

## **Rule 83.7 Professional Conduct and Attorney Discipline**

**(a) Standards for Professional Conduct.** Attorneys admitted to practice in this Court shall be bound by the ethical standards of the Ohio Rules of Professional Conduct adopted by the Supreme Court of the State of Ohio, so far as they are not inconsistent with federal law (see LR 83.5(b) and (f)).

**(b) Failure to Comply.**

(1) For misconduct defined in this Rule, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be subjected to such disciplinary action as the circumstances warrant.

(2) 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 Ohio 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.

**(c) Attorneys Specially Admitted.** Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged professional misconduct of that attorney.

**(d) Disciplinary Proceedings.**

(1) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by this Rule, the Judge shall refer the matter to the Court's Committee on Complaints and Policy Compliance ("the Committee"), with notification to the Clerk of Court, for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as is appropriate.

(2) If the Committee concludes after investigation, review and findings that a formal disciplinary proceeding should not be initiated against the respondent-attorney, the Committee shall make a written recommendation to the Court for disposition of the matter by dismissal, admonition, referral, or otherwise.

(3) To initiate formal disciplinary proceedings, the Committee shall issue by regular U.S. mail an order of this Court requiring the respondent-attorney to show cause as noticed why the attorney should not be disciplined.

(4) 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, the matter shall be set for hearing before the Committee, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court who is a member of the Committee, that judge shall not participate in such hearing or in any action of this Court relative to said respondent-attorney.

(5) After a disciplinary proceeding, the Committee shall make a written recommendation to the Court for disposition, including, but not limited to, suspension from practice before this Court, reprimand, censure, restitution of funds, satisfactory completion of educational programs, compliance with treatment programs, assignment of a mentor, and community service.

(6) Counsel appointed pursuant to the authority set forth in section (f) of this Rule, *Discipline Imposed By Other Courts*, shall have the authority to investigate, prosecute before the Committee and otherwise assist the Committee in any matters involving a respondent-attorney.

**(e) Attorneys Convicted of, Pleading Guilty or Nolo Contendere to Crimes.**

(1) Serious Crimes

(a) If an attorney admitted to practice before this Court is found guilty by verdict at trial in any Court of record, or enters a plea of guilty or nolo contendere, to a serious crime, as herein after defined, the Chief Judge, on behalf of this Court, shall immediately enter an order of interim suspension of 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 by regular U.S. mail. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(b) The Court shall, in addition to ordering an interim suspension of that attorney, refer the matter to the Committee on Complaints and Policy Compliance for the institution of a disciplinary proceeding on behalf of the Court. The sole issue to be determined shall be the extent of the final discipline to be imposed. A disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(2) Other Crimes

If an attorney admitted to practice before this Court is found guilty by verdict at trial in any Court of record, or enters a plea of guilty or nolo contendere

to a crime not constituting a serious crime, the Court may refer the matter to the Committee on Complaints and Policy Compliance for whatever action the Committee deems warranted, including the institution of a disciplinary proceeding.

(3) The term “serious crime” shall include, but not be limited to, 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, tax evasion, 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.”

(4) A certified copy of an official document from any Court of record indicating that the Court has found an attorney guilty by verdict or trial, or has accepted a plea of guilty or nolo contendere, for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney.

(5) An attorney suspended under the provisions of this Rule will be reinstated upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed. However, the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

**(f) Discipline Imposed By Other Courts.**

(1) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of record, promptly inform the Clerk of this Court of such action. If the Committee becomes aware of any public discipline to which any attorney admitted to practice before this Court is subjected, the Committee shall inform the Clerk of this Court.

(2) 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 issue by regular U.S. mail a notice directed to the attorney containing:

(A) a copy of the judgment or order from the other Court; and

(B) 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 (3) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor. If any issue of fact is raised, the matter shall be set for hearing before the Committee.

(3) This Court shall impose the identical discipline unless this Court finds that from the face of the record upon which the discipline in another jurisdiction is predicated, it clearly appears:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) 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 the conclusion on that subject; or

(C) that the imposition of the same discipline by this Court would result in grave injustice.

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

(4) 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 this Court.

(5) This Court, acting through the Committee, may at any stage appoint counsel to prosecute the disciplinary proceedings.

