciplinary Committee determines a formal hearing is necessary.

- (b) Upon receipt of a complaint alleging violation of these Rules, the Chief Judge shall designate one or more members of this Court's Bar, as necessary, to investigate the allegations of misconduct, and a three-member Disciplinary Committee, comprised of attorneys who are members of this Court's Bar.

LDR 5 - Investigation Procedure; Report.

- (a) The person or persons designated to investigate a complaint shall conduct such an investigation as is warranted by the circumstances and shall submit a report to the Disciplinary Committee concerning the merits of the complaint.
- (b) The report of the investigation shall include copies of statements of witnesses, all documentary evidence relative to the complaint, and a summary of the findings of the investigation, but shall not include recommended disciplinary action.
- (c) No report shall be submitted until the respondent attorney has had a reasonable opportunity to submit to the person assigned to investigate the matter any evidence or statements relevant to the complaint, and such evidence or statements shall be attached to the investigation report.

LDR 6 - Disciplinary Committee; Composition; Duties.

- (a) Composition. The Disciplinary Committee shall consist of three attorneys who are admitted to the Bar of this Court.
- (b) Duties. Within a reasonable time, the Disciplinary Committee shall review all reports forwarded to it by the investigating attorney(s) and take such action pursuant to these Rules as it deems appropriate.
- (c) Formal Hearing. If the Disciplinary Committee determines a formal hearing is necessary, it will recommend to the Chief Judge that Prosecuting Counsel be appointed in accordance with Rule 8 and that a hearing be conducted in accordance with Rule 10.

LDR 7 - Investigation Report Disposition and Appointment of Judicial Panel.

- (a) If, after review of the report of the investigation conducted in accordance with Rule 5, the Disciplinary Committee determines the complaint is unfounded or of a trivial nature, the Committee shall so inform the Chief Judge.
- (b) If, after a review of the report of the investigation conducted in accordance with LDR 5, the Disciplinary Committee determines that the matter warrants further consideration, the Committee shall so inform the Chief Judge, who will then appoint to hear the matter a three-judge Judicial Panel which shall, unless circumstances dictate otherwise, consist of the Chief Judge and two judges designated to sit in this Court.

LDR 8 - Prosecuting Counsel; Appointment; Duties.

- (a) Appointment. Counsel will be appointed by the Chief Judge to prosecute allegations of misconduct.
- (b) Duties. Upon appointment, counsel will prepare a formal complaint for filing with the Court and shall be responsible for the presentation of all evidence relevant to the complaint. Counsel shall also have authority to conduct such further investigation as is necessary regarding the alleged misconduct of respondent attorney.

LDR 9 - Immunity of Investigating Counsel, Disciplinary Committee, and Prosecuting Counsel.

Investigating Counsel, members of the Disciplinary Committee, the Prosecuting Counsel, and all other investigators and staff shall be absolutely immune from civil suit and liability for any conduct in the course of their official duties. Such immunity shall extend to all cases, whether previously decided, currently pending, or to be investigated and prosecuted.

LDR 10 - Hearing on Complaint.

- (a) Complaint. Formal disciplinary proceedings before the Court shall be instituted by the filing of a complaint which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. A copy

of the complaint shall be served upon the respondent.

- (b) Answer. The respondent shall serve his or her answer upon the Prosecuting Counsel and file the original and two copies with the Court within twenty (20) days after service of the complaint, unless such time is extended by the Court upon motion for good cause shown. In the event the respondent fails to answer within the time allowed, or within any extension of time allowed by the Court, the charges shall be deemed admitted.
- (c) Date of Hearing. The Court shall cause notice of the time and place of the hearing to be given to the respondent attorney at least ten (10) days prior thereto. The hearing will be conducted not earlier than thirty (30) days nor later than ninety (90) days after service of the complaint, unless delayed for good cause.
- (d) Place of Hearing. All disciplinary hearings shall be held in the District Court.
- (e) Public Excluded from Hearing. Unless a public hearing is requested in writing by the respondent attorney at least five (5) days prior to the hearing, the hearing of a disciplinary matter shall not be public.
- (f) Hearing Procedure. At every hearing respondent shall have full opportunity to cross-examine all witnesses presented by the Prosecuting Counsel and to present witnesses on his or her own behalf. The Court shall not be bound by the formal Rules of Evidence but it shall admit only trustworthy evidence.
- (g) Findings and Conclusions. Within a reasonable time after the hearing, the Court shall enter its findings of fact and conclusion of law and specify the disciplinary action, if any, to be taken against respondent.

