

1.8 Attorney Discipline.

(a) Required Conduct.

An attorney who is admitted to practice in this court must comply with the Nebraska Rules of Professional Conduct, which are adopted as the rules of this court, and the local rules of this district, including the court's local rules that address attorney conduct and discipline. An attorney commits misconduct by failing to comply with the Nebraska Rules of Professional Conduct.

(b) Available Discipline.

The court may discipline any attorney who is admitted to practice before the court or is admitted for a particular proceeding. Such discipline may include, but is not limited to, disbarment, suspension, public reprimand, private admonition, or sanctions. This rule does not limit the court's inherent, statutory, or other authority to control its proceedings, including through civil or criminal contempt proceedings.

(c) Reciprocal Discipline.

(1) Duty to Report.

An attorney admitted to practice in this court must promptly report the following in writing to the clerk: disbarment, suspension, public reprimand, or other public discipline imposed by any other court or jurisdiction. The attorney's report must include a copy of the judgment or order imposing the discipline.

(2) Discipline.

- (A) An attorney admitted to practice in this court is subject to discipline if the attorney is publicly disciplined by any other court.
- (B) An attorney who is publicly disciplined by any other court must be given written notice by the chief judge, or by a district judge designated by the chief judge, that the court intends to impose the same discipline as the other court. The notice must identify the ground for imposing reciprocal discipline and provide the attorney an opportunity to show cause, within the time prescribed by the notice, why the attorney should not be disciplined.

- (C) A final adjudication in another court that the attorney has been found guilty of misconduct leading to discipline shall establish conclusively the conduct for the purposes of proceeding in this court. The chief judge, or a district judge designated by the chief judge, imposes the same discipline as that imposed by the other court unless the attorney carries the burden of showing that such prior action lacked due process.

(d) Conviction of a Crime.

(1) Duty to Report.

An attorney admitted to practice in this court must promptly report the following in writing to the clerk: any conviction of committing, attempting to commit, conspiring to commit, or aiding another to commit:

- (A) Any crime punishable by incarceration for more than one year; or
- (B) Any crime that includes as a necessary element false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, or theft.

(2) Discipline.

- (A) Unless the court orders otherwise, an attorney admitted to this court who is convicted of a crime set forth in NEGenR 1.8(d)(1) must immediately cease practicing before this court pending further action by the court. This must occur regardless of 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, and regardless of whether the charge resulted in a suspended imposition of sentence.
- (B) An attorney who is convicted of a crime set forth in NEGenR 1.8(d)(1) must be given written notice by order of the chief judge, or by a district judge designated by the chief judge, that:
 - (i) the attorney is suspended from practicing in this court pending final disposition of a disciplinary proceeding; and
 - (ii) the attorney must explain why he or she should not be disbarred.

- (C) An attorney who fails to respond to the order within the time prescribed will be disbarred. Otherwise, the chief judge, or a district judge designated by the chief judge, may take any appropriate disciplinary action, including disbarment, against the attorney.
- (D) A judgment of conviction of an attorney for any crime set forth in NEGenR 1.8(d)(1) shall establish conclusively the commission of that crime for the purposes of proceeding in this court.

(e) Misconduct in a Case Before This Court.

(1) Initiation of Grievance.

Grievances alleging an attorney has violated the Nebraska Rules of Professional Conduct in a case before this court may be filed directly with the Nebraska Supreme Court Counsel for Discipline or with the chief judge of this court.

(A) Nebraska Supreme Court Counsel for Discipline.

To file a grievance with the Nebraska Supreme Court Counsel for Discipline, complainants should follow the procedures set forth by the Nebraska Supreme Court for investigation and prosecution of violations of the Nebraska Rules of Professional Conduct.

(B) Chief Judge.

Complainants may file a written grievance with the chief judge by following the procedures set forth on the court's website. The chief judge will review the grievance and determine whether the grievance should be dismissed, pursued further, or referred to the Nebraska Supreme Court Counsel for Discipline.

If the chief judge determines that the grievance should be retained by the court for investigation and prosecution, he or she may self-assign the matter or refer it to another judge. However, if the chief judge initiates the grievance, he or she must refer the matter to another judge. A judge who presents a written grievance may not be assigned to preside over the disciplinary proceeding.

(2) Procedures for Matters Retained by the Court for Investigation and Prosecution.

(A) Appointment of Investigatory Counsel.

The chief judge or assigned judge may appoint investigatory counsel to investigate and advise the judge as to whether disciplinary proceedings should be initiated. Investigatory counsel, if assigned, must provide the judge with a written report containing a recommendation as to whether the judge should initiate disciplinary proceedings.

(B) Notice and Hearing.

