FILED by B.B. D.C.

JAN 30 2002

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: **Administrative Order 2002-03**

AMENDMENTS TO THE LOCAL RULES
_____/

THIS COURT has given notice and opportunity to be heard in accordance with Fed.R.Civ.P. 83 and Fed.R.Crim.P. 57, has conducted an *en banc* hearing, and has considered the comments of the public and the reports of the Court's Ad Hoc Committee on Rules and Procedures and Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance with regard to proposed amendments, in the form attached, to Local General Rules 1.1, 7.5, 11.1 and 67.1, Rules 1, 5, and 6 of the Special Rules Governing the Admission and Practice of Attorneys, and Rules II, III, IV, V, VIII, IX, and XI of the Rules Governing Attorney Discipline. Upon consideration of the public comments received and the reports of the Ad Hoc Committees, it is hereby

ORDERED that the rules identified are amended in the form attached (with the language to be deleted ~~stricken~~ and the language to be added double underlined).

IT IS FURTHER ORDERED that the foregoing rule amendments shall take effect on April 15, 2002, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

IT IS FURTHER ORDERED that the Clerk of the Court is hereby directed, for the next 60 days: (a) to publish this Order (without the attachments) twice a week in the Daily Business Review (in the editions published in Dade, Broward and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached rule amendments.

29th **DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida this 29th day of January, 2002.

WILLIAM J. ZLOCH
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable R. Lanier Anderson, III, Chief Judge, Eleventh Circuit Court of Appeals
All Southern District Judges and Magistrate Judges
Norman E. Zoller, Circuit Executive, Eleventh Circuit
All members of the Ad Hoc Committee on Rules and Procedures
Brian F. Spector, Chair, Ad Hoc Committee on Rules & Procedures
Clarence Maddox, Court Administrator • Clerk of Court
Library
Daily Business Review

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

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B. Effective Date. These rules become effective February 15, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, the 1996 amendments shall take effect on April 15, 1996, the 1997 amendments shall take effect on April 15, 1997, the 1998 amendments shall take effect on April 15, 1998, the 1999 amendments shall take effect on April 15, 1999, the 2000 amendments shall take effect on April 15, 2000, ~~and~~ the 2001 amendments shall take effect on April 15, 2001, and the 2002 amendments shall take effect on April 15, 2002 and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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RULE 7.5 MOTIONS FOR SUMMARY JUDGMENT

A. Motions for Summary Judgment: Motions for summary judgment shall be accompanied by a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

B. Opposition Papers: The papers opposing a motion for summary judgment shall include a memorandum of law, necessary affidavits, and a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

C. Statement of Material Facts: The statement of material facts submitted ~~with~~ either in support of or in opposition to a motion for summary judgment shall ~~not~~:

1. Not exceed ten pages in length~~.~~; and

2. Be supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court.

D. Effect Of Failure To Controvert Statement Of Undisputed Facts: All material facts set forth in the statement required to be served by the moving party will be deemed admitted unless controverted by the opposing party's statement, if and only to the extent supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court.

E. Briefing Schedule: As oral argument is not always scheduled on motions for summary judgment, the briefing schedule in Local Rule 7.1 shall apply.

Comments

(2002) The rule is amended to require specific references to materials on file with the Court to support or controvert the movant's statement of undisputed facts. The "on file with the Court" language will require litigants to file any materials on which they intend to rely or to which they refer. This is in accord with the practice contemplated by Fed.R.Civ.P. 5(d)(1), as amended effective December 1, 2000. The Advisory Committee Notes to the December 2000 amendments make clear that, with regard to voluminous materials, only those parts actually used need to be filed, with any other party free to file other pertinent portions of the materials that are so used. *See* Fed.R.Evid. 106; *cf.* Fed.R.Civ.P. 32(a)(4). Therefore, only the portions of deposition transcripts actually "used" need be filed.

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RULE 11.1 ATTORNEYS

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D. Appearance by Attorney.