LDR 11 - Refusal of Complainant to Proceed or Compromise.

Neither unwillingness nor neglect of the complainant to prosecute a charge, nor settlement or compromise between the complainant and the respondent attorney, or restitution or other remedial action taken by the respondent attorney shall, in itself, justify abatement of the prosecution of any complaint.

LDR 12 - Matters Involving Related Pending Civil or Criminal Litigation.

- (a) Prosecution of a complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Chief Judge in his or her discretion for good cause shown.
- (b) The acquittal of an attorney on criminal charges or a verdict or judgment in his or her favor in civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary action predicated on the same material allegations.

LDR 13 - Service.

- (a) Service upon the respondent of the complaint in any disciplinary proceeding shall be made by personal service by a person authorized by the Federal Rules of Civil Procedure; except, if the respondent cannot be found within the district or has departed therefrom, service may be made by registered or certified mail at his or her address as it is shown in the registration statement filed with his or her admission papers, or other last known address.
- (b) Service of any other papers or notices required by these Rules shall be made in accordance with the Federal Rules of Civil Procedure.

LDR 14 - Subpoena Power - Witnesses.

- (a) Any person designated by the Court or the Disciplinary Committee to investigate any matter under these Rules may administer oaths and affirmations.
- (b) The Chief Judge, any member of the Judicial Panel, and any member of the Disciplinary Committee may issue subpoenas to compel the attendance of the respondent attorney or of a witness, or the production of books or documents at the taking of a deposition or at a hearing. Subpoenas shall be served in the same manner as in civil cases under the Federal Rules of Civil Procedure.
- (c) A respondent may compel by subpoena the attendance of witnesses and the production of books or documents at a hearing or deposition.
- (d) There shall be no discovery proceedings except upon order of the Court.

LDR 15 - Attorneys Convicted of Crimes.

- (a) Upon the filing with the Chief Judge of a certificate of a Clerk of Court demonstrating that an attorney has been convicted of a crime which is or, if it had been committed in the district, would have been, a felony, or which involves dishonesty or false statement, pending final disposition of the disciplinary procedure to be commenced upon such conviction, the Chief Judge shall enter an order immediately restraining the attorney from engaging in the practice of law. This shall be done whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial or otherwise, regardless of the pendency of an appeal. Upon good cause shown, the Chief Judge may set aside such order restraining the attorney from engaging in the practice of law when it appears to be in the interests of justice to do so.
- (b) Final conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him or her based upon the conviction. For the purpose of this Rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted.
- (c) Upon the receipt of a certificate of conviction described in (a), above, even if the attorney is not restrained from the practice of law, the Chief Judge shall institute a hearing as provided in Rule 10 in which the sole issue to be determined shall be the extent of the discipline to be imposed, if any, provided the proceedings so instituted shall not be brought to hearing until the judgment of conviction is final, unless the respondent so requests.
- (d) Immediately upon the filing with the Chief Judge or Judicial Panel of a certificate demonstrating that the underlying conviction for a crime has been reversed, any order entered under provisions of (a), above, restraining the attorney from the practice of law shall be vacated, any formal proceeding then pending against the attorney founded solely upon such conviction shall be terminated, and any discipline imposed in such formal proceeding shall be vacated. But, the reversal of conviction shall not terminate or affect any formal proceeding previously or thereafter instituted founded upon alleged misconduct by the attorney, whether or not involving the same general facts and whether or not involving the same facts alleged to constitute a crime or offense for which the attorney was convicted.

LDR 16 - Reciprocal Discipline.

