

1.8 Attorney Discipline.

(a) Attorneys Convicted of Crimes.

- (1) Suspension.** When a certified copy of a judgment of conviction is filed with the court showing that an attorney admitted to practice in this court has been convicted of a serious crime, as defined in Nebraska General Rule 1.8(a)(2), in any court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, this court enters an order immediately suspending the attorney. The court enters the suspension order whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, and regardless of the pendency of an appeal. The court immediately serves the attorney with a copy of the suspension order. The court may set aside the suspension order for good cause and in the interest of justice. The suspension is effective until the final disposition of the disciplinary proceeding required by Nebraska General Rule 1.8(a)(4).
- (2) "Serious Crime" Defined.** The phrase "serious crime" includes any felony. It also includes any lesser crime a necessary element of which, as determined by the statutory or common law definition of 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.
- (3) Conclusive Evidence.** A certified copy of a judgment of conviction of an attorney for any crime is considered conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.
- (4) Mandatory Disciplinary Proceeding.** In addition to suspending an attorney as described in Nebraska General Rule 1.8(a)(1), the court also refers the matter to counsel for institution of a disciplinary proceeding before the court. The sole issue to be determined in this proceeding is the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction. The court will not hold a final hearing in the disciplinary proceeding until the attorney has exhausted all appeals from the conviction.
- (5) Discretionary Disciplinary Proceeding.** When a certified copy of

a judgment of conviction is filed with the court showing that an attorney admitted to practice in this court has been convicted of a crime not constituting a serious crime as defined in Nebraska General Rule 1.8(a)(2), the court may refer the matter to counsel for whatever action counsel may consider warranted, including the institution of a disciplinary proceeding before the court. The court may, however, make no reference with respect to convictions for minor offenses.

- (6) **Reinstatement.** An attorney suspended under this rule will be reinstated immediately upon the filing of a certificate showing a reversal of the underlying conviction of a serious crime. An attorney's reinstatement does not terminate any disciplinary proceeding then pending against the attorney, however; the court decides the disciplinary issues based on (1) all available evidence relating to both guilt and (2) the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

- (1) **Attorney's Duty to Notify This Court.** Any attorney admitted to practice in this court must promptly inform the clerk if any other court of the United States or the District of Columbia or a court of any state, territory, commonwealth or possession of the United States publicly disciplines the attorney.
- (2) **Notice to Attorney.** If a certified or exemplified copy of a judgment or order is filed demonstrating that an attorney admitted to practice in this court has been disciplined by another court, this court issues a notice directed to the attorney, containing:
- (A) a copy of the other court's judgment or order; and
 - (B) an order directing the attorney to show cause within 30 days after service of the order why, on the grounds listed in Nebraska General Rule 1.8(b)(4), the court should not impose the same discipline.
- (3) **Discipline Stayed.** If the other jurisdiction has stayed its imposed discipline, this court defers any reciprocal discipline until the stay expires.
- (4) **Discipline Imposed.** This court imposes the same discipline imposed by another jurisdiction 30 days after service of the notice issued under Nebraska General Rule 1.8(b)(2)(B), unless the

respondent/attorney shows, or this court finds, that on the face of the record upon which the other jurisdiction's discipline is based, it clearly appears:

- (A) the procedure was so lacking in notice or opportunity to be heard that it resulted in a deprivation of due process;
- (B) an infirmity of proof establishing the misconduct clearly shows this court could not, consistent with its duty, accept as final the conclusion on that subject;
- (C) the imposition of the same discipline by this court would result in grave injustice; or
- (D) the established misconduct warrants substantially different discipline.

If this court determines any of these elements exists, it may enter an appropriate order.

- (5) **Conclusive Evidence.** In all other respects, another court's final adjudication that an attorney is guilty of misconduct conclusively establishes the misconduct in any disciplinary proceeding in this court.
- (6) **Appointment of Prosecuting Counsel.** This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts.

