



**ADDENDUM TO THE LOCAL RULES OF COURT
UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT
[ALL-IN-ONE DOCUMENT]**

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LOCAL RULES OF COURT | 11TH CIRCUIT (US)

SECTION: ADDENDUM

RULES: ONE through NINE



ADDENDUM 1 | RULES FOR CONDUCT OF AND REPRESENTATION AND PARTICIPATION AT THE ELEVENTH CIRCUIT JUDICIAL CONFERENCE

(a) Planning and Conducting the Conference

The judicial council shall have the responsibility for planning and conducting judicial conferences. The long-range plans for conducting judicial conferences shall be made on recommendation of a judicial conference committee of the judicial council appointed by the chief judge with judicial council approval. Each annual conference shall be planned and conducted by a judicial conference planning chair, appointed by the committee with judicial council approval. The chair, with approval of the chief judge, shall appoint such committees as may be necessary for efficient and effective operation of the conference.

(b) Members of the Conference

The judicial conference of this circuit shall consist of the following:

(1) ex officio

- a. the active circuit and district judges, bankruptcy judges, and full-time magistrates of the circuit;
- b. the circuit justice;
- c. the senior and retired circuit, district and bankruptcy judges and magistrates of the circuit;
- d. the circuit executive of the circuit;
- e. the clerk of the circuit court or a designated deputy;
- f. the staff attorney of the court;
- g. the circuit librarian;
- h. presidents and presidents-elect of the state bars of the states within the circuit;
- i. three official representatives chosen by each state bar of the states comprising the circuit;
- j. the chief justices of the state supreme courts of each state within the circuit, or their designees;



- k. the members of the lawyers advisory committee of the circuit;
- l. the executive director of each state bar of the states within the circuit;
- m. each United States attorney of the circuit;
- n. the federal public defender of any district within the circuit, and a representative of a community defender organization in any district, designated by the president of such organization;
- o. the dean of each accredited law school within the circuit;
- p. any retired justice of the Supreme Court of the United States residing or practicing within the circuit;
- q. any current or former attorney general of the United States residing or practicing within the circuit;
- r. any lawyer who has been nominated to a circuit, district or bankruptcy court judgeship within the circuit, whether or not yet confirmed or inducted;
- s. the president, or personal designee, of the American Bar Association;
- t. former presidents of the American Bar Association residing or practicing in the circuit;
- u. the current members of the board of governors of the American Bar Association from the circuit;
- v. the current members of the American Bar Association judiciary committee who reside in the circuit;
- w. the president, or personal designee, of the Federal Bar Association and the regional representatives;
- x. the president, or personal designee, of the National Bar Association and the regional representatives;



y. the executive director and the attorney board members of the historical society;

z. state attorneys general or their designees;

aa. chief judge of the United States Tax Court or designee;

bb. directors of capital case resource centers.

(2) One or more lawyers, as indicated below, who actively practice in the federal courts of the circuit as selected by the judges of the courts hereinafter designated. As the Congress may change the number of active judges from time to time, the number of designees shall be adjusted correspondingly:

	Number of Designees
<u>Eleventh Circuit Court of Appeals</u>	12
<u>Northern District of Alabama</u>	
-District	7
-Bankruptcy	5
<u>Middle District of Alabama</u>	
-District	3
-Bankruptcy	2
<u>Southern District of Alabama</u>	
-District	3
-Bankruptcy	2
<u>Northern District of Florida</u>	
-District	3
-Bankruptcy	1
<u>Middle District of Florida</u>	
-District	9
-Bankruptcy	4



Southern District of Florida

-District 15

-Bankruptcy 3

Northern District of Georgia

-District 11

-Bankruptcy 6

Middle District of Georgia

-District 2

-Bankruptcy 2

Southern District of Georgia

-District 3

-Bankruptcy 2

The standards used in selecting representative lawyers as members of the conference must bear a direct relationship to the following minimum requirements:

a. the lawyer-members must constitute a fair cross-section of the practitioners of the court, giving due consideration to qualified individuals regardless of race, color, sex, religion, or national origin;

b. each lawyer-member must be interested in the purposes and work of the conference and be willing and able to actively contribute to this end; and

c. each lawyer-member must be willing to assist in implementing conference programs with the local bar.

A court may invite the same lawyer representative to the judicial conference for not more than three years during any five year period, but only if such representative is fully performing the three requirements referred to above and if approved by the circuit chief judge.



(c) Open Judicial Conference

From time to time the Court of Appeals may conduct a judicial conference at which any attorney admitted to practice in one of the several district courts within the Eleventh Circuit or the Eleventh Circuit Court of Appeals may be invited to attend.

(d) Registration Fee

A non-reimbursable registration fee in an amount fixed by the judicial council shall be collected from each member attending the conference. The sums so collected shall be used to defray conference expenses. Any excess shall be placed in a separately maintained Eleventh Circuit Judicial Conference Fund that shall be used for the purpose of paying the expense of other conference or future conference-related activities.

(e) Secretary of the Conference

The circuit executive, who shall be secretary of the conference, shall be responsible for collection and disbursement of conference funds, for all records and accounts of the conference, and for the staff support required for conducting the conference, and shall perform such other duties as may be necessary to ensure efficient operation of the conference.



**ADDENDUM 2 | PROCEDURES IN PROCEEDINGS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

(a) Petition for Review. The petition for review shall specify as a part of its caption the number, date, and identification of the order to be reviewed and append the service list required by FRAP 15(c). The petition shall contain a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

(b) Docketing. Petitions for review and other documents concerning commission orders in the same number series (i.e., 699, 699A 699B) shall be assigned to the same docket in this court.

(c) Intervention.

(1) Party. A party to a commission proceeding may intervene in a review of the same proceeding in this court by filing a notice of intervention in the docket assigned to the petition for review of any order entered in such proceeding. The notice shall state whether the intervenor is a petitioner who objects to the order or a respondent who supports the order. A notice of intervention shall confer petitioner or respondent status on the intervening party as to all proceedings in the docket.

(2) Nonparty. One not a party to a commission proceeding who desires to intervene in a review of that proceeding in this court shall file with the clerk and serve upon all parties to the proceeding a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party, the grounds upon which intervention is sought, and a statement why the interest asserted is not adequately protected by existing parties. Any opposition to the motion shall be filed within 10 days of service.

(d) Docketing Statement. Within 30 days of the initial petition for review but not later than 10 days after the expiration of the period permitted for filing a petition for review, all parties filing petitions for review shall file a joint docketing statement that shall:

(1) list each issue to be raised in the review;



(2) list any other review proceeding pending as to the same order in any other court, and

(3) append copies of the order to be reviewed.