- (i) If, after reviewing the record, the assigned judge determines that the matter should not be pursued, he or she will inform the chief judge.
- (ii) If the assigned judge concludes that a disciplinary proceeding should be conducted, he or she will issue an order to show cause to the attorney explaining the alleged misconduct and inviting the attorney to show cause why he or she should not be disciplined. The notice shall be sufficiently clear and specific to inform the attorney of the alleged misconduct.
- (iii) The attorney will be afforded at least 30 days to present any objections and show cause why discipline should not be imposed.
- (iv) The attorney may request a hearing and choose to be represented by counsel at his or her own expense.
- (v) During the hearing, if one is requested, or in the attorney's response to the order to show cause, the attorney may submit any evidence or statements to rebut the grievance.
- (vi) If a hearing is requested, the judge may appoint disciplinary counsel to prosecute the matter. An attorney who served as investigatory counsel may serve as disciplinary counsel. Disciplinary counsel may introduce evidence, call witnesses, and cross-examine any witness called by the respondent-attorney. Likewise, the respondent-attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by disciplinary counsel.

- (vii) The court may impose discipline only after the respondent-attorney is afforded the opportunity to present evidence and argument in rebuttal and/or mitigation.
- (viii) If the attorney fails to file a timely response to the order to show cause, the assigned judge will review the record and determine whether the imposition of discipline is warranted.

(C) Confidentiality.

During the pendency of the disciplinary proceedings, the allegations and other records of the proceeding will remain confidential and will not be made a part of the public record.

(D) Recommendation to Chief Judge.

Within a reasonable time after the hearing, if one has been requested, or after receiving the attorney's response to the order to show cause, the assigned judge shall make findings of fact and conclusions of law and recommend the disciplinary action, if any, to be taken. The assigned judge will transmit his or her findings of fact and conclusions of law, recommendation, and the record to the chief judge.

(E) Imposition of Discipline.

The chief judge will review the documents transmitted by the assigned judge and determine whether discipline should be imposed and if so, the appropriate discipline. If the chief judge initiated the grievance, then the matter shall be referred to another judge for review and a determination. The appropriate disciplinary sanction to be imposed is within the court's discretion. However, in determining the proper disciplinary sanction, the court may refer to the American Bar Association Standards for Imposing Lawyer Sanctions or seek guidance from the Nebraska Supreme Court Counsel for Discipline.

(f) Temporary Suspension.

The chief judge or his or her designee may temporarily suspend or restrict an attorney's right to practice pending a final determination of a disciplinary proceeding if evidence establishes probable cause to believe the attorney has committed misconduct and evidence establishes the attorney poses a threat of serious harm to the public, to any person, or to the administration of justice.

(g) Reinstatement.

(1) Court Order Required.

An attorney who has been suspended or disbarred from practice before this court may not resume practice before the court until reinstated by order of the court.

(2) Time of Application.

- (A) An attorney who has been suspended from practice before this court may apply for reinstatement but not before the end of his or her term of suspension.
- (B) An attorney who has been disbarred may apply for reinstatement but not before five years from the effective date of the disbarment.
- (C) An attorney who has been suspended or disbarred from practice pursuant to the provisions of 1.8(c) (Reciprocal Discipline) may apply for reinstatement based upon a change of the attorney's status in the jurisdiction whose imposition of discipline was the basis for the imposition of reciprocal discipline by the court.

(3) Petition for Reinstatement.

- (A) Petitions for reinstatement must be filed with the clerk in paper format. The petition must include a copy of this court's prior order of suspension or disbarment, a copy of an order of reinstatement from another jurisdiction (if applicable), and a concise statement of facts claimed to justify reinstatement. Petitioners for reinstatement after disbarment must also apply for admission to practice in this court and pay the prescribed fee.
- (B) The petitioner has the burden of demonstrating that he or she is qualified and able to practice law before the court and that the circumstances that led to the suspension or disbarment have changed.
- (C) The chief judge will consider the petition for reinstatement or refer it to another judge designated by the chief judge. After consideration, the court will enter an appropriate order.

(h) Fees and Costs.

(1) Disciplinary Proceedings.

The court may assess fees and costs against an attorney if the court finds that the attorney committed misconduct.

(2) Reinstatement Proceedings.

The court may assess fees and costs against an attorney petitioning for reinstatement, whether the petition is granted or denied.

(i) Duties of Clerk.

(1) Service.

The clerk will serve documents issued by the court under this rule by first class mail to the respondent or respondent's attorney.

(2) Disciplinary Orders and Notices.

(A) Any order of discipline, except for non-public forms of discipline, will be published by the clerk to the court's external website at the following web address: <https://www.ned.uscourts.gov/attorney/attorney-discipline>. The clerk will maintain all other records as sealed records.

(B) The court will provide copies of all public orders imposing discipline to the Clerk of the United States Bankruptcy Court for the District of Nebraska, the Clerk of the United States Court of Appeals for the Eighth Circuit, the Nebraska State Bar Association, and the American Bar Association National Lawyer Regulatory Data Bank.