**(g) Disbarment on Consent or Resignation in Other Courts.**

(1) Any attorney admitted to practice before this Court who is disbarred on consent or resigns from the bar of any other Court of record 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 or exemplified copy of the judgment or order or upon notification by the attorney.

(2) It is the duty of any attorney admitted to practice before this Court who is disbarred on consent, or resigns from the bar of any other Court of record while an investigation into allegations of misconduct is pending, to notify the Clerk of this Court of such disbarment.

**(h) Disciplinary Action on Consent While Under Disciplinary Investigation or Prosecution.**

(1) 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 disciplinary action, but only by delivering to the Clerk of this Court an affidavit stating that the attorney desires to consent to disciplinary action 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 so consenting;

(B) the attorney is aware that there is presently pending an 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 alleged are true; and

(D) the attorney 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 or herself.

(2) Upon receipt of such affidavit, this Court shall enter an order striking the attorney from the roll of attorneys admitted to practice before this Court.

**(i) Reinstatement.**

(1) After Suspension. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon filing with the Clerk of Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months may not resume practice until reinstated by order of this Court.

(2) Time of Application. A person who has been stricken from the roll of attorneys admitted to practice before this Court due to disbarment may not apply for reinstatement until the expiration of at least five years from the effective date of being removed from the roll of attorneys.

(3) Hearing on Application. Applications for reinstatement under this Rule shall be filed with the Clerk of Court. The attorney's application must include an affidavit stating that the jurisdiction which entered the order of discipline on which this Court based its discipline has reinstated the attorney. Upon receipt of a properly filed application, the Clerk shall refer the application to the Committee which shall schedule a hearing. At the hearing the attorney shall have the burden of demonstrating by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his/her 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. If the disciplinary proceeding which led to the suspension and/or removal from the roll of attorneys

was predicated upon the complaint of a Judge of this Court who is a member of the Committee, that Judge shall not participate in such hearing or in any action of this Court relative to said attorney.

(4) Duty of Counsel. In all proceedings upon an application for reinstatement, cross-examination of the witnesses of the attorney and the submission of evidence, if any, in opposition to the application shall be conducted by members of the Committee, unless the Committee has appointed counsel in which case such cross-examination shall be conducted by that counsel.

(5) Conditions of Reinstatement. If the attorney is found unfit to resume practice in this Court, the application shall be dismissed. If the attorney is found fit to resume practice in this Court, the judgment shall reinstate him/her, provided that the judgment may make reinstatement conditional upon the making of partial or complete restitution to parties harmed by the attorney whose conduct led to the disciplinary action. In addition, if the attorney has been suspended and/or removed from the roll of attorneys for two years or more, reinstatement is conditioned upon the attendance of the attorney at a Federal Court Practice Seminar. If the attorney has been suspended and/or removed from the roll of attorneys for five years or more, reinstatement may be conditioned upon furnishing 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.

(6) Successive Applications. No application for reinstatement under this Rule shall be filed within one year following an adverse judgment upon an application for reinstatement filed by or on behalf of the same attorney.

(j) Appointment of Counsel. Whenever counsel is to be appointed pursuant to this Rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement application filed by a disciplined attorney, this Court or the Committee may appoint as counsel the disciplinary agency of the Supreme Court of Ohio or other state or local disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or if the Committee determines it more appropriate, the Committee may appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under this Rule, 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.

(k) Service. Service of orders, notices or any other papers shall be made by regular U.S. mail addressed to the respondent-attorney at the last known office address of the respondent-attorney. Any attorney admitted to practice before this Court who fails to comply with LR 83.5(i) and LCrR 57.5(i), which require the submission of a written

notice of a change of business address and/or email address to the Clerk upon a change of address, makes the Clerk of Court his or her agent for the service of any notice provided in any disciplinary matter proceeding before this Court.

(l) **Public Record.** The general order imposing disciplinary action or reinstating an attorney shall be a matter of public record. All other records pertaining to attorney disciplinary action(s), which are not already public records, shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(m) **Jurisdiction.** Nothing contained in this Rule 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.

(n) **Applicability.** This Rule shall apply only to disciplinary actions initiated on or after April 4, 2011.