A petitioner who files for review after a docketing statement has been filed shall specify in the petition for review any exceptions taken or additions to the issues listed in the docketing statement. A party who intervenes after a docketing statement has been filed shall specify in the notice of intervention any exceptions taken to the issues listed in the docketing statement.

(e) Venue. Upon the filing with the judicial panel on multidistrict litigation of notice that petitions for review have been filed in more than one court, further proceedings in this court shall be governed by 28 U.S.C. §2112.

(f) Prehearing Conference. Ten days after the filing of a docketing statement or 10 days after entry of an order by the court deciding a venue issue, whichever is later, the clerk may notice a prehearing conference to:

(1) simplify and define issues;

(2) agree on an appendix and record;

(3) assign joint briefing responsibilities and schedule briefs, and;

(4) handle such other matters as may aid in disposing of the proceeding. Except for good cause shown a party who petitions for review or intervenes in a docket after prehearing conference has been held will be bound by the result of the prehearing conference.

(g) Severance. A petitioner or respondent may move to sever parties or issues on a showing of prejudice.

(For other provisions governing review of administrative agencies, boards, and commissions, see FRAP 15).







ADDENDUM 3A | RULES FOR JUDICIAL CONDUCT AND JUDICIAL DISABILITY PROCEEDINGS

11th Cir. JCDR 6.1 Form. Complaints may be filed on the form contained in the Appendix to these Rules, and available from these other sources:

- on the court's web site at www.call.uscourts.gov;
- by telephoning the court's Clerk's Office at 404-335-6577;
- by visiting or writing to the court's Clerk's Office at the address shown in 11th Cir. JCDR 6.6; or
- from the clerk of any district court or bankruptcy court within the Eleventh Circuit.

* * * *

11th Cir. JCDR 6.2 Statement of Facts: Length; Format. The required statement of facts should be attached to the complaint form, and should not exceed five (5) pages. To assure legibility, the statement of facts should conform to the following technical requirements:

- 8½ x 11 inch paper;
- Only one side of the paper should be used;
- The text should be double-spaced, but quotations more than two lines long may be indented and single-spaced; headings and footnotes may be single-spaced;
- Margins should be at least one inch on all four sides; page numbers may appear in the margins but no text should appear there;
- If typed, either a proportionally spaced or monospaced typeface may be used; a proportionally spaced typeface should be 14-point or larger; a monospaced typeface should not contain more than 10½ characters per inch.

* * * *

11th Cir. JCDR 6.3 Submission of Documents. Documents referred to in the statement of facts may be filed with the complaint. The statement should cite the page(s) of such document(s) that the complainant deems pertinent to the allegations of the complaint.



* * * *

11th Cir. JCDR 6.4 Number of Copies. Four copies each of the complaint, statement of facts, and any document(s) filed therewith must be filed with the Clerk.

* * * *

11th Cir. JCDR 6.5 Anonymous Complaints. An anonymous complaint will not be accepted for filing by the Clerk. Nevertheless, the Clerk will forward such a complaint to the Chief Judge.

* * * *

11th Cir. JCDR 6.6 Place of Filing. A complaint must be delivered or mailed in an envelope to:

Clerk
United States Court of Appeals
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the subject judge must not appear on the envelope.

* * * *

11th Cir. JCDR 6.7 Supplementation. Once filed, a complaint may not be supplemented or modified by additional statements or documents unless authorized by order of the Chief Judge.

* * * *

11th Cir. JCDR 6.8 No Filing Fee. There is no filing fee for a complaint of misconduct or disability.

* * * *

11th Cir. JCDR 8.1 Receipt of Complaint Not in Proper Form. Upon receipt of a complaint not filed in the form required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings adopted by the Judicial Conference of the United States, the Clerk shall return the complaint to the complainant and explain why it was returned.

* * * *



11th Cir. JCDR 18.1 Petition for Review: Length; Format. The petition should not exceed five (5) pages, and should not include attachments. To assure legibility, the petition should conform to the following technical requirements:

- 8½ x 11 inch paper;
- Only one side of the paper should be used;
- The text should be double-spaced, but quotations more than two lines long may be indented and single-spaced; headings and footnotes may be single-spaced;
- Margins should be at least one inch on all four sides; page numbers may appear in the margins but no text should appear there;
- If typed, either a proportionally spaced or monospaced typeface may be used; a proportionally spaced typeface should be 14-point or larger; a monospaced typeface should not contain more than 10½ characters per inch.

* * * *

11th Cir. JCDR 18.2 Place of Filing. A petition for review must be delivered or mailed in an envelope to:

Clerk
United States Court of Appeals
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not appear on the envelope.

















ADDENDUM 5 | NON-CRIMINAL JUSTICE ACT COUNSEL APPOINTMENTS

The court adopts these provisions for furnishing representation for persons financially unable to obtain adequate representation in cases and situations which do not fall within the scope of 18 U.S.C. §3006A, as amended - but in which the court believes that the interests of justice will be served by the presence of counsel.

(a) Determination of Need.

In determining need for appointment of counsel, the court shall generally be governed by the guidelines outlined in 18 U.S.C. §3006A.

(b) Appointment of Counsel.

(1) Counsel shall be selected from the same panels of attorneys designated or approved by the district courts of the Eleventh Circuit as described in Addendum Four, which are hereby approved by this court, or from a bar association, legal aid agency, or other approved organization. In addition, any judge of this court may appoint competent counsel not otherwise included in the preceding categories.

(2) Any person seeking relief under 29 U.S.C. §621, 42 U.S.C. §1981, 42 U.S.C. §1982, 42 U.S.C. §1983, 42 U.S.C. §1985, 42 U.S.C. §1986, 42 U.S.C. §2000a, 42 U.S.C. §2000d, and 42 U.S.C. §2000e or in such other cases as the court shall determine to be appropriate may be eligible for representation. The court may approve such representation on a determination that the interests of justice so require and that the person is financially unable to obtain representation.

(3) The court may at its discretion and in the interest of justice substitute one appointed counsel for another at any stage of the proceedings on appeal.

(4) The court may at its discretion and where circumstances warrant make appointments of counsel retroactive so as to include representation furnished prior to appointment.



(c) Withdrawal or Release of Appointed Counsel.

Counsel appointed under this rule to represent a party shall continue such representation until relieved by order of the court of appeals.

(d) Duties of Appointed Counsel.

(1) Appointed counsel shall furnish the party represented, upon written request, with a copy of motion papers and briefs filed for the party on the appeal, and shall send the party a copy of the court's decision when issued; the clerk will send appointed counsel an extra copy of the decision for this purpose.

(2) Appointed counsel shall appear for oral argument only when directed by the court.

(3) In the event of affirmance or other decision adverse to the party represented appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for writ of certiorari with the Supreme Court.

(4) Appointed counsel shall advise the party represented in each case that, if the party wishes to file a petition for a writ of certiorari with the Supreme Court, the party may have the right to do so without prepayment of fees and costs or giving security therefor.