- (1) **Disbarment.** When a certified copy of a judgment or order accepting an attorney's disbarment on consent or resignation is filed with the court showing that an attorney admitted to practice in this court will 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, the attorney is no longer allowed to practice in this court and is stricken from the court's roll of attorneys.
- (2) **Attorney's Duty to Notify This Court.** Any attorney admitted to practice in this court must promptly inform the clerk of a disbarment on consent or resignation 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.

(d) Violation of Ethical Standards.

- (1) Jurisdiction.** This court has disciplinary jurisdiction to investigate and, if appropriate, discipline any attorney admitted to practice in this court, and any attorney specially admitted to this court for a particular case, with respect to the attorney's alleged misconduct arising during or in the preparation of a case pending in this court.
- (2) Disciplinary Action.** Misconduct, as defined in these rules, may result in disciplinary action against an attorney if, after providing the attorney with notice and opportunity to be heard, good cause is shown to support a finding of misconduct. An attorney subject to the court's disciplinary jurisdiction may be disbarred, suspended from practice before the court, reprimanded, or subjected to other appropriate disciplinary action.
- (3) "Misconduct" Defined.** Acts or omissions by an attorney, acting individually or in concert with any other person or persons, that violate the ethical standards stated in Nebraska General Rule 1.7(b) constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship.
- (4) Disciplinary Procedure.** The following procedure will be followed in investigating alleged misconduct occurring within the court's disciplinary jurisdiction. This procedure does not limit or govern the court's exercise of additional powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or Federal Rule of Criminal Procedure 42.
 - (A) Imposition of Sanction; Referral.** When a judge of this court learns by complaint or otherwise of an attorney's alleged misconduct that, if substantiated, would warrant discipline, and the applicable procedure is not otherwise mandated, the judge may impose an appropriate sanction, refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or other appropriate recommendation, or both.

- (B) Investigating Counsel.** If the complaint alleges misconduct that, if substantiated, may warrant discipline, the court must appoint counsel under Nebraska General Rule 1.8(d)(8) to investigate the allegations of misconduct and prosecute disciplinary proceedings.
- (C) Investigating Counsel's Recommendation.** After investigation and review, investigating counsel must file with the court a recommendation indicating whether the matter should be (i) dismissed because insufficient evidence exists to initiate a formal disciplinary proceeding against the respondent/attorney, or (ii) deferred because another proceeding is pending against the respondent/attorney, the disposition of which should be awaited before this court considers further action. Investigating counsel may also recommend other courses of action based on valid reasons.
- (D) Order to Show Cause.** To initiate formal disciplinary proceedings, and upon a showing of probable cause, investigating counsel must obtain an order from the court requiring the respondent/attorney to show cause why the attorney should not be disciplined. The order must advise the respondent/attorney to respond within 30 days of being served. The order must be served as stated in Nebraska General Rule 1.8(d)(7).
- (E) Hearing.** When the respondent/attorney answers the order to show cause, the court must set a prompt hearing before one or more judges if the answer raises any issue of fact or if the respondent/attorney wishes to be heard in mitigation; provided, however, that if the disciplinary proceeding is based on the complaint of a judge or bankruptcy judge, the hearing is conducted as follows:

 - (i) if two or more Article III judges, other than the complainant, are available, the hearing must be before a panel of two or more Article III judges, other than the complainant, appointed by the chief judge or, if the chief judge is the complainant, appointed by the active Article III judge then available and next senior in service; or
 - (ii) if the conditions of (i) do not apply, the hearing must be before a panel of two or more Article III judges

appointed by the this circuit's chief judge.

(5) Disbarment on Attorney's Consent.

(A) Attorney's Affidavit; Contents. An attorney admitted or specially admitted to practice before this court who is the subject of an investigation or pending proceeding involving allegations of misconduct in any jurisdiction, including this court, may consent to disbarment by this court, but only by delivering to the court an affidavit stating that the attorney consents to disbarment and:

- (i) the attorney freely and voluntarily consents, is not under coercion or duress, and is fully aware of the implications of consenting;
- (ii) the attorney is aware of a presently pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline, the nature of which the attorney must specifically state;
- (iii) the attorney acknowledges that the alleged material facts are true; and
- (iv) the attorney consents because the attorney knows that if charges were brought based on the matters under investigation or if the proceeding were prosecuted, the attorney could not present a successful defense.

