

83.6 ATTORNEY DISCIPLINE

- (a) **Generally.** If an attorney admitted to this Bar commits misconduct as specified in this Rule, then the Court en banc may discipline that attorney in accordance with this Rule.
- (b) **Definitions.** As used in this Rule:
 - 1. **Any Court.** “Any court” includes any federal court or the court of any state, territory, commonwealth, or possession of the United States.
 - 2. **Serious Crime.** “Serious crime” includes any 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 the above crimes.
- (c) **Forms of Misconduct.**
 - 1. **Attorneys Violating Rules of Professional Responsibility.** An attorney admitted to this Bar has committed misconduct if he or she violates the District’s adopted Code of Professional Responsibility, whether by act or omission, whether committed individually or in concert with any other person or persons, and whether committed in the course of an attorney client relationship or the practice of law. The District’s Code of Professional Responsibility is the Rules of Professional Conduct adopted by the Supreme Court of Missouri, except as otherwise provided by specific order of the Court en banc after consideration of comments by representatives of bar associations within the State.
 - 2. **Attorneys Convicted of Crimes.**
 - A. An attorney admitted to this Bar has committed misconduct if convicted of a crime in any court, 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.
 - B. If the Clerk receives a certified copy of a judgment of conviction demonstrating that an attorney admitted to this Bar has been convicted of a serious crime in any court, the Court en banc must enter an order commencing a disciplinary proceeding and immediately suspending that attorney until final disposition of the disciplinary proceeding. The Court en banc must immediately serve a copy of such order upon the attorney. Upon a showing of good cause, the Court en banc may set aside such order.
 - C. An attorney suspended under this Rule must be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed. This reinstatement does

not terminate any disciplinary proceeding then pending against the attorney, the disposition of which must be determined by the Court en banc on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

- D. In any disciplinary proceeding instituted against an attorney based upon a criminal conviction, a certified copy of a judgment of that is conclusive evidence that the attorney committed that crime.
- E. If the misconduct alleged is the commission of a serious crime, the Court en banc may not issue discipline until all appeals from the conviction are concluded.

3. Attorneys Disciplined by Other Courts

- A. An attorney admitted to this Bar has committed misconduct if subjected to public discipline by any court besides this District. Upon being subjected to such discipline, the attorney must so inform the Clerk.
- B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted this Bar has been disciplined by another court, this Court en banc must serve on the attorney under investigation:
 - i. A copy of the judgment or order from the other court; and
 - ii. An order directing the respondent to show cause within 30 days why the Court en banc should not impose identical discipline.
- C. If the other court has stayed the discipline imposed, any reciprocal discipline imposed by the Court en banc must be deferred until the stay expires.
- D. In any disciplinary proceeding instituted against an attorney based upon discipline by another court, a final adjudication by that court that the attorney was guilty of misconduct is conclusive evidence that the attorney committed misconduct.
- E. No sooner than 30 days after serving the respondent, the Court en banc must impose the identical discipline unless the Court en banc enters an order finding from the face of the certified copy of the judgment or order that clearly:
 - i. The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
 - ii. There was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court en banc could not, consistent with its duty, accept as final the conclusion on that subject;

- iii. The imposition of the same discipline by the Court en banc would result in grave injustice; or
- iv. The misconduct established warrants substantially different discipline.

F. Upon resigning or being disbarred on consent from the bar of any other court, the attorney must so inform the Clerk. Upon the filing of a certified or exemplified copy of a judgment or order by any other court accepting the resignation or disbarment on consent from that court by an attorney admitted to this Bar, the Clerk must strike the attorney's name from the rolls. The stricken attorney is no longer permitted to appear or practice in this District. Such a resignation or disbarment on consent does not terminate any disciplinary proceeding against that attorney in this District.

(d) **Disciplinary Proceedings.** Except as specified in Rule 83.6(c), the following governs the process of disciplining attorneys admitted to this Bar that have committed misconduct.

1. **Initiating a Disciplinary Investigation.** When misconduct, or allegations which, if substantiated, would constitute a misconduct, on the part of an attorney admitted to this Bar come to the attention of the Clerk or a judge, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by this Rule, the Clerk must initiate a disciplinary investigation.