(5) No appointed representative under this rule shall accept a payment from or on behalf of the person represented in this court without prior authorization by a United States circuit judge.

(e) Payment of Claims for Expenses.

(1) In all appeals covered by this rule, the court of appeals may authorize reimbursement of necessary expenses reasonably incurred in representing a party on appeal, consistent with the limitations contained in the Criminal Justice Act, by any private attorney, bar association, legal aid agency, or other approved organization appointed by the court for the purpose of representing a party on appeal pursuant to this addendum. Compensation for attorney services as a fee



for either in-court or out-of-court time is not authorized.

(2) Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal may be claimed by an appointed attorney or other legal representative. The clerk of court shall furnish each attorney or other representative at the time of appointment with information as to expenses currently allowable and in accordance with rules, regulations and guidelines promulgated by the Judicial Conference of the United States. Per diem may not be claimed in lieu of actual travel and subsistence expenses. Meal and lodging expenses incurred incident to representation on appeal, necessary long distance telephone calls or telegrams, and the cost of photocopying (but not printing), are reimbursable expenses within the guidelines established by the court. Expenses of general office overhead, personal items, filing fees and expenses of printing of briefs are not reimbursable. Expenses of travel by private automobile may be claimed on a straight mileage basis at the authorized rate. See §(6) of the guidelines, below. Parking fees and toll expenses are allowable. Transportation other than by private automobile may be claimed on an actual cost basis, but first class fare is not permitted unless absolutely necessary and documentation is provided that tourist or economy fares were not available.

(3) Unless otherwise ordered by the court for good cause shown, travel expenses other than those incurred in connection with attending oral argument will not be reimbursed without a prior ex parte application to and approval by the court.

(4) All claims for reimbursement of expenses for representation on appeal shall be itemized in detail and filed with the clerk of court on officially approved forms that the clerk's office will provide. Claims should be filed as promptly as possible and in no event later than 60 days after issuance of the mandate.

(5) After approval of allowable reimbursable expenses by the court, the claim form will be forwarded to the circuit executive for payment.



(6) Reimbursable Expenses.

(a) Travel and transportation expenses. Travel and transportation must be accomplished by the most economical means available. Only actual expenses may be claimed.

(i) Air transportation. Tourist or economy accommodations must be used except where unavailable. A copy of the ticket must be attached to the claim form. If travel by first class air transportation is claimed a detailed explanation of the reasons therefor must be provided with the ticket copy.

(ii) Automobile transportation. The total mileage cost shall not exceed the fare authorized for travel by tourist or economy air transport except in an emergency or for other compelling reasons. Travel by privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, and tunnel fares.

(iii) Local transportation. Local travel will be accomplished by the most economical means available and only actual expenses may be claimed. Transportation to and from an airport should be by airport shuttle, if available.

(iv) Meals and lodging. Reasonable compensation for hotel or motel accommodations and meals will be allowed on an actual expense basis subject to the limitations governing compensation for federal employees traveling to the same destination. Counsel will be notified by the clerk prior to the scheduled oral argument session of the current limitations. A copy of the hotel or motel bill shall be attached to the claim form.

(b) Photocopying. Actual costs not to exceed 25 cents per page will be paid if copy bill is submitted. For in-house copying, actual costs not to exceed 15 cents per page will be paid.



(c) Express mail and other special arrangements. For delivery of items that could have been mailed via U.S. Postal Service first class mail, additional expenses will be reimbursed only if a satisfactory explanation is given why first class mail service was not utilized. In non-emergency cases routine documents such as briefs and motions should be prepared early enough to permit use of first class mail.

(d) Computer Assisted Legal Research.

(i) By Court Appointed Counsel. The cost of use, by appointed counsel, of computer assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the claim form a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

(ii) By Commercial Computer Assisted Legal Research Services. The court may in advance authorize counsel to obtain computer assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer assisted legal research services is reasonable. Requests by counsel for authority to obtain such computer assisted legal research services should include the following:

a - a brief explanation of the need for the research services; and

b - an estimate of the charges.



(e) Miscellaneous Expenses. The lowest possible cost for expenses such as postage, telephone calls, brief supplies, and parking, shall be incurred.

(f) Briefs.

Reimbursement will be provided only for the number of copies of briefs and appendices required by the rules to be filed and served, plus two copies for each party signing the brief. The number of copies and number of pages must be itemized on the claim form.

(g) Funding.

By resolution the court may allocate from time to time certain monies from its nonappropriated fund account to support this program of non-CJA counsel appointments.

















ADDENDUM 7 | REGULATIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FOR THE SELECTION AND APPOINTMENT OR THE REAPPOINTMENT OF FEDERAL PUBLIC DEFENDERS

1. Purpose

Federal public defenders exercise important powers and responsibilities as officers of the United States Courts. It is imperative that highly qualified individuals be selected and retained as public defenders. For the expeditious and orderly achievement of this end, as well as to ensure that federal public defenders provide competent, independent counsel and vigorous representation to indigent persons, the United States Court of Appeals for the Eleventh Circuit has adopted the regulations set forth herein. These regulations shall be administered through a Federal Public Defender Committee appointed by the Chief Judge of the Eleventh Circuit Court of Appeals pursuant to Section 3 of these regulations.

2. Authority

The Criminal Justice Act, 18 U.S.C. §3006A(g), provides that "A Federal Public Defender Organization . . . shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit . . . after considering recommendations from the district court or courts to be served."

3. Federal Public Defender Committee

a. Appointment of Federal Public Defender Committee

The Chief Judge of the U.S. Court of Appeals shall appoint a Federal Public Defender Committee [hereinafter "Committee"]. The Committee shall consist of a U.S. Circuit Judge, a U.S. District Judge from each district which has established a Federal Public Defender Organization pursuant to 18 U.S.C. §3006A(g)(2)(A), and one or more lawyers from each such district who specialize in the practice of criminal law and are themselves qualified for appointment as a Federal Public Defender under Section 5 of these regulations.



b. Terms of Committee Members

The U.S. Circuit Judge and each district judge appointed to the Committee shall serve for a term of two years. One-third of the lawyers first appointed shall serve a term of one year, one-third 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 Chief Judge of the U.S. Court of Appeals may vacate an appointment at any time.

c. Functions of Committee

(1) The Committee shall determine which applicants meet the qualifications for appointment as a federal public defender as set forth in Section 5 of these regulations.

(2) The Committee shall examine applications and evaluate all qualified candidates without regard to race, color, age, gender, religion, disability, or national origin.

(3) If a federal public defender has applied for an additional four-year term, the Committee shall also consider public comments received and the results of the survey conducted pursuant to Section 6 of these regulations in its evaluation of the Federal Public Defender's application.