- (a) All attorneys subject to the provisions of these Rules shall, upon being notified of contemplated or pending professional disciplinary action in another jurisdiction, promptly inform the Chief Judge of such action and provide the Chief Judge with a true copy of any disciplinary letter, notice, order, or other paper received by the attorney.
- (b) When discipline in another jurisdiction has been imposed, an attorney subject to the provisions of these Rules shall, upon receipt of a true copy of an order or other official notification indicating that he or she has been subjected to discipline in another jurisdiction, provide the Chief Judge a copy of said order. Upon receipt thereof, whether from the affected attorney or from the jurisdiction, the Chief Judge shall forthwith issue a notice directed to the attorney containing:
 - (1) A copy of said order or other official notification from the other jurisdiction; and
 - (2) An order directing that the attorney inform the Chief Judge within thirty (30) days from mailing by certified mail, return receipt requested, of the notice of any claim by the attorney that the imposition of the identical discipline in this Court would be unwarranted and the reasons therefor. Failure of the attorney to respond may be deemed acquiescence to the imposition of reciprocal discipline.
- (c) Upon the expiration of thirty (30) days from the service of notice issued pursuant to provision (b), above, the Chief Judge shall impose the identical discipline, unless the attorney requests a hearing to show cause why identical discipline should not be imposed. After the hearing the Court shall impose the same discipline unless it clearly appears in the record upon which the discipline is predicated (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute deprivation of due process; or, (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court should not, consistent with its duties, accept as final the conclusion on that subject; or, (3) that the misconduct established warrants substantially different discipline in this Court. Where the Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

- (d) In all other respects a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purpose of a disciplinary proceeding in this Court.

LDR 17 - Disbarred or Suspended Attorney.

- (a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, including litigation or administrative proceedings, of his or her disbarment or suspension and his or her consequent inability to act as an attorney after the effective date of disbarment or suspension. The attorney shall also advise the clients to seek legal assistance elsewhere. With regard to pending litigation or administrative proceedings the notice to be given to the client shall advise the client of the desirability of prompt substitution of another attorney in his or her place. Notice shall be given also to the attorney or attorneys for any adverse party and shall state the place of residence of the client of the disbarred or suspended attorney.
- (b) In the event the client does not obtain subsequent counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move, in the court or agency in which the proceeding is pending, for leave to withdraw as attorney of record.
- (c) orders imposing suspension or disbarment shall be effective thirty (30) days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as the attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order to its effective date, the attorney may complete on behalf of any client all matters which were pending on the entry date.
- (d) Within ten (10) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this Court an affidavit showing: (1) that he or she has complied with the provisions of the order and with these Rules; (2) that he or she has notified all other commonwealth, state, territorial, and federal jurisdictions to which he or she is admitted to practice of the disciplinary action. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her.

- (e) The Chief Judge shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the district.
- (f) The Chief Judge shall promptly transmit a certified copy of the order of suspension or disbarment to all judges within the district, to all courts to which the attorney has been admitted, as reflected in the attorney's application for admission to this court's bar, and to the administrative agencies therein, and shall make such further orders as are deemed necessary to fully protect the rights of the clients of the suspended or disbarred attorney.
- (g) A disbarred or suspended attorney shall keep and maintain records of the various steps he or she has taken under these Rules so that, upon any subsequent proceedings instituted by or against the attorney, proof of compliance with these Rules and with disbarment or suspension order will be available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement.

LDR 18 - Reinstatement.

- (a) No suspended or disbarred attorney may resume practice until reinstated by order of this Court.
- (b) Any person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least two (2) years from the effective date of disbarment. Any attorney suspended from practice may not apply for reinstatement until the expiration of at least one-half of the period of suspension.
- (c) Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Chief Judge. Upon receipt of the petition the Chief Judge shall set the matter for hearing. At such hearing the petitioner shall have the burden of demonstrating that he or she is qualified to practice law in the district and is worthy of the Court's trust and confidence. At the conclusion of the hearing the Court shall enter an appropriate order within a reasonable time.
- (d) Necessary expenses incurred in the investigation and processing of a petition for reinstatement shall be paid by the petitioner.

LDR 19 - Cumulative Violations.

An attorney disciplined after the effective date of these Rules may be subject to suspension from the practice of law if he or she has a record of:

- (a) three or more censures and/or reprimands; or
- (b) any combination of a suspension or disbarment, plus one or more censures or reprimands.

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