

UNITED STATES COURT OF VETERANS APPEALS

Misc. No. 2-92

IN RE:

RULES OF ADMISSION AND PRACTICE

Before NEBEKER, Chief Judge, and KRAMER, FARLEY, MANKIN,  
HOLDAWAY, IVERS, and STEINBERG, Associate Judges.

O R D E R

Pursuant to the authority of 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b), this Court's proposed Rules of Admission and Practice, appended hereto, are published as an appendix to Rule 46 of the Rules of Practice and Procedure of the United States Court of Veterans Appeals. The Court has benefited from the views of the admissions committee appointed to facilitate the exercise of its responsibilities under 38 U.S.C. § 7263. The Court invites all interested persons to submit written comment regarding these rules to the Clerk of the Court, United States Court of Veterans Appeals, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950 within 45 days after the date of this order. Accordingly, it is

ORDERED that this Court's Rules of Admission and Practice are hereby published for public comment.

DATED: April 30, 1992

BY THE COURT:



FRANK Q. NEBEKER  
Chief Judge

## APPENDIX

### **RULES OF ADMISSION AND PRACTICE FOR THE UNITED STATES COURT OF VETERANS APPEALS**

The United States Court of Veterans Appeals, in furtherance of its power and responsibility under 38 U.S.C. § 7264(a) and Rule 46 of its Rules of Practice and Procedure, and its inherent powers and responsibility to supervise the conduct of persons who are admitted to practice before it, or who are admitted for the purpose of a particular case, promulgates the following Rules of Admission and Practice.

#### **RULE 1. STANDARDS OF PROFESSIONAL CONDUCT**

(a) **Disciplinary Action.** For misconduct as defined in paragraph (b) below, or for failure to comply with these Rules or any rule or order of this Court, and after notice and opportunity to be heard, any person admitted to practice before this Court may be reprimanded (publicly or privately), suspended from practice before this Court, disbarred, or subjected to such other disciplinary action as the circumstances may warrant. The term disbarment includes the prohibition of a non-attorney from practice before the Court.

(b) **Misconduct.** Acts or omissions by any person admitted to practice before this Court, individually or in concert with any other person or persons, which violate any Code of Professional Responsibility or other officially-adopted body of disciplinary rules applicable to the conduct of the person constitute misconduct. The Code of Professional Responsibility adopted by this Court is the Model Rules of Professional Conduct adopted by the House of Delegates of the American Bar Association on August 2, 1983, and such amendments thereto adopted by such House. The Model Rules, except as otherwise provided by specific rule of this Court, shall apply to the conduct of all persons admitted to practice before this Court.

#### **RULE 2. COMMITTEE ON ADMISSION AND PRACTICE**

(a) **The Committee.** The Court shall appoint a standing committee of three members to be known as the Committee on Admission and Practice. Each member shall be a member of the bar of this Court and shall be appointed to serve for a term of three years (except that, of the three members first appointed after the effective date of these Rules, one shall be appointed for a term of one year and one shall be appointed for a term of two years). A member is eligible for reappointment to one additional term. Each member may serve until a successor has been appointed. If a member holds over after the expiration of the term for which that member was appointed, the period of the member's holdover shall be treated as part of the term of his or her successor. The Court may revoke any appointment at any time. In the case of any vacancy, the successor appointed shall serve the unexpired term of his or her predecessor. The Court shall designate one of the members of the Committee to serve as Chair.

(b) **Confidentiality.** Except to the extent reasonably necessary to carry out its responsibilities and unless otherwise ordered by the Court, the Committee shall treat in confidence the referral to it of a grievance or an application for admission, its consideration of such matter, and its report to the Court.

(c) **Admissions.**

(1) The Court may refer to the Committee an application for admission to practice before the Court whenever that application or other available information raises a question as to whether the applicant is qualified for admission under the standards set forth in Rule 46(a) and (b) of the Rules of Practice and Procedure of this Court.

(2) Upon referral by the Court of any such application for admission, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. The Committee shall provide the applicant with a copy of its findings and recommendations if the Committee recommends denial of the application.

(3) In considering applications for admission referred to it by the Court, the Committee may solicit relevant information from the applicant or from others, hold hearings, and take testimony under oath. In addition, the applicant may submit to the Committee any information that he or she deems to be relevant, and shall be entitled to be represented by counsel.

(4) The applicant shall have the burden of establishing by clear and convincing evidence that he or she has the requisite character and qualifications necessary for admission and shall cooperate with the Court and the Committee in their consideration of the application.