(B) Court Order. Upon receiving the attorney's affidavit, the court must order the attorney disbarred.

(C) Public Disclosure of Affidavit and Order. An order disbarring the attorney on consent is a matter of public record; however, the affidavit required under this rule must not be publicly disclosed or made available for use in any other proceeding except upon this court's order.

(6) Reinstatement.

(A) After Disbarment or Suspension. An attorney suspended for 3 months or less is automatically reinstated at the end of the suspension period upon filing an affidavit of compliance with

the provisions of the order. An attorney suspended for more than 3 months or disbarred may not resume practice until the court orders the attorney reinstated.

(B) Time of Application After Disbarment. A person disbarred after hearing or by consent may not apply for reinstatement until 5 years from the disbarment's effective date.

(C) Petition for Reinstatement. A disbarred or suspended attorney must file a petition for reinstatement with the chief judge. After receiving the petition, the chief judge may either:

(i) waive further proceedings under this rule and order the disbarred or suspended attorney reinstated; or

(ii) appoint investigating counsel under Nebraska General Rule 1.8(d)(8), and assign the matter for prompt hearing before one or more judges.

(a) If the disciplinary proceeding is based on a judge's complaint, the hearing is conducted before a panel of three other judges appointed by the chief judge or, if fewer than three judges are eligible to serve or the chief judge was the complainant, by this circuit's chief judge.

(b) Within 30 days after referral, the judge(s) assigned to the matter must schedule a hearing at which the petitioner has the burden to demonstrate by clear and convincing evidence that the petitioner has the moral qualifications, competency, and learning in the law required for admission to practice law before this court and that the petitioner's 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) Investigating Counsel's Duty. In all reinstatement proceedings, investigating counsel cross-examines the respondent/attorney's witnesses and submits any evidence opposing the petition.

- (E) **Deposit for Costs of Proceeding.** A respondent/attorney seeking reinstatement must include with the petition 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.
- (F) **Conditions of Reinstatement.** If the petitioner is found unfit to resume the practice of law, the petition is dismissed. If the petitioner is found fit to resume the practice of law, the judgment reinstates the petitioner, if the petitioner:

 - (i) pays all or part of the costs of the proceedings;
 - (ii) makes partial or complete restitution to parties harmed by the petitioner's conduct that led to the suspension or disbarment; and
 - (iii) furnishes proof of competency and learning in the law, in the discretion of the judge(s) before whom the matter is heard, if the petitioner has been suspended or disbarred for 5 years or more. Proof may include certification by bar examiners from another state or jurisdiction that the attorney successfully completed an examination for admission to practice after the suspension or disbarment date.
- (G) **Successive Petitions.** No petition for reinstatement under this rule may be filed within 1 year of an adverse judgment on a petition for reinstatement filed by or on behalf of the same person.
- (7) **Service of Documents and Other Notices.** Service of an order to show cause instituting a formal disciplinary proceeding, or any other documents required by this rule, must be made by personal service or registered or certified mail addressed to the respondent/attorney at the most recent address shown in the records of the Nebraska State Bar Association for members of that Association, or the records of this court for others.
- (8) **Investigating Counsel's Appointment.** When counsel is appointed under these rules to investigate alleged misconduct, prosecute disciplinary proceedings, or in conjunction with a reinstatement petition, this court appoints as counsel one or more members of the

this court's bar. However, the respondent/attorney may move to disqualify an appointed attorney who is or was an adversary of the respondent/attorney in any matter. Once appointed, counsel may not resign without the court's leave. The Federal Practice Fund pays counsel's fees and expenses.

(e) Violation of Policy on Uncivil and Unprofessional Conduct.