~~7. If an attorney of any party is examined as a witness in an action or proceeding, and gives testimony on the merits, the party shall not argue the merits of the action or proceeding, either to the Court or jury, except with the permission of the Court.~~

~~8~~7. Only one attorney on each side shall examine or cross-examine a witness, and not more than two attorneys on each side shall argue the merits of the action or proceeding unless the Court shall otherwise permit.

Comments

(2002) Rule 11.1.D.7. deleted, as the issue addressed by this local rule deals with an ethical rule, *see* Rule 4-3.7 of the Rules of Professional Conduct of the Rules Regulating the Florida Bar, subject to exceptions and distinctions not encompassed by the local rule.

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RULE 67.1 AUTHORIZED DEPOSITORY BANKS

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H. A party applying for the issuance of a writ of garnishment shall deposit the amount prescribed by applicable Florida law in the non-interest bearing registry of the Court. The deposit is for the attorneys' fees of the garnishee. Once deposited, those monies shall be disbursed as follows:

1. The Clerk of Court shall pay such deposit to the garnishee (or garnishee's counsel, if so requested) for the payment or partial payment of attorney's fees which the garnishee expends or agrees to expend in obtaining representation in response to the writ. Such payment shall be made upon the garnishee's demand, in writing, at any time after the service of the writ, unless otherwise directed by the Court.

2. In cases of a pre-judgment writ of garnishment, if the garnishee fails to make written demand within sixty (60) days of the conclusion of the case, including all appeals, the Clerk of Court shall return such deposit to the depositing party (or their counsel) without further order or request, unless otherwise directed by the Court.

3. In cases of a post-judgment writ of attachment, if the garnishee fails to make written demand within sixty (60) days after post-judgment proceedings on the writ have concluded, including all appeals concerning the writ, the Clerk of Court shall return such deposit to the depositing party (or their counsel) without further order or request, unless otherwise directed by the Court.

4. If garnishment cost deposit monies remain on deposit with the Clerk more than five (5) years after the conclusion of a case or post-judgment proceedings, including all appeals, and if the Clerk has made reasonable attempts to provide notice to the depositing party or to distribute those monies without success, those unclaimed monies shall be moved into the appropriate U.S. Treasury Unclaimed Funds account pursuant to 28 U.S.C. § 2042, without further order of Court. Any monies deposited with the U.S. Treasury under these provisions as unclaimed are available for immediate disbursement to any party by the Clerk upon application and further Court order.

Authority

(2002) Fed..R.Civ.P. 69, Fla. Stat. §77.28, and Administrative Orders 90-104, 98-51 and 2001-69.

Comments

(2002) Subparagraph H. added at the request of the Clerk of the Court to clarify responsibilities and procedures for obtaining distribution of garnishment deposits.

SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEY

RULE 1. QUALIFICATIONS FOR ADMISSION

An attorney is qualified for admission to the bar of this district if the attorney is (1) currently a member in good standing of The Florida Bar; and (2) has received a passing score on the Uniform examination, approved and adopted by the District Examination Committee~~s~~ of the ~~Southern and~~ Northern District~~s~~ of Florida<u>, the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance of the Southern District of Florida,</u> and by the respective Courts, testing knowledge of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and the law of federal jurisdiction and venue. The Examination shall also contain sections testing knowledge of the local rules of the Southern and Northern Districts. Admission to the Southern and Northern Districts requires successful completion of the applicable local rules section either at the time the Uniform Examination is given or at such subsequent time that the applicant takes the applicable local rules section(s). An applicant may take the Examination three times in any calendar year. However, if the applicant fails to pass the Examination after three attempts, he or she must wait a full calendar year before reapplying.