(4) The Committee shall interview at least four of the applicants determined to be qualified. If the Committee determines that less than four qualified persons have applied for the position, it may either reopen the application process or report to the Chief Judge of the U.S. Court of Appeals why fewer than four qualified persons could reasonably be expected to apply for the position.



d. Committee Chair, Votes, and Quorum

- (1) The Chief Judge of the U.S. Court of Appeals shall designate one of the members of the Committee to serve as Chair.
- (2) Decisions of the Committee shall be made by a majority of those participating.
- (3) A majority of the Committee shall constitute a quorum.

4. Term of Appointment of Federal Public Defenders

The Criminal Justice Act provides that the U.S. Court of Appeals shall appoint a person to serve as Federal Public Defender for a four-year term. The expiration date of a four-year term is the day prior to the fourth anniversary of the date the oath of office was administered. The Administrative Office of the United States Courts determines the precise expiration date of a four-year term of office.

5. Qualifications for Appointment as Federal Public Defender

To be qualified for appointment as Federal Public Defender, applicants must:

- a. be members in good standing of at least one state bar, or the District of Columbia, or Virgin Islands bar, and members in good standing of every other bar of which they are members;
- b. have been engaged in the active practice of criminal law for a period of at least five years, preferably with significant federal criminal trial and appellate experience;
- c. possess the ability to administer a federal public defender's office effectively;
- d. possess, and have a reputation for:
 - (1) integrity and good character;
 - (2) sound physical and mental health;
 - (3) commitment to equal justice under law and vigorous representation of his or her clients;



(4) outstanding legal ability and competence (evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes);

e. have a commitment to the vigorous representation of those unable to afford counsel; and

f. not be related by blood or marriage to a judge of the Eleventh Circuit Court of Appeals or to a judge of the district court to be served, within the degrees specified in Title 28, United States Code, Section 458 at the time of the initial appointment. The Federal Public Defender Committee will resolve any questions regarding the qualifications of applicants.

6. Federal Public Defender Committee's Evaluation of the Performance of the Incumbent Federal Public Defender

a. Prior to the conclusion of the third year of each four-year term, the Federal Public Defender Committee shall conduct an evaluation of the administration of the Federal Public Defender's office. The purpose of this evaluation is to identify strengths and weaknesses in the administration of the office and to provide the Federal Public Defender with an opportunity to initiate corrective measures if any administrative deficiencies are discovered. The performance of the Federal Public Defender will be evaluated in terms of the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the office. This evaluation will be based on information received through a solicitation for public comment and a written survey designed and administered by the Committee.

(1) A solicitation for public comment regarding the performance of the Federal Public Defender and his or her office will be placed by the Committee in the major metropolitan or legal newspapers within the district served by the Federal Public Defender.

(2) The Committee shall also conduct a written survey of the administration of the office of the Federal Public Defender. That survey shall be distributed to district judges, magistrate judges, the Defender Services Division of the Administrative Office of the United States Courts, and to any other persons whose employment places them in a position to observe the performance of the Federal Public Defender, the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the Federal Public Defender's office.

(3) The Committee may make such additional inquiry as it considers appropriate concerning the quality of services provided by the Federal Public Defender office in the district. With the prior approval of the Chief Judge of the U.S. Court of Appeals, the Committee may appoint consultants to assist it in its evaluation of the administration of a federal public defender's office.

(4) At the conclusion of the survey period the Committee shall prepare a statistical summary of the results of its survey and a narrative summary of the responses to the solicitation for public comment.

(5) The Federal Public Defender shall be afforded an opportunity to review and respond to the statistical summary and narrative summary prepared by the Committee.

(6) The Committee should meet with the Federal Public Defender to discuss the evaluation of his or her office, if such conference is warranted by the responses to the request for public comment or the survey.



7. Incumbent Federal Public Defenders

a. Eligibility of Federal Public Defenders for Reappointment

The Criminal Justice Act permits appointment of an incumbent Federal Public Defender to an additional four-year term. There is not, however, a legitimate expectation of a right to reappointment or a presumption that the Federal Public Defender is the best qualified applicant for a subsequent four-year term.

b. Application by Federal Public Defender for Additional Four-Year Term

Approximately one year prior to expiration of the four-year term of office, the Administrative Office of the United States Courts advises the Chief Judge of the U.S. Court of Appeals of the expiration date of each four-year term. Upon receipt of this notice, the Chief Judge of the U.S. Court of Appeals shall write to the incumbent Federal Public Defender to inquire whether he or she intends to again apply for appointment at the expiration of his or her term of office. The Federal Public Defender shall notify the Chief Judge of the U.S. Court of Appeals whether he or she wishes to apply for an additional four-year term within 35 days of the receipt of the inquiry from the Chief Judge of the U.S. Court of Appeals.

c. Evaluation Statement to Accompany Application

If the Federal Public Defender applies for appointment for an additional four-year term, such application shall be accompanied by a written statement prepared by the Federal Public Defender setting forth an evaluation of his or her administration of the office of Federal Public Defender. This statement shall assess the strengths and weaknesses of his or her administration of the office of Federal Public Defender and the steps that should be taken to eliminate any deficiencies and strengthen the administration of the office.

8. Public Recruitment of Qualified Candidates

a. Public Notice

At the end of each four-year term, or when a vacancy occurs due to the resignation, removal, or incapacity of the occupant of the office of Federal Public Defender, a public notice shall issue announcing that applications are being accepted for a four-year term for the position of Federal Public Defender for the particular district. The public notice shall advise all applicants that the U.S. Court of Appeals for the Eleventh Circuit is searching for the best qualified person currently available for this position and that the U.S. Court of Appeals for the Eleventh Circuit encourages applications from all qualified persons including women, members of minority groups, and individuals with disabilities. If the Federal Public Defender has applied for an additional four-year term, the notice shall also state that the Federal Public Defender has applied for reappointment and that his or her application will be reviewed under the same standards applied to all other applicants.

b. Publication of Public Notice

The Committee shall seek qualified applicants who reflect the makeup in the relevant national labor market and will use adequate means to publicize the existence of a vacancy to all segments of the relevant national labor market.

(1) The Committee shall publish a notice that applications are being accepted for a four-year term as Federal Public Defender in a national publication for the legal profession.