2. **Investigation.**

A. Once a disciplinary investigation is initiated, the Court en banc may refer the matter to an attorney to serve as a special master.

i. The special master may perform any appropriate task, including investigating the case, determining whether probable cause exists to believe that an attorney has violated Rule 83.6(c), prosecuting a formal disciplinary proceeding, and formulating another appropriate recommendation.

ii. An attorney is eligible to serve as special master if he or she is an attorney for the Missouri Office of Chief Disciplinary Counsel, a member of this Bar, or an Assistant United States Attorney. The attorney under investigation may move at any time to disqualify a special master on the grounds that the special master is or has been engaged in any matter as an adversary of the attorney under investigation. A special master, once appointed, may not resign unless granted leave of the Court en banc.

iii. If the special master concludes after investigation and review that there is probable cause to believe that an attorney has violated

Rule 83.6(c), the special master must demonstrate such to the Court en banc. If the Court en banc concurs with the special master, the special master must file with the Court en banc an order that contains a short and plain statement of each ground for discipline and that directs the attorney under investigation to show cause why he or she should not be disciplined. The Court en banc must serve the show cause order on the respondent, who may, within 30 days, file an answer identifying any disputed issues of fact and any matters in mitigation.

iv. If the special master concludes after investigation and review that there is no probable cause to believe that an attorney has violated Rule 83.6(c), or that the Court en banc should await the disposition of another proceeding against the attorney under investigation, the special master must file with the Court en banc a report containing recommendations for disposition—whether by dismissal, admonition, or deferral—and setting forth the reasons.

B. Once a disciplinary investigation is initiated, if the Court en banc does not appoint an attorney to serve as special master, the Court en banc must undertake its own investigation. If the Court en banc determines that there is probable cause to believe that an attorney has violated Rule 83.6(c), the Court en banc must serve on the attorney under investigation an order that contains a short and plain statement of each ground for discipline and that directs the respondent to show cause why he or she should not be disciplined. The respondent may, within 30 days, file an answer identifying any disputed issues of fact and any matters in mitigation.

3. Selecting Discipline.

A. If the respondent's response to the show cause order raises any issue of fact or gives notice of issues on which the respondent wishes to be heard in mitigation, the Court en banc must set the matter for a hearing.

i. The Chief District Judge must appoint one or more judges to serve on the hearing panel. If the proceeding resulted from the initial complaint of a judge, the Chief District Judge must appoint 3 judges, none of who may be the complaining judge. If the Chief District Judge is the complainant, the active district judge with the most seniority must appoint the panel. If the appointing judge determines that the complaint involves issues related to practice before the Bankruptcy Court, at least one bankruptcy judge must be appointed.

ii. The hearing panel must submit to the Court en banc a report containing findings on disputed facts and issues heard in mitigation, and recommendations for appropriate discipline, if any, to the Court en banc. Upon consideration of this report and

recommendation, the Court en banc must determine the appropriate discipline, if any, and terminate the proceeding.

- B. If no hearing panel is required, then the Court en banc must determine the appropriate discipline, if any, and terminate the proceeding.

(e) Disbarment on Consent While under Disciplinary Investigation or Prosecution.

1. **Affidavit Required to Consent to Disbarment.** Any attorney admitted to this Bar 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 the Court en banc an affidavit swearing that the attorney:
 - A. Freely and voluntarily consents to disbarment, is not being subjected to coercion or duress, and is fully aware of the implications of so consenting;
 - B. 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 must specifically set forth;
 - C. Acknowledges that the material facts so alleged are true; and
 - D. Acknowledges that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.
2. **Disbarment upon Receipt of Affidavit.** Upon receiving this affidavit, the Court en banc must enter an order disbarring the attorney and terminating the disciplinary investigation or proceeding.
3. **Disbarment Order Matter of Public Record.** The order disbarring the attorney on consent must be a matter of public record. Unless the Court en banc orders otherwise, the attorney's affidavit may not be publicly disclosed or made available for use in any other proceeding.

(f) Resignation While under Disciplinary Investigation or Prosecution.

An attorney admitted to this Bar who is the subject of an investigation into or a pending proceeding involving allegations of misconduct may voluntarily resign from the Bar, but the resignation does not automatically terminate the disciplinary proceeding against that attorney.

(g) Reinstatement.

1. **Generally.** An attorney who is suspended for more than 3 months or disbarred may not resume practice until the Court en banc grants a petition for reinstatement. An attorney who is suspended for 3 months or less is automatically reinstated at the end of the period of suspension if he or she files

with the Chief District Judge an affidavit of compliance with the provisions of the order of suspension.