(d) **Grievances.**

(1) A panel of the Court may refer to the Committee any accusation or suggestion of misconduct on the part of any person admitted to practice before the Court, or any failure to comply with these Rules or any rule or order of this Court, for such investigation, hearing, and report as the Court deems advisable. Any such matter shall be referred to in these Rules as a grievance, and the person to whom the grievance relates shall be referred to as the respondent.

(2) Upon referral by the Court of any grievance, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. In such matters, the Committee shall be guided by Rule 1 of these Rules.

(3) The Committee shall consider each grievance referred to it and, if in its opinion further action is warranted, it shall serve a statement thereof on the respondent by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. The respondent shall file with the Chair of the Committee, within 30 days after the mailing date of the statement, an answer subscribed and sworn to under oath. The Chair of the Committee, upon good cause shown, may extend the time to answer.

(4) If the Committee concludes after investigation and review that a hearing is unnecessary because (A) the facts are not in dispute, (B) sufficient evidence to support the grievance is not present, (C) there is pending another proceeding against the respondent, the disposition of which in the judgment of the Committee should be awaited before further action is considered, or (D) a hearing is otherwise not warranted under the circumstances presented, the Committee shall report to the Court its recommendation for disposition of the matter.

**(e) Hearings by the Committee.**

(1) The Committee may sit as a fact-finding body and, upon reasonable notice to the respondent, may hold hearings on the grievance.

(2) The respondent shall be entitled to representation by counsel. The respondent may submit to the Committee all relevant information he or she deems appropriate and may request that the Committee consider the testimony of witnesses.

(3) The persons who may be present at the hearing are the members of the Committee, the respondent, the respondent's counsel, if any, and a witness providing testimony.

(4) At the respondent's request and expense, the hearing will be recorded.

(5) The Committee shall report its findings and recommendations to the Court. A copy of its finding and recommendations shall be forwarded simultaneously to the respondent.

**(f) Duty of Respondent to Cooperate.** It shall be the duty and responsibility of the respondent and his or her counsel to cooperate with the Committee. If a respondent fails to respond to the Committee, the Committee may recommend to the Court that discipline be imposed.

**(g) Show Cause Order or Hearing by the Court.** Upon receipt of the Committee's finding that misconduct occurred, the Court may issue an order requiring the respondent to show cause why discipline should not be imposed. The Court may invite the Committee or any person admitted to practice before the Court to reply to the respondent's

answer to the show cause order or to pursue the grievance against the respondent at a show cause hearing.

### **RULE 3. MEMBERS OF THE BAR AND NON-ATTORNEY PRACTITIONERS CONVICTED OF CRIMES**

(a) **Suspension from Practice.** Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any person admitted to practice before the Court has been convicted of a serious crime, as defined in paragraph (f) below, in any court of the United States, of the District of Columbia, or of any state, territory, commonwealth, or possession of the United States, the Clerk shall enter an order immediately suspending that person, regardless of the pendency of any appeal, until further order of the Court. The Clerk shall immediately serve a copy of such order upon the person by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(b) **Referral for Serious Crime.** Upon the filing of a certified copy of a judgment of conviction for a serious crime of a person who is admitted to practice before this Court, the Court may refer the matter to the Committee for a recommendation to the Court on the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that the recommendation for final discipline shall not be made until all appeals from the conviction are concluded.

(c) **Referral for Other Crime.** Upon the filing of a certified copy of a judgment of conviction of a person admitted to practice before this Court for a crime not constituting a "serious crime", the Court may refer the matter to the Committee for a recommendation to the Court for any appropriate action.

(d) **Proof of Crime.** In any disciplinary proceedings instituted against a person admitted to practice before this Court based upon a conviction, a certified copy of a judgment of conviction of such person for a crime shall be conclusive evidence of the commission of that crime.

(e) **Reversal of Conviction.** A person admitted to practice who is suspended under the provisions of this Rule shall be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement shall not terminate any disciplinary proceeding then pending against the person in this Court. In any such proceeding, evidence relating to the conduct which resulted in the conviction may be considered despite the reversal of the conviction.

(f) **Definition of Serious Crime.** The term "serious crime" includes any felony and also includes 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 moral turpitude, interference with the administration of justice, 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".