(2) Whenever possible, the Committee shall also advertise in publications from each of the following categories: (1) state bar journal, newsletter, or similar publication; (2) general local newspaper or similar publication; (3) local bar journal, newsletter, or legal periodical.



c. Posting and Distribution of Notice

The public notice shall also be posted in the offices of the Clerk of the U.S. Court of Appeals and in each district court clerk's office within the Eleventh Circuit. A copy of the notice shall also be provided to each district judge and magistrate judge of the circuit, requesting that the judges recruit attorneys whom they feel may be qualified for the position, especially females, members of minority groups, and individuals with disabilities. The Defender Services Division of the Administrative Office of the United States Courts shall also be provided with a copy of the notice for nationwide distribution.

d. Availability of Applications

The Committee shall devise and provide federal public defender application forms to the Clerk of the U.S. Court of Appeals and to each district court clerk's office within the Eleventh Circuit when a vacancy occurs.

e. Timely Submission of Application

To be considered, applications must be received by the Committee by the posted deadline.

f. Review of Completed Applications

After the closing date for receipt of applications, the Committee shall review all timely applications.

9. Report to U.S. Court of Appeals

Upon completion of the duties set forth in Sections 6 and 8 of these regulations, the Federal Public Defender Committee shall submit a report to the Chief Judge of the U.S. Court of Appeals and to the active judges of the Court. The report shall constitute the recommendations of the Committee concerning the appointment of the federal public defender in that district, and shall include the following:

- a. a description of actions taken pursuant to Section 8 of these regulations regarding giving notice of the position;



- b. the names of all persons who submitted applications and the names of those deemed by the Committee to be qualified for appointment pursuant to Section 5 of these regulations;
- c. the results of the Committee's investigation into the background of the qualified candidates;
- d. the names of the qualified candidates who were interviewed by the Committee; and
- e. a preferential ranking of not less than three nor more than five best qualified persons from among those the Committee considered qualified for appointment under Section 5 of these regulations. The Committee shall set forth the basis for its ranking of each of the persons it found to be the best qualified applicants.

10. District Court Recommendations

a. Solicitation of Recommendations

Following receipt of all applications, the Chair of the Federal Public Defender Committee shall send a list of the names of all applicants determined by the Committee to be qualified, its preferential ranking of the not less than three nor more than five applicants considered to be best qualified and if the Federal Public Defender has applied for an additional four-year term a copy of the summary of the results of the survey concerning his or her last four-year term and of the summary of the responses to the solicitation for public comment to the Chief Judge of the district in which the Federal Public Defender is to be appointed, soliciting the recommendations of that district. The district court shall submit to the Chair of the Committee and to the Chief Judge of the U.S. Court of Appeals its written recommendation, if any, within 35 days after receipt of the Committee's letter. Extensions of time to respond may be granted by the Chair of the Committee upon application by a chief judge of the district court.

b. Suggested Procedures for the District Court

(1) The Chief Judge of the district court may circulate to the members of his or her court the names of all applicants and the summary of the results of the survey if the Federal Public Defender has applied for an additional four-year term.

(2) The district court may wish to consider the summaries of the results of the survey and responses to the solicitation for public comment, if conducted, in arriving at its recommendation. The district court may, in its discretion, conduct its own inquiry concerning any qualified applicant. Within 35 days of receipt of the Committee's report, the district court may either:

(a) submit its written recommendation(s) to the Chair of the Committee; or

(b) notify the Chief Judge of the U.S. Court of Appeals and the Committee that the district court declines to make a recommendation.

(3) If the district court decides to submit a recommendation, its report should include:

(a) a preferential ranking of the applicants whom the district court found to be the best qualified for appointment if different from the ranking recommended by the Committee. The district court may set forth the reasons for its ranking. The district court should consider only those applicants determined by the Committee to have been qualified; and

(b) a summary of the district court's inquiry, if any, concerning the qualified applicants.



11. Vote by U.S. Court of Appeals and Background Investigation on Nominee

a. If the Federal Public Defender Committee's recommendation is in accord with that submitted by the district court and if time constraints or exceptional circumstances warrant it, a vote of the judges of the U.S. Court of Appeals may be conducted by mail or by telephone. Otherwise the Committee's recommendations on the nomination to a vacancy, together with the recommendations of the district court, shall be presented at a regularly scheduled U.S. Court of Appeals Administrative Meeting.

b. After voting to nominate a candidate to fill a vacancy,

(1) the name of the nominee shall be submitted by the Chief Judge of the U.S. Court of Appeals to the Director of the Administrative Office of the United States Courts for background investigations by the Federal Bureau of Investigation and the Internal Revenue Service;

(2) The Administrative Office of United States Courts will send the FBI and IRS reports to the Chief Judge of the U.S. Court of Appeals, who shall refer the reports to the Committee;

(3) The candidate will complete the required financial disclosure forms and will send them to the Chief Judge of the U.S. Court of Appeals and to the Administrative Office of United States Courts;

(4) After reviewing the FBI and IRS reports, the Committee shall submit its recommendation to the U.S. Court of Appeals on whether the nomination should be confirmed;

c. Upon receipt of the Committee's recommendation on confirmation, the U.S. Court of Appeals shall vote on whether to confirm the nomination. The confirmation vote of the U.S. Court of Appeals may be conducted either by mail or at a regularly scheduled court administrative meeting.



12. Confidentiality

If a member of the public makes a comment concerning the qualifications of the incumbent Federal Public Defender or the administration of his or her office, or about an applicant for that position, in a survey or otherwise, the person making the comment may request that their identity be kept confidential. The incumbent or applicant will, however, be provided with a general description of the source and nature of any comments.

The Federal Public Defender Committee or the Court of Appeals may determine, at its sole discretion, that the identity of a person making a comment should be disclosed to the incumbent or applicant in order to afford that person a fair opportunity to respond to the comment. In that event, the person making the comment will be given an opportunity to withdraw the comment before the commenter's identity is disclosed to the incumbent or applicant. If the comment is withdrawn, it will not be considered by the Committee or the Court of Appeals, and the identity of the person making the comment will remain confidential. If the person making the comment waives confidentiality, the commenter's name will be revealed to the incumbent or the applicant, along with the substance of the comment.

All information made available to the members of the Federal Public Defender Committee in the performance of their duties, including the Committee's report and the names recommended therein, shall be kept in strict confidence by the persons authorized by these procedures to receive this information, unless other provisions of these procedures or the U.S. Court of Appeals specifically authorize a disclosure.

If the Committee, with the consent of the Chief Judge of the U.S. Court of Appeals, decides to appoint consultants pursuant to Section 6(a)(3) of these regulations to assist it in considering the appointment of a federal public defender, it may provide any confidential information to the consultants as it considers necessary or appropriate.

13. Interim Appointment

A federal public defender whose four-year term of office has expired may continue to perform the duties of his or her office until a successor is chosen or until one year passes, whichever is earlier, upon approval of such an extension by a majority of the judges of the U.S. Court of Appeals.



ADDENDUM 8 | RULES GOVERNING ATTORNEY DISCIPLINE IN THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Prefatory Statement

Nothing contained in these rules shall be construed to deny the U. S. Court of Appeals for the Eleventh Circuit (the Court) its inherent power to maintain control over proceedings conducted before it or to deny the Court those powers derived from statute, rules of procedure, or rules of court. References herein to a panel are to a three-judge panel of the Court who shall act by majority vote.