2. **Ineligibility for Reinstatement.** An attorney may not petition for reinstatement within one year following an order rejecting a petition for reinstatement. Unless the Court en banc orders otherwise, an attorney who has been disbarred may not petition for reinstatement until at least five years after the effective date of the disbarment.
3. **Filing the Petition.** A petition for reinstatement must be filed with the Chief District Judge and must be accompanied by an advance deposit, in an amount to be set from time to time by the Court en banc, towards payment of anticipated costs of the reinstatement proceeding. The Court en banc must fix the actual amount of the cost of the reinstatement proceeding at the conclusion of the proceeding.
4. **Assigning the Petition.** Upon receiving a petition for reinstatement, the Chief District Judge must assign the petition to one or more judges of this Court to conduct appropriate proceedings and to recommend appropriate disposition to the Court en banc. If the discipline resulted from the initial complaint of a judge, the Chief District Judge may not assign the petition for reinstatement to the complaining judge. The Court en banc, after consulting with the judges assigned to the petition, may appoint a special master in accordance with Rule 83.6(d)(2)(A)(ii) to investigate the petition. If a special master is appointed under this Rule, the special master must submit, within 45 days, a report and recommendation to the judges assigned to the petition.
5. **Hearing on Reinstatement.** After receiving and considering any report and recommendation of a special master, the judges assigned to the petition may schedule a hearing. If a hearing is scheduled, the special master must present all pertinent information bearing on the relief requested in the petition at the hearing. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she has the necessary integrity, moral qualifications, and competency for readmission to this Bar. The judges assigned to the petition must submit suggested findings and conclusions to the Court en banc.
6. **Conditions of Reinstatement.** Upon consideration of these findings and conclusions, the Court en banc must decide whether to reinstate the petitioner and terminate the proceeding. The Court en banc may reinstate the petitioner subject to conditions. Conditions of reinstatement may include the payment of all or part of the costs of the proceedings, and may include partial or complete restitution to parties harmed by the attorney, and proof of competency to practice before the District.

(h) Service of Papers and Other Notices.

The show cause order specified in Rule 83.6(d) must be served on the respondent by personal service or by registered or certified mail. Service of any paper or notice under this Rule is proper if the paper or notice is addressed to the respondent at:

1. The most recent address the Clerk has on file;
2. The address indicated in the most recent pleading or other document filed in the course of any proceeding; or
3. The respondent's last known address.

(i) Payment of Fees and Costs.

1. At the conclusion of any disciplinary investigation or proceeding, any special master may move the Court en banc for an order awarding reasonable fees and reimbursing costs expended in the course of the investigation or proceeding. The Court en banc may require the special master to submit a budget for approval.
2. The Chief District Judge may order the Clerk, as trustee of the funds collected under Rule 83.5(e), to pay the costs incurred by the Court en banc in administering this Rule. The Chief District Judge may order these payments to be taxed as costs against any attorney disciplined by the Court en banc.

(j) Certificate of Disciplinary Judgment and Notice by Clerk.

1. Upon being informed that an attorney admitted to this Bar may have been convicted of a crime, the Clerk must determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to the Court en banc. If a certificate has not been forwarded, the Clerk must promptly obtain a certificate and file it with the Court en banc.
2. Upon being informed that an attorney admitted to this Bar may have been subjected to discipline by any other court, the Clerk must determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with the Court en banc. If it has not been filed, the Clerk must promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with the Court en banc.
3. Upon being informed that an attorney disbarred, suspended, censured, or disbarred on consent by this District for being convicted of a crime is admitted to practice law before any other court, the Clerk must promptly transmit a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, to the disciplinary authority of that court and to the last known office and residence addresses of the attorney.
4. The Clerk must promptly notify the National Discipline Data Bank operated by the American Bar Association of any order by the Court en banc imposing public discipline upon an attorney admitted to this Bar.

(k) Jurisdiction. This Rule does not deny the Court any powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Fed. R. Crim. P. 42.

- (1) **Unauthorized Practice.** Unless specifically authorized by a judge, an attorney who, before admission or during disbarment or suspension, exercises any of the privileges of a member of this Bar, or who pretends to be entitled to so do, is guilty of contempt of court and is subject to appropriate punishment, to be instituted in the same manner as provided in this Rule.