**RULE 4. DISCIPLINE IMPOSED BY OTHER COURTS  
OR ANY OTHER GOVERNMENTAL ENTITIES**

(a) **Initial Action.** Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that a person admitted to practice before this Court has been disciplined for professional misconduct by another court or any other governmental entity, this Court may refer the matter to the Committee for recommendation for any appropriate action, or may issue a notice directed to the attorney or non-attorney practitioner containing --

- (1) a copy of the judgment or order from the other court or entity; and
- (2) an order to show cause directing that the attorney or non-attorney practitioner inform this Court within the time specified of any claim by the attorney or non-attorney practitioner, predicated upon the grounds set forth in paragraph (c) below, that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

(b) **Deferral of Discipline.** In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court may be deferred until such stay expires.

(c) **Final Action.** After consideration of the response called for by the order issued pursuant to paragraph (a) above or after expiration of the time specified in the order, this Court will impose the identical discipline unless the respondent demonstrates, or this Court is satisfied that --

- (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) there was such an infirmity of proof establishing the misconduct 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;
- (3) the imposition of the same discipline by this Court would result in grave injustice; or
- (4) the misconduct warrants substantially different discipline.

When this Court determines that any of these elements exists, it shall enter such other order as it deems appropriate.

(d) **Proof of Misconduct.** Except as provided in paragraph (c) above, a final adjudication in another court or any other governmental entity that an attorney or non-attorney practitioner has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(e) **Referral to Committee.** This Court may at any stage ask the Committee to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court or other governmental entity.

#### **RULE 5. DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS**

Any attorney admitted to practice before this Court who is disbarred on consent or resigns 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 is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment of consent or resignation, be disbarred.

#### **RULE 6. DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION**

(a) **Consent to Disbarment.** Any person admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practicing before this Court, but only by delivering to this Court an affidavit stating that he or she desires to consent to disbarment and that --

- (1) the consent is freely and voluntarily rendered; the person is not being subjected to coercion or duress; and the person is fully aware of the implications of so consenting;
- (2) the person is aware that there is a presently pending investigation or proceeding involving allegations that there exists grounds for his or her discipline, the nature of which shall be specifically set forth;
- (3) the person acknowledges that the material facts so alleged are true or that he or she has no defense to the allegations; and
- (4) the person so consents because he or she knows that if a grievance were predicated upon the matters under investigation, or if the proceeding were prosecuted, the person could not successfully interpose a defense.

(b) **Order of Disbarment.** Upon receipt of the required affidavit, the Clerk shall enter an order disbarring the person.

(c) **Confidentiality.** An order disbarring on consent a person admitted to practice before this Court 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.

## **RULE 7. REINSTATEMENT**

(a) **After Disbarment or Suspension.** A former practitioner before this Court who is suspended for a definite period shall automatically be reinstated at the end of the period of suspension upon the filing with the Clerk of an affidavit of compliance with the provisions of the suspension order. Any person who is suspended indefinitely or disbarred may not resume practice before this Court until reinstated by order of this Court. A suspension may be directed to run concurrently with a suspension mandated by another court, in which event the person shall be eligible for reinstatement in this Court when that suspension expires, and will automatically be reinstated upon filing with the Clerk an affidavit indicating that the period of suspension has run and that person has been reinstated by the other court. A former practitioner before the Court who has been disbarred may not file a petition for reinstatement until 12 months have elapsed following the date of the order of disbarment.

(b) **Hearing on Application.** Petitions for reinstatement by a disbarred or indefinitely suspended former practitioner before this Court under this Rule shall be filed with the Clerk. Upon receipt of the petition, the Clerk shall promptly refer the petition to the Committee, which shall assign the matter for prompt hearing before the Committee. At the hearing the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she possesses the moral and professional qualifications required for admission to practice before this Court and that the petitioner's resumption of practice before this Court will not be detrimental to the integrity and standing of the bar or to the administration of justice. The Committee shall make its recommendation to the Court, which may adopt its findings, schedule a hearing on the matter, or take such other action as it deems appropriate.

(c) **Conditions of Reinstatement.** If the petitioner is found by the Court to be unfit to resume practice before this Court, the petition will be dismissed. If the petitioner is found fit to resume such practice, the petitioner will be ordered reinstated. Reinstatement may be 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 misconduct which led to the suspension or disbarment.

(d) **Successive Petitions.** No petition for reinstatement under this Rule may be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.



## **RULE 8. PERSONS SPECIALLY ADMITTED**

Whenever a person applies to be admitted or is admitted to practice before this Court for purposes of a particular proceeding (pro hac vice) under Rule 46(c) of the Rules of Practice and Procedure of this Court, the person shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that person arising in the Court, in the course of, in the preparation for, or in connection with such proceedings.

