

APPENDIX

Model Federal Rules  
of Disciplinary Enforcement

The United States District Courts for the Eastern and Western Districts of Arkansas, in furtherance of their inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (pro hac vice), promulgate the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

RULE I

Attorneys Convicted of Crimes.

A. 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. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

B. 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".

C. A certified copy of a judgment of conviction of any 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.

D. 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 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.

E. 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.

F. 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.

## RULE II

### Discipline Imposed By Other Courts.

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline 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, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other court; and
2. An order to show cause directing that the attorney inform this Court within 30 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 (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

D. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a 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 this Court could not, consistent with its duty, accept as final conclusion on that subject;
- or
3. that the imposition of the same discipline by this Court would result in grave injustice; or
  4. that the misconduct established is deemed by this Court to warrant substantially different discipline.

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

E. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

F. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

### RULE III

#### Disbarment on Consent or Resignation in Other Courts

A. 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 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.

B. 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

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the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

#### RULE IV

##### Standards for Professional Conduct.

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility or Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility or Rules of Professional Conduct adopted by this Court is the Code of Professional Responsibility or Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

#### RULE V

##### Disciplinary Proceedings.

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of 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 disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary 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 therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include the form certification of all courts before which the respondent-attorney is admitted to practice, as specified in Form A appended to these Rules.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or 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 disciplinary proceeding is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The respondent-attorney shall execute the certification of all courts before that respondent-attorney is admitted to practice, in the form specified, and file the certification with his or her answer.

## RULE VI

### Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

A. Any attorney 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, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. 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 implication of so consenting;
2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
3. the attorney acknowledges that the material facts so alleged are true, and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provision of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

## RULE VII

### Reinstatement.

A. 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. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court, except as provided in Rule XI(H).

B. 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.

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or if there are less than three Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his 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.

D. Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witness of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

E. Deposit for Cost 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. (On October 15, 2009, the Court set the deposit amount at \$5,000.)<sup>1</sup>

F. 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, the judgment shall reinstate him, provided that the judgment may make 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. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. 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.

## RULE VIII

### Attorneys Specifically Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purpose of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred

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<sup>1</sup>On October 15, 2009 the Judges of the Eastern District unanimously voted that the amount of advance cost deposit should be \$5,000 in our District.

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disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the  
course of or in the preparation for such proceeding.

#### RULE IX

##### Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the most recent registration filed pursuant to Rule XI(F) hereof. 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 address shown on the most recent registration statement filed pursuant to Rule XI(F) hereof, 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.

#### RULE X

##### Appointment of Counsel.

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney this Court shall appoint as counsel the disciplinary agency of the Supreme Court of Arkansas, wherein this Court sits, or the attorney maintains his principal office in the case of the Courts of Appeal or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.



RULE XI

Periodic Assessment of Attorneys; Registration Statements.

A. Every attorney admitted to practice before this Court shall pay to the Clerk of the United States District Court an annual fee of \$5 for each fiscal year. The first payment will be due October 1, 1980. Said fee shall be used to pay the cost of disciplinary administration and enforcement under these Rules, (but only by those courts which have adopted these rules and have required registration and assessment) or as provided in Rule 83.6 of these Local Rules.

B. An attorney admitted to practice before this Court as well as one or more other courts of the United States shall be required to make only a single payment of the fee prescribed hereunder in any fiscal year regardless of the number of Courts of the United States to which he may be admitted.

C. Any attorney who fails to pay the fee required under (A) above within 90 days shall be summarily suspended, provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension.

D. Any attorney suspended under the provisions of (D) above shall be reinstated without further order upon payment of all arrears and a penalty of \$15.00 per year from the date of his last payment to the date of his request for reinstatement.