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RULE 5. PEER REVIEW

~~**A. Peer Review Committee.** There is hereby established in this district the Peer Review Committee as an official arm of the Court vested with the power and authority prescribed hereinafter, subject to the supervision and control of the Court.~~

~~**B. Membership.** The Committee shall consist of a group of experienced attorneys practicing within this district. Each active district judge and the active Bankruptcy Judge most senior in service shall select a member of the Committee. The appointment of the initial membership of the Committee shall be accomplished by order of the Chief Judge listing the name and term of office of each member. To the extent practicable, members shall be named by class for a term of three years so that one-third of the Committee will rotate annually. Any interim vacancies shall be filled by the Chief Judge for the remaining unexpired term.~~

~~**C. Organization.** The members of the Committee shall elect a chairman, secretary and such other officers as the Committee may deem appropriate, and prescribe their terms of office. The Committee may adopt rules, regulations and procedures and submit them to the Court for approval. The approved rules, regulations and procedures shall be filed with the Clerk of the Court.~~

~~**D**~~ <u>**A**</u>. **Purpose.** It is recognized that the Court and the bar have a joint obligation to improve the level of professional performance in the courtroom. To this end, the purposes to be accomplished through the ~~Peer Review~~ <u>Ad Hoc</u> Committee <u>on Attorney Admissions, Peer Review and Attorney</u>

Grievance (the "Committee") are to determine whether individual attorneys are failing to perform to an adequate level of competence necessary to protect the interests of their clients, to establish and administer a remedial program designed to raise the competence of an attorney who is not performing adequately, to refer such attorneys to appropriate institutions and professional personnel for assistance in raising his or her level of competency, to determine through evaluation, testing or other appropriate means whether an attorney who has been referred for assistance has attained an adequate level of competency, and to report to the Court any attorney who refuses to cooperate by participating in a remedial program to raise his or her level of competence, or fails to achieve an adequate level of competence within a reasonable time.

RULE 6. STUDENT PRACTICE

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G. Court Administration. ~~With the approval of the members of this Court, the~~ The Chief Judge, ~~may appoint~~ or one or more members of the Court appointed by the Chief Judge, ~~to~~ shall act on behalf of the Court in connection with any function of this Court under this Rule. The ~~Student Practice Committee~~ Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance shall assist the Court to administer this Rule including the review of applications and continuing eligibility for certification of programs, supervising attorneys, and students.

RULE 7. ~~DISTRICT COMMITTEES~~ AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE

A. Establishment and Function. There shall be ~~a District Admissions Committee, a District Examinations Committee, a District Peer Review Committee, and a District Student Practice Committee~~ an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"). Subject to the direction of the Court, ~~each~~ the Committee shall have the authority and perform the functions assigned by these Rules and shall otherwise assist the Court in the implementation and evaluation of these Rules.

B. Memberships. The Committee shall consist of a group of law school professors and attorneys practicing within this district. The Chief Judge, or one or more members of the Court appointed by the Chief Judge, shall appoint the members of the Committee. The Chief Judge shall select the Committee Chair. Selections shall be made by Administrative Order entered by the Chief Judge. All persons appointed to the Committee shall serve at the pleasure of the Court.

~~**1. District Admissions Committee.** The District Admissions Committee shall be composed of the chair-persons of the other four Committees established by these Rules and of one active judge of this Court who shall serve as chairperson of the District Admissions Committee.~~

~~**2. District Examination and Student Practice Committees.** Each of the District Committees created by these Rules, except for the District Admissions and the District Peer Review Committees, shall have not less than five nor more than fifteen members who shall be appointed by the Court. The Court shall designate one member of each Committee to serve as its chairperson.~~

~~**3. District Peer Review Committee.** The members of the District Peer Review Committee shall be appointed and the chairperson elected in accordance with Rule 5.B.~~

~~**C. Terms.** Except for the District Peer Review Committee, all persons appointed to any of the Committees established by these Rules shall serve at the pleasure of the Court. The terms of the members of the District Peer Review Committee shall be determined in accordance with Rule 5.B.~~

RULES GOVERNING ATTORNEY DISCIPLINE

PREFATORY STATEMENT

Nothing contained in these rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it nor to deny the Court those powers derived from statute, rule or procedure, or other rules of court. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the ~~local grievance committee~~ Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance as hereinafter defined; or take any other action the court deems appropriate. These procedures are not mutually exclusive.