When alleged attorney misconduct is brought to the attention of the Court, whether by a judge of the Court, a lawyer admitted to practice before the Court, an officer or employee of the Court, or otherwise, the Court may 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 Court's Committee on Lawyer Qualifications and Conduct as hereinafter defined; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

RULE 1.

Standards for Professional Conduct

A. An act or omission of an attorney admitted to practice before the Court, committed individually or in concert with any other person or persons, that violates the Code of Professional Responsibility or 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. Except as otherwise provided by a specific rule of the Court, attorneys practicing before the Court shall be governed by the Federal Rules of Appellate Procedure, the Court's local rules, the American Bar Association Model Rules of Professional Conduct, and the rules of professional conduct adopted by the highest court of the state(s) in which the attorney is admitted to practice to the extent that those state rules are not inconsistent with the American Bar Association Model Rules of Professional Conduct, in which case the model rules shall govern.



B. Discipline for misconduct defined in these rules may consist of disbarment, suspension, reprimand, monetary sanctions (including payment of the costs of disciplinary proceedings), removal from district court Criminal Justice Act panels, removal from the Court's roster of attorneys eligible for practice before the Court and for appointment under the Criminal Justice Act, or any other sanction the Court may deem appropriate.

RULE 2.

Committee on Lawyer Qualifications and Conduct

A. The Court may appoint a standing committee consisting of nine members of the bar of the Court, three from each state of the circuit, to be known as the "Committee on Lawyer Qualifications and Conduct" (the Committee). Three of those first appointed shall serve a term of one year; three shall serve a term of two years; and the remainder and all thereafter appointed shall serve a term of three years. Each member shall serve until the member's successor is appointed. The Court may vacate any such appointment at any time. The Court shall designate one of the members to serve as chairman. A majority of the Committee shall constitute a quorum.

B. The purpose and function of the Committee is to conduct, on referral by the Court through the Chief Judge or the Chief Judge's designee (hereinafter the Chief Judge unless otherwise provided in these rules), investigations of alleged misconduct by any member of the bar of the Court, or any attorney appearing and participating in any proceeding before the Court; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; to conduct, on referral by the Court through the Chief Judge, inquiries and investigations of allegations of inadequate performance by an attorney practicing before the Court as hereinafter provided; and to submit written findings and recommendations to the Court for appropriate action. The members of the Committee, while serving in their official capacities, shall be considered representatives of the Court and as 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. The Court through the Chief Judge may refer to the Committee any accusation or evidence of misconduct that may



constitute a violation of the disciplinary rules by any member of the bar with respect to any professional matter before the Court for such investigation, hearing, and report as the Court deems advisable. In addition to or instead of referring a disciplinary matter to the Committee, the Court through the Chief Judge may refer a complaint to the chief judge of the appropriate district court of the Eleventh Circuit for referral to that court's committee on lawyer qualifications and conduct. The Committee may refer disciplinary matters to an appropriate state bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively to conduct disciplinary proceedings, as provided in Rule 11., infra. The Court through the Chief Judge also may refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in the attorney's practice before the Court, as provided in Rule 8., infra. Under no circumstances may the Committee investigate or initiate proceedings concerning these matters without prior referral by the Court through the Chief Judge.

D. The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including, but not limited to, the power to compel the attendance of witnesses; to take or cause to be taken the deposition of witnesses; to order the production of books, records, or other documentary evidence; and any power prescribed elsewhere in these rules. The chairman, or in the chairman's absence each member of the Committee, shall have the power to administer oaths and affirmations to witnesses. The Committee may constitute itself into investigative panels, each investigative panel ordinarily consisting of the three members residing in the same state, for the purpose of investigating allegations of misconduct and inquiring into inadequate performance, and submitting written findings and recommendations to the Committee and to the Court. Hearings shall ordinarily be held before the Committee and not an investigative panel.

E. Except as provided in Rule 13(C), unless and until otherwise ordered by the Chief Judge, all reports, records of proceedings, and other materials presented by the Court, the Committee, or any person to the Clerk of the Court (the Clerk) for filing shall be filed and maintained as sealed and confidential documents and shall be labeled accordingly by

the Court, the Committee, or the person presenting such matters for filing.

RULE 3.

Disciplinary Proceedings

A

(1). When misconduct or an allegation of misconduct that, if substantiated, may warrant discipline against an attorney admitted to practice before the Court comes to the attention of a judge of the Court, whether by complaint or otherwise, the judge may refer the matter to the Court through the Chief Judge for possible referral to the Committee for investigation and, if probable cause is found that the attorney has engaged in such misconduct, for initiation of formal disciplinary proceedings. In addition to or instead of referring the disciplinary matter to the Committee, the Court through the Chief Judge may refer the matter to the chief judge of the appropriate district court of the Eleventh Circuit for disposition.

(2). The Court through the Chief Judge may, prior to referring the matter to the Committee, direct the Clerk to issue an order requiring the attorney to show cause within 14 days from the date of the order why the attorney should not be disciplined. Such order may further provide that if the attorney fails to file a verified response within the time allowed, the attorney shall be indefinitely suspended from practice before the Court.

The attorney's response to such order shall be verified by a signed declaration similar to the following: "I swear (or affirm) that all statements made herein, including those made in attachments which are incorporated herein by reference, are true and correct to the best of my knowledge, information, and belief." When an attorney is suspended upon failure timely to file a verified response the matter need not be referred to the Committee. If an attorney timely files a verified response, the Clerk shall refer the matter to the Chief Judge, who shall determine whether to refer the matter to the Committee or take other appropriate action.



B

(1). If the Committee concludes, after investigation, that no probable cause exists to believe that the attorney has engaged in misconduct, and, therefore, that a formal disciplinary proceeding should not be initiated, the Committee in a report filed with the Clerk shall recommend a disposition of the matter -- for example, that the Court dismiss the complaint, that further action on the complaint be deferred, or that other action be taken. The Committee's report and all material received or generated by the Committee in the course of its investigation shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

(2). With respect to matters referred to the Committee under Rule 3(A)(2), if the Committee concludes, after investigation, that the attorney has demonstrated sufficient justification why discipline should not be imposed, the Committee in a report filed with the Clerk shall request the Court to close the matter with no discipline imposed, stating its reasons therefor.