E. To facilitate the collection of the annual fee provided for in (A) above, every person required by this Rule to pay an annual fee shall, on or before January 1st of every year, commencing January 1, 1981, file with the Clerk of the United States District Court a registration statement, on a form prescribed by the Clerk of the United States District Court setting forth his current residence and office addresses; the bars of all states, territories, districts, commonwealths or possessions or other Courts of the United States to which the attorney is admitted. In addition to such statement, every attorney subject to these Rules shall file with the Clerk, United States District Court, a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to practice before this Court after October 1, 1980, shall file the statement required by this Rule at the time of admission and shall pay the fee prescribed by (A) and (C) above for the fiscal year then in effect without proration.

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F. Within 30 days of the receipt of a statement and payment or a supplement thereto filed by an attorney in accordance with the provisions of (A) and (F) above, the Clerk of the United States District Court shall acknowledge receipt thereof, on a form prescribed for that purpose, in order to enable the attorney on request to demonstrate compliance with the requirements of (A) and (F) above.

G. Any attorney who fails to file the statement or supplement thereto in accordance with the requirements of (F) above shall be summarily suspended, provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension. He shall remain suspended until he shall have complied therewith, whereupon he shall become reinstated without further order.

H. An attorney who has retired or is not engaged in the practice of law before a Court of the United States may advise the Clerk of the United States District Court in writing that he desires to assume inactive status and discontinue the practice of law before the Courts of the United States. Upon the filing of such notice, the attorney shall no longer be eligible to practice law in this Court. An attorney who is retired or on inactive status shall not be obligated to pay the annual fee imposed by this Rule upon active practitioners.

I. Upon the filing of a notice to assume inactive status, the attorney shall be removed from the roll of those classified as active until and unless he requests and is granted reinstatement to the active rolls. Reinstatement shall be granted (unless the attorney is subject to an outstanding order of suspension or disbarment or has been on inactive status for five years or more) upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to the transfer to inactive status. Attorneys who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required in the discretion of this Court, to establish proof of competency and learning in the law. The proof may include evidence that the attorney has continued to engage in the practice of law in good standing in another jurisdiction or before any other court or certification by the Bar Examiners of a state or other jurisdiction in which the attorney is admitted to practice, or his successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

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J. The Clerk of Court for the Eastern District shall monitor the fund and make a written report of the use of the fund and the fund balance remaining to the judges and magistrate judges of the Eastern and Western Districts by the fourteenth day of each month.

RULE XII

Payment of Fees and Costs.

At the conclusion of any disciplinary investigation or prosecution, if any, under these Rules, counsel may make application to this Court for an order awarding reasonable fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. Any such order shall be submitted to the Clerk, United States District Court, which shall pay the amount required thereunder from the funds collected pursuant to Rule XI(A) hereof.

RULE XIII

Duties of the Clerk.

A. 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.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline 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.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within fourteen (14) days of that conviction, disbarment, suspension, censure or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such 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.

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D. 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.

RULE XIV

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 Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

RULE XV

Pending Proceedings.

Any formal disciplinary proceeding pending before this Court on the effective date of these Rules shall be concluded under the procedure existing prior to the effective date of these Rules.

Rule XI(A) Revised July 1, 1985  
Adopted and effective May 1, 1980  
Rule XI(E) Amended March 26, 1992  
Amended November 10, 2009

Form A

DECLARATION OF ADMISSIONS TO PRACTICE

In Re \_\_\_\_\_ Disciplinary No. \_\_\_\_\_

I, \_\_\_\_\_, am the attorney who has been served with an order to show cause why disciplinary action should not be taken in the above captioned matter.

I am a member of the bar of this court.

I have been admitted to practice before the following state and federal courts, in the years, and under the license record numbers shown below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ Date Signature

\_\_\_\_\_  
(Full name - typed or printed)

\_\_\_\_\_  
(Address of Record)

This declaration must be signed, and delivered to the Court with the attorney's answer to the order to show cause or any waiver of an answer. Failure to return this declaration may subject an attorney to further disciplinary action. Under 28 U.S.C. Sec. 1746, this declaration under penalty of perjury has the same effect as a sworn declaration made under oath.