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RULE II. ~~GRIEVANCE COMMITTEE~~ AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE

~~A. Appointment.* The Court, consisting of the active District Judges thereof, may appoint a [at least one] standing committee consisting of at least five members of the bar to be known as the "Grievance Committee." One of those first appointed shall serve a term of one year; two for two years; and the remainder and all thereafter appointed for a term of three years. Each member shall serve until his or her successor has been appointed. The Court may vacate any such appointment at any time. The Court shall designate one of the members to serve as chairperson. A majority of the committee shall constitute a quorum.~~

A. Establishment and Membership. There shall be an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"), as established under Rule 7

of the Special Rules Governing the Admission and Practice of Attorneys.

B. Purpose and Function. The purpose and function of the Committee is to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any attorney appearing and participating in any proceeding before the Court; to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, inquiries and investigations into allegations of inadequate performance by an attorney practicing before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations to the Court or referring District Judge, Magistrate Judge or Bankruptcy Judge for appropriate action by the Court, except as otherwise described herein. The members of the ~~Grievance~~ Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

C. Jurisdiction and Powers.

(1) The Court may, in its discretion, refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules on the part of any member of the bar with respect to any professional matter before this Court for such investigation, hearing, and report as the Court deems advisable. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for referral to the District Court's ~~Grievance~~ Committee.] The Committee may, in its discretion, refer such matters to an appropriate State Bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively conduct such proceedings, as hereinafter provided in these rules. (See Rule XI, infra.) The Court may also, in its discretion, refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court, as hereinafter provided. (See Rule VIII, infra.) The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

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RULE III. DISCIPLINARY PROCEEDINGS

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a District Judge, Magistrate Judge or Bankruptcy Judge of this Court, whether by complaint or otherwise, the District Judge, Magistrate Judge or Bankruptcy Judge may, in his or her discretion, refer the matter to the ~~Grievance~~ Committee for investigation and, if warranted, the prosecution of formal disciplinary proceedings or the formulation of such other recommendation as may be

appropriate. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for consideration.]

B. Should the ~~Grievance~~ Committee conclude, after investigation and review, that a formal disciplinary proceeding should not be initiated against an attorney because sufficient evidence is not present or for any other valid reason, the Committee shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal, the attorney who is the subject of the investigation need not be notified that a complaint has been submitted or of its ultimate disposition. All investigative reports, records, and recommendations generated by or on behalf of the Committee under such circumstances shall remain strictly confidential.

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RULE IV. ATTORNEYS CONVICTED OF CRIMES

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D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to the ~~Grievance~~ Committee for institution of disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

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RULE V. DISCIPLINE IMPOSED BY OTHER COURTS

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B. Upon the filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court as described above, this Court may refer the matter to the ~~Grievance~~ Committee for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

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F. This Court may at any stage ask the ~~Grievance~~ Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

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RULE VIII. INCOMPETENCE AND INCAPACITY

A. When it appears that an attorney for whatever reason is failing to perform to an adequate level of competence necessary to protect his or her client's interests, the Court may take any remedial action which it deems appropriate, including but not limited to referral of the affected attorney to appropriate institutions and professional personnel for assistance in raising the affected attorney's level of competency. The Court may also, in its discretion, refer the matter to the ~~Grievance~~ Committee for further investigation and recommendation.

B. A referral to the ~~Grievance~~ Committee of any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court is not a disciplinary matter and does not implicate the formal procedures previously described in these Rules. Upon a referral of this sort, the ~~Grievance~~ Committee may request that the attorney meet with it informally and explain the circumstances which gave rise to the referral and may conduct such preliminary inquiries as it deems advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee determines that further attention is not needed, the Committee shall so notify the referring Judge and consider all inquiries terminated.

RULE IX. REINSTATEMENT

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the petition to the Court or may, in his or her discretion, refer the petition to the ~~Grievance~~ Committee which shall within thirty days of the referral schedule a hearing at which the petitioner shall have the burden of establishing 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 his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing the Committee shall make a full report to the Court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

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F. Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set from time to time by the Court in consultation with the ~~Grievance~~ Committee to cover anticipated costs of the reinstatement proceeding.

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RULE XI. APPOINTMENT OF COUNSEL

Whenever, at the direction of the Court or upon request of the ~~Grievance~~ Committee, counsel is to be appointed pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of the active Judges thereof, may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.