

DISTRICT COURT OF THE VIRGIN ISLANDS

IN RE:)
)
AMENDMENTS TO THE LOCAL RULES OF) Misc. No. 2003-06
CIVIL PROCEDURE)
)
_____)

NOTICE INVITING COMMENT

The Court has proposed amendments to Local Rule of Civil Procedure 83.2. Copies of the proposed amendments are attached hereto as Attachment A.

Accordingly, it is hereby

ORDERED that the public and members of the bar are hereby given notice and opportunity to comment on the amendment of Local Rule 83.2, as required by 28 U.S.C. § 2071(b). Such comment may be submitted to the Clerk of Court in writing or may be made orally at public hearings at the District Court on October 28, 2011 at 12:00 noon, in the main courtroom in St. Thomas and in the Magistrate Judge's courtroom on St. Croix. The amendments will take effect on November 4, 2011, and will remain in effect unless modified as a result of such comment from the public and bar.

S\ _____
CURTIS V. GÓMEZ
Chief Judge

Copies:
Hon. Wilma A. Lewis
Hon. Ruth Miller
Hon. George W. Cannon
Wilfredo F. Morales, Clerk of the Court
Members of the V.I. Bar

Amendments to Local Rule of Civil Procedure 83.2

RULE 83.2 Attorneys: Disciplinary Rules and Enforcement

(a) STANDARDS FOR PROFESSIONAL CONDUCT - BASIS FOR DISCIPLINARY ACTION.

(1) In order to maintain the effective administration of justice and the integrity of the Court, each attorney admitted or permitted to practice before this Court shall comply with the standards of professional conduct required by the Model Rules of Professional Conduct (the "Model Rules"), adopted by the American Bar Association, as amended. Attorneys who are admitted or permitted to practice before this Court are expected to be thoroughly familiar with the Model Rules' standards.

(2) Any attorney admitted or permitted to practice before this Court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant for misconduct, and after notice and an opportunity to be heard.

(3) Acts or omissions by an attorney admitted or permitted to practice before this Court, individually or in concert with any other person or persons, which violate the Model Rules, 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 or in the course of judicial proceedings.

(b) DISCIPLINARY PROCEEDINGS.

When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted or permitted to practice before this Court, shall come to the attention of a judicial officer of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judicial officer shall inform the Chief Judge. Thereafter, the Chief Judge or his designee shall refer the matter to a magistrate judge or a committee designated by the Chief Judge (Disciplinary Committee) for investigation and a report and recommendation. The magistrate judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard. The attorney may submit objections to the report and recommendation. Any objections are to be filed with the Court within fourteen (14) days upon notice of the report and recommendation. The matter will then be submitted to the Court for final determination.

(c) DISCIPLINARY PENALTIES.

(1) An order imposing discipline under this rule may consist of any of the following:

- (A) disbarment;
- (B) suspension;
- (C) public or private reprimand;
- (D) monetary penalties, including an order to pay the costs of proceedings; or
- (E) if the attorney was admitted pro hac vice or has been otherwise permitted to appear, preclusion from, or the placement of conditions on, any further appearances before this Court.

(2) Any suspension or reprimand imposed may be subject to additional specified conditions, which may include continuing legal education requirements, counseling, or supervision of practice, or any other condition which the Court deems appropriate.

(d) POWERS OF INDIVIDUAL JUDGES TO DEAL WITH CONTEMPT OR OTHER MISCONDUCT NOT AFFECTED.

(1) The remedies for misconduct provided by this rule are in addition to the remedies available to individual judges under applicable law with respect to lawyers appearing before them. Misconduct of any attorney in the presence of a judge or in any manner with respect to any matter pending before the Court may be dealt with directly by the judge in charge of the matter or, at the judge's option, referred to the Chief Judge, or both.

(2) Nothing in this rule shall limit the Court's power to punish contempt or to sanction counsel in accordance with the federal rules of procedure or the Court's inherent authority to enforce its rules and orders.

(e) NOTICE OF DISCIPLINARY ACTION TO OTHER COURTS.

The clerk shall give prompt notice of any order imposing discipline under this rule to the Court of Appeals for the Third Circuit, the Supreme Court of the Virgin Islands, and the American Bar Association

(f) CONFIDENTIALITY.

Unless otherwise ordered by the Court, complaints or grievances and any files based on them, shall be treated as confidential.