- (1) Generally.** Any attorney admitted to practice in this court, or any attorney who has applied for and been specially admitted to this court for a particular case, must adhere to the court's Policy on Uncivil and Unprofessional Conduct, as stated in Nebraska General Rule 1.8(e)(2).
- (2) Policy.** The court's Policy on Uncivil and Unprofessional Conduct states:
 - the litigation process, although adversarial in nature, should be nondiscriminatory and professional; all participants should be accorded fair, equal, and respectful treatment; to this end, the conduct of judges and lawyers should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms;
 - nondiscriminatory and professional conduct includes, as those terms are used in this policy, reasonable attempts by all participants to recognize and accommodate persons for family emergencies and responsibilities, as well as making reasonable accommodation for professional conflicts; and
 - conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently, and such conduct tends to delay and often to deny justice.
- (3) Procedure.** Unless the alleged uncivil or unprofessional conduct occurred in the court's presence, and a participant in the litigation raised a complaint or the court noted the conduct at that time, an alleged violation of the Policy on Uncivil and Unprofessional Conduct must be reported to the court and handled as follows.

(A) Grievance or Complaint. A grievance or complaint alleging a violation of the Policy on Uncivil and Unprofessional Conduct must be submitted by letter to the clerk and include the following:

- (i) name, address, and telephone number of the person making the grievance or complaint;
- (ii) name, address, and telephone number of the person(s) against whom the grievance or complaint is made; and
- (iii) a brief description of the events constituting the basis for the grievance or complaint, including the date of the proceeding or event at which the uncivil or unprofessional conduct allegedly occurred.

(B) Response. Upon receipt of the written grievance or complaint, the clerk forwards a copy to the person(s) against whom the grievance is made, granting the person(s) 14 days to file a response.

(C) Court Review. When the clerk receives a response, or after 14 days without receiving a response, the clerk refers the matter to the chief district or bankruptcy judge for further proceedings. If the grievance or complaint involves the chief judge, the matter is referred to the next most senior active judge. If the grievance or complaint involves a bankruptcy judge, the matter is referred to another bankruptcy judge in this district or, if none, to the chief judge.

(4) Scope. Recognizing that this Policy on Uncivil and Unprofessional Conduct is primarily aspirational, the reviewing judge is limited to (A) finding that the grievance or complaint is well founded in whole or in part, and cautioning the offending party of the responsibility to act in a civil and professional manner as required by this rule; or (B) finding that the complaint or grievance is not well founded. Complaints or grievances under this rule and the resolution of them is informal. Unless the reviewing judge in the exercise of sound discretion decides otherwise, complaints or grievances under this rule and the resolution of them is confidential. This rule on uncivil or unprofessional conduct does not limit or replace the court's or counsel's authority or responsibility to report or initiate disciplinary proceedings for any alleged uncivil or unprofessional conduct that violates the court's

ethical standards stated in Nebraska General Rule 1.7(b). Nor may these provisions be construed to deny or govern this court's exercise of additional powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or Federal Rule of Criminal Procedure 42.

(f) Clerk's Duties.

- (1) Attorneys Convicted of Crimes.** When the clerk learns that an attorney admitted to practice before this court has been convicted of a crime, the clerk must determine whether the clerk of the court in which the conviction occurred has forwarded a certificate of the conviction to this court. If a certificate has not been forwarded, the clerk must promptly obtain a certificate and file it.
- (2) Discipline Imposed by Other Courts.** When the clerk learns that another court has disciplined an attorney admitted to practice before this court, the clerk must determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and if not, the clerk must promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.
- (3) Notice to Other Courts.** If a person is still admitted to practice law in another jurisdiction or before another court after being (A) convicted of a crime by this court, or (B) disbarred, suspended, censured, or disbarred on consent by this court, the clerk must, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, send to the disciplinary authority in the other jurisdiction or court a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent. The clerk must include in this notice the person's last known address.
- (4) Notice to National Discipline Data Bank.** The clerk must likewise promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline on an attorney admitted to practice before this court.