C

(1). If the Committee concludes, after investigation, that probable cause exists to believe that the attorney has engaged in misconduct, the Committee shall file with the Clerk a report of its investigation, stating with specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within 14 days after service of that order why the attorney should not be disciplined. The order to show cause, issued by the Chief Judge, shall set forth the particular misconduct for which the attorney is sought to be disciplined. A copy of the Committee's report and the order to show cause shall be served on the attorney as provided in Rule 12., infra. The attorney may file with the Clerk, within 14 days of service of the order to show cause, a written response thereto. After considering the attorney's response, if any, the Committee may request the Court to rescind the order to show cause. If the Committee does not request the Court to rescind the order to show cause, or if a panel of the Court convened by the Chief Judge



denies the Committee's request that it rescind the order to show cause, the Committee shall hold a hearing on the matter, giving the attorney at least 14 days notice as provided in Rule 12., infra. All proceedings before the Committee shall be recorded and the record thereof made available to the attorney. Such proceedings, the record thereof, and all materials received or generated by the Committee shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

(2). With respect to matters referred to the Committee under Rule 3(A)(2), if the Committee concludes, after investigation, that the attorney has failed to demonstrate sufficient justification why discipline should not be imposed, or if a panel of the Court convened by the Chief Judge denies the Committee's request that it rescind the order to show cause, the Committee shall hold a hearing on the matter, giving the attorney at least 14 days notice as provided in Rule 12., infra.

(3). An attorney may waive a hearing before the Committee by agreeing to the imposition of specific discipline to be recommended by the Committee in a report filed with the Clerk pursuant to Rule 3(E). When an attorney waives a hearing pursuant to this rule, an order to show cause pursuant to Rule 3(F), infra, need not issue.

D. Attorney misconduct shall be established by clear and convincing evidence. Except as otherwise ordered by the Court or provided in these rules, the Committee, in receiving evidence, shall be guided by the spirit of the Federal Rules of Evidence. The attorney, personally or through counsel, shall have the right to confront and cross-examine all witnesses appearing before the Committee and to present witnesses or other evidence. The Committee may require the attorney to testify or otherwise to make under oath specific and complete disclosure of all matters material to the alleged misconduct, subject to any privilege or right against such disclosure the attorney may assert pursuant to federal or state law.

E. Upon completion of a disciplinary proceeding, the Committee shall file with the Clerk the record of that proceeding and the Committee's report to the Court. The report shall include the Committee's findings of fact regarding the



alleged misconduct and its recommendation as to whether the attorney should be found guilty of misconduct and disciplined. A copy of the report and recommendations shall be served on the attorney as provided in Rule 12., infra.

F. Upon receipt of the Committee's finding that misconduct warranting discipline occurred, a panel of the Court convened by the Chief Judge shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be accepted and implemented. After considering the attorney's response, the panel may adopt, modify, or reject the Committee's finding or take other appropriate action as provided in Rule 1.B., supra.

RULE 4.

Attorneys Convicted of Crimes

A. When an attorney admitted to practice before the Court has been convicted in a court of the United States or the District of Columbia or of a state, territory, commonwealth, or possession of the United States (another court) of a serious crime as defined in this rule, the Clerk, upon receipt of a copy of the judgment of such conviction, shall issue and serve on the attorney as provided in Rule 12., infra, an order to show cause why the attorney should not be disbarred. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disbarred. The order shall further state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee with instructions to initiate a disciplinary proceeding; provided, however, that the panel shall not disbar the attorney or refer the matter to the Committee until any direct appeal from the attorney's conviction has been concluded and the conviction becomes final.

B. The term "serious" crime shall include any felony, or any attempt, conspiracy, or solicitation of another to commit a felony, and any lesser crime an essential element of which, as determined by the statutory or common-law definition of such crime in the jurisdiction in which it occurred, involves



false swearing, misrepresentation, fraud, deceit, dishonesty, bribery, extortion, misappropriation, or theft.

C. An attorney suspended or disbarred pursuant to the provisions of this rule shall be reinstated immediately upon the filing with the Clerk of proof that the attorney's conviction has been set aside; such reinstatement, however, shall not terminate any disciplinary proceeding that has been initiated pursuant to this rule.

RULE 5.

Discipline Imposed By Other Courts

A. When an attorney admitted to practice before the Court has been suspended or disbarred by another court, the attorney shall file a copy of the judgment or order imposing such discipline with the Clerk. Upon receipt of a copy of such judgment or order, whether from the attorney or another source, the Clerk shall issue and serve on the attorney as provided in Rule 12., infra, an order to show cause why the Court should not discipline the attorney in the same manner. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disciplined accordingly. The order further shall state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee; provided, however, that the panel shall not suspend or disbar the attorney or refer the matter to the Committee until any stay of discipline granted by a court having jurisdiction has been lifted.

B. A determination by another court that an attorney has engaged in misconduct shall establish such conduct conclusively for purposes of a disciplinary proceeding pursuant to these rules, unless the attorney demonstrates and the Court is satisfied that:

1. the procedure used to make such determination was so lacking in notice or opportunity to be heard as to constitute a deprivation of the attorney's due process rights; or



2. the proof was so insufficient that the Court, consistent with its duty, could not accept as final the conclusion of the other court that the attorney engaged in such misconduct.

C. Discipline imposed by another court, whether suspension or disbarment, shall likewise be imposed by this Court unless the attorney demonstrates and the Court is satisfied that:

1. the imposition of the same discipline by the Court would result in grave injustice; or

2. the misconduct warrants substantially different discipline by the Court.

D. The Court at any time may direct the 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.

RULE 6.

Disbarment on Consent or Resignation in Other Courts

A. When an attorney admitted to practice before the Court has been disbarred on consent or has resigned from the bar of another court pending an investigation of allegations of misconduct, the attorney promptly shall inform the Clerk in writing of such disbarment on consent or such resignation.

B. Upon receipt of written notice, whether from the attorney or another source, that an attorney admitted to practice before the Court has been disbarred on consent or has resigned from the bar of another court pending an investigation of allegations of misconduct, the Clerk shall issue and serve on the attorney as provided in Rule 12., *infra*, an order to show cause why the Court should not disbar the attorney. The order shall state that unless the attorney files a response to the order with the Clerk within 14 days after service the attorney shall be disbarred. The order shall further state that if a response is filed the attorney shall be suspended from the bar of the Court until a panel of the Court convened by the Chief Judge otherwise orders. The panel, after considering the attorney's response, (1) may rescind the order to show cause and lift the suspension, (2) may suspend or disbar the attorney, or (3) may refer the matter to the Committee.



RULE 7.

Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. An attorney admitted to practice before the Court who is the subject of an investigation or of a pending proceeding involving allegations of misconduct may consent to disbarment by filing with the Clerk an affidavit stating that the attorney freely and voluntarily consents to disbarment by the Court.

B. Upon the Clerk's receipt of such affidavit, a panel of the Court convened by the Chief Judge shall enter an order disbaring the attorney.

C. The order disbaring the attorney on consent shall be a matter of public record. The affidavit required pursuant to the provisions of this rule, however, shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

RULE 8.