(g) DISBARMENT OR SUSPENSION ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION.

(1) Affidavit of Consent. Any attorney admitted or permitted 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 or suspension, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment or suspension and that:

(A) the attorney's consent is freely and voluntarily given; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of consenting;

(B) the attorney is aware that there is a pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true; and,

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

(2) Order of Disbarment or Suspension on Consent. Upon receipt of the required affidavit, the Court may enter an order disbaring or suspending the attorney.

(3) Disclosure. The order disbaring or suspending the attorney on consent shall be a matter of public record. The affidavit required under the provisions of this rule shall not be publicly disclosed, however, or made available for use in any other proceeding except upon order of this Court.

(h) DISBARMENT OR RESIGNATION IN OTHER COURTS.

(1) Any attorney admitted to practice before this Court who is disbarred, disbarred on consent, or resigns from the bar of any Court while an investigation into allegations of misconduct

is pending, shall be stricken from the roll of attorneys admitted to practice before this Court, upon the filing of a certified copy of the judgment or order of disbarment or accepting such disbarment on consent or resignation.

(2) Any attorney admitted to practice before this Court, upon being disbarred, disbarred on consent, or resigning from the bar of any Court while an investigation into allegations of misconduct is pending, shall promptly inform the clerk of the disbarment, disbarment on consent, or resignation.

(i) ATTORNEYS CONVICTED.

(1) *Felony Convictions.*

(A) Conviction in this District. Upon the entry of judgment of a felony conviction against an attorney admitted or permitted to practice before this Court, the clerk shall immediately notify the Chief Judge of the conviction. The Chief Judge or his or her designee may then immediately issue an order suspending the attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding as set forth in this rule. A copy of such order shall be served upon the attorney.

(B) Convictions in Other Courts. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted or permitted to practice before this Court has been convicted of a felony in any Court of the United States or of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, the Chief Judge or his or her designee shall enter an order immediately suspending that attorney, 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 be served upon the attorney.

(C) Other Crimes. Upon the filing of a certified copy of a judgment of conviction of an attorney for any crime, the Chief Judge may appoint a Disciplinary Committee for whatever action deemed warranted.

(2) *Certified Judgment as Conclusive Evidence.* A certified copy of a judgment of conviction of an 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.

(3) *Reinstatement Upon Reversal of Conviction.* An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(j) DISCIPLINE IMPOSED BY OTHER COURTS.

(1) When it is shown to this Court that any member of its Bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of this Court, the member will be subject to suspension or disbarment by this Court. The member shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the order to show cause, and after hearing, if requested or ordered by the Court, or upon expiration of the time prescribed for a response, if no response is made, the Court shall enter an appropriate order.

(2) Upon the filing of a certified copy of a judgment or order establishing that an attorney admitted or permitted to practice before this Court has been disciplined by any court of competent jurisdiction, this Court shall issue forthwith a notice directed to the attorney containing:

(A) a copy of the judgment or order from the issuing court; and

(B) an order directing the attorney to show cause within thirty (30) days after service why disciplinary action should not be taken against him or her.

(3) The Chief Judge may designate another judge or a Disciplinary Committee to investigate and submit a report and recommendation.

(k) REINSTATEMENT.

(1) After Disbarment or Suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.

(2) Hearing on Application. Petitions for reinstatement by an attorney who has been disbarred or suspended under this rule shall be filed with the Chief Judge of the Court who shall schedule the matter for consideration by the active district judges of this Court within thirty (30) days from receipt of the petition. In considering the petition for reinstatement, the active district judges shall enter the order they deem appropriate. In considering the petition for reinstatement, the Court may schedule a hearing.

(3) The petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that resumption of the practice of law will not be detrimental to the integrity of the bar, the administration of justice, or undermine the public interest.

(4) 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. This list is not intended to be exhaustive.

(l) DUTIES OF THE CLERK.

(1) Upon being informed that an attorney admitted or permitted to practice before this Court has been convicted of any crime, the clerk 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 forwarded, the clerk shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted or permitted to practice before this Court has been subjected to discipline by another court, the clerk 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.

(3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent or precluded from appearance and practice by this Court is admitted to practice law in any other jurisdiction(s) or before any other court, the clerk shall promptly transmit to the other court(s), a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, disbarment on consent, or order of preclusion, as well as the last known office and residence addresses of the defendant or attorney.

(4) The clerk 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.