## **RULE 9. PROCEEDINGS WHERE A PERSON IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED**

(a) **Persons Declared Mentally Incompetent.** Where a person who is admitted to practice before this Court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Court, upon proper proof of the fact, shall enter an order suspending such person from practicing before the Court effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon the person, his guardian, and the Director of the mental health hospital in such a manner as the Court may direct.

(b) **Persons Alleged to be Incapacitated.** Whenever it appears to the Court that a person who has been admitted to practice may be incapacitated by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the person is so incapacitated, including the examination of the person by such qualified medical experts as the Court shall designate, and including reference of the matter to the Committee. Failure or refusal to submit to such examination shall be prima facie evidence of incapacity. If the Court concludes that the person is incapacitated and should not be permitted to continue to practice before the Court, it shall enter an order suspending the person for an indefinite period and until further order of the Court. The Court may provide for such notice to the respondent of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if the respondent is without representation.

(c) **Claim of Disability During Disciplinary Proceedings.** If during the course of disciplinary proceeding the respondent contends that he or she is suffering from a disability by reason of a mental or physical infirmity or illness or because of the use of drugs or intoxicants, and that this disability makes it impossible for the respondent to make an adequate defense, the Court shall enter an order immediately suspending the respondent from continuing to practice before this Court until a determination is made of the respondent's capacity to continue to practice in a proceeding instituted in accordance with the provisions of paragraph (b) above.

(d) **Application for Reinstatement.** Any former practitioner before this Court suspended for incompetency or mental illness or because of the use of drugs or intoxicants

may apply to the Court for reinstatement once a year or at such shorter intervals as the Court may direct in the order of suspension. The application will be granted by the Court upon a showing by clear and convincing evidence that the person's disability has been removed and that he or she is fit to resume the practice before this Court. The Court may take or direct actions as it deems necessary or proper to make a determination of whether the person's disability has been remedied, including a direction for an examination of the person by qualified medical experts designated by the Court. The Court may direct that the expenses of such an examination be paid by the applicant. Where a person has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Court may dispense with further evidence and direct the reinstatement of the person upon such terms as are deemed proper and advisable.

(e) **Waiver of Physician-Patient Privilege.** The filing of an application for reinstatement by a former practitioner before this Court who has been suspended for disability shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the person during the period of his disability for the condition underlying the suspension. The person may be required to disclose the name of every psychiatrist, psychologist, physician, and facility by whom or in which the person has been examined or treated since his or her suspension for the condition underlying the suspension, and may be required to furnish the Court with written consent for such psychiatrists, psychologists, physicians, or facilities to divulge such information or records as may be requested by the medical experts designated by the Court.

#### **RULE 10. DUTY OF ALL PERSONS ADMITTED TO PRACTICE TO PROVIDE NOTICE OF CONVICTIONS OR DISCIPLINE BY OTHER COURTS OR AGENCIES**

If any person admitted to practice before this Court (a) is subjected to public discipline for professional misconduct; (b) is indicted or charged with a felony or serious crime as defined in Rule 3(f); (c) is convicted of a felony or misdemeanor; (d) is disbarred on consent; or (e) resigns from the bar of any court while an investigation into an allegation of misconduct is pending, the person shall so notify the Clerk of this Court and all clients whom the person represents in matters before this Court and the adverse parties in such matters before this Court in writing within ten days of such discipline, indictment, charge, conviction, disbarment on consent, or resignation.

#### **RULE 11. DUTIES OF THE CLERK**

(a) **Verification of Information.** Upon being informed that a person admitted to practice before this Court has been convicted of any crime or has been subject to discipline by another court or governmental entity, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred or in which such discipline was imposed, or the executive officer of the governmental entity in which such discipline was imposed, has forwarded a certificate of such conviction or discipline to this Court. If a

certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(b) **Notice to Other Jurisdictions.** Whenever it appears that a person disbarred, suspended, publicly reprimanded, or disbarred on consent by this Court is admitted to practice in any other jurisdiction or before any other court or governmental entity, the Clerk of this Court shall, within ten days of that action transmit a certified copy of the order of disbarment, suspension, reprimand, or disbarment on consent to the disciplinary authority for each other jurisdiction, court, or governmental entity, if any, affected by the misconduct.

(c) **Notice to National Discipline Data Bank.** The Clerk of this Court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order of this Court imposing public discipline upon any attorney admitted to practice before this Court.

## **RULE 12. 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, such as proceedings for contempt under 38 U.S.C. § 7265(a), or to deprive the Court of its inherent disciplinary powers.