Attorney Competency and Incapacity

A. When it appears that an attorney, for whatever reason, is failing to perform at an adequate level of competency necessary to protect the interests of the attorney's client (a competency matter), a panel of the Court convened by the Chief Judge may take any remedial action that it deems appropriate, including but not limited to referral of the attorney to appropriate institutions and professional personnel for assistance in raising the attorney's level of competency. The panel, through the Chief Judge, may also refer the matter to the Committee for investigation and recommendation.

B. A competency matter is not a disciplinary matter and thus shall not implicate the formal procedures described elsewhere in these rules. Upon referral of a competency matter, the Committee may conduct a preliminary inquiry and may request an informal meeting with the attorney to discuss the circumstances relating to the referral.



C. If, after conducting a preliminary inquiry, including meeting with the attorney if it elects to do so, the Committee determines that further action is not warranted, the Committee shall so notify the attorney and the referring panel and the matter shall be considered terminated unless the referring panel otherwise directs.

D. If the Committee determines, with or without a preliminary inquiry, that the matter warrants formal action, the Committee may recommend to the attorney in writing that steps be taken to improve the quality of the attorney's professional performance and may recommend that specific actions be taken to effect such improvement. Upon receipt of the Committee's recommendation, the Clerk shall forthwith serve it upon the attorney as provided in Rule 12., infra. The attorney may file a written response to the Committee's recommendation with the Clerk within 14 days of such service, seeking review or revocation of the Committee's recommendation or suggesting alternatives thereto. If the attorney does not file such a response, the Committee's recommendation shall become the decision of the Committee. If the attorney does file such a response, the Committee may modify, revoke, or adhere to its recommendation, and that determination shall become the decision of the Committee. Upon receipt of the Committee's decision, the Clerk shall forthwith serve it upon the attorney as provided in Rule 12., infra. If the attorney agrees to comply with the Committee's decision, the Committee shall report to the referring panel that the attorney has agreed to its resolution of the matter. The Committee may monitor the attorney's compliance with its decision and may request the assistance of the Court to ensure such compliance.

E. If the attorney objects to the Committee's decision, the attorney may file a written response with the Clerk within 14 days of service of the decision. The referring panel shall consider the Committee's decision and the objection of the attorney and may adopt, modify, or reject the Committee's decision or take other appropriate action.

F. If the Committee finds that there is a substantial likelihood that the attorney's continued practice of law before the Court may result in serious harm to the attorney's clients, it may recommend that, pending compliance with its decision, the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continued practice



before the Court. The referring panel may take any action that it deems appropriate with respect to the Committee's recommendation.

G. All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a competency matter shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

H. Nothing contained in this rule or any action taken pursuant to this rule shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these rules. Disciplinary proceedings shall occur separately from competency proceedings held pursuant to this rule.

RULE 9.

Reinstatement After Disbarment or Suspension

A. An attorney suspended for 90 days or less shall be reinstated by the Clerk at the end of the suspension period upon filing with the Clerk an affidavit of compliance with the provisions of the suspension order. An attorney suspended for more than 90 days or disbarred may not resume the practice of law before the Court until reinstated by order of the Court. An attorney who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

B. A petition for reinstatement filed by a suspended or disbarred attorney pursuant to this rule shall be filed with the Clerk and referred to the Chief Judge of the Court. If an attorney's suspension or disbarment in this Court was reciprocally imposed pursuant to Rule 5, supra, and the attorney has been reinstated to practice in the other court, the Chief Judge may grant the petition if deemed appropriate. In other circumstances, the Chief Judge may submit a petition to a panel of the Court or may refer a petition to the Committee. When a petition is referred to it, the Committee shall schedule a hearing, giving at least 14 days notice as provided in Rule 12., infra.

C. At the hearing the petitioner shall have the burden of establishing by clear and convincing evidence that the petitioner has the moral qualifications, competency, and



learning in the law required for admission to practice before the Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest. The petitioner, personally or through counsel, shall have the right to present witnesses or other evidence. The Committee may require the petitioner to testify or otherwise to make under oath specific and complete disclosure of all matters material to the petition for reinstatement, subject to any privilege or right against such disclosure the petitioner may assert under federal or state law.

D. Upon completion of the hearing, the Committee shall file with the Clerk the Committee's report to the Court. The report shall include the Committee's findings of fact regarding the petitioner's fitness to resume the practice of law and its recommendation regarding whether or not the petitioner should be reinstated. A copy of the report and recommendation shall be served on the petitioner as provided in Rule 12., infra. The Committee's report and all material received or generated by the Committee in the course of its proceedings shall be confidential unless and until otherwise ordered by the Court through the Chief Judge.

E. If, after considering the Committee's report and recommendation, a panel of the Court convened by the Chief Judge finds that the petitioner is unfit to resume the practice of law, the panel shall dismiss the petition. If, after considering the Committee's report and recommendation, the panel finds that the petitioner is fit to resume the practice of law, the panel shall reinstate the petitioner. The panel's order may condition reinstatement upon the petitioner paying all or part of the costs of the proceedings and making partial or complete restitution to all parties harmed by the petitioner's conduct that led to the suspension or disbarment. Further, if the petitioner has been suspended for five or more years, or disbarred, the panel may condition reinstatement upon the petitioner furnishing proof of competency and learning in the law. Such proof may include certification by the bar examiners of a state or other jurisdiction that the petitioner successfully completed an examination for admission to practice subsequent to the date of suspension or disbarment. Reinstatement may be subject to any conditions that the panel in its discretion deems appropriate.



F. No petition for reinstatement filed pursuant to this rule shall be filed within one year following an adverse judgment on a petition for reinstatement filed by the same person.

G. Petitions for reinstatement filed pursuant to this rule shall be accompanied by a deposit in an amount sufficient to cover anticipated costs of the reinstatement proceeding. The Court through the Chief Judge, in consultation with the Committee, shall set and may periodically adjust the amount of such deposits.

RULE 10.

Attorneys Specially Admitted

Whenever an attorney applies for admission to the bar of the Court or is admitted for purposes of a particular proceeding pursuant to 11th Cir. R. 46-3 (including admission pro hac vice), the attorney thereby confers disciplinary jurisdiction upon the Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding that may constitute a violation of the Code of Professional Responsibility and Rules of Professional Conduct adopted by the Court as provided in Rule 1., supra.

RULE 11.

Special Counsel

A. Whenever pursuant to these rules the Court directs or the Committee requests appointment of special counsel 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, a panel of the Court convened by the Chief Judge may appoint as special counsel any active member of the bar of the Court, the disciplinary agency of the highest court of any state in which the attorney is admitted to practice, or any other disciplinary agency having jurisdiction.

B. The Court, acting in its administrative capacity, may allocate from time to time certain monies from its nonappropriated fund account to support the operations of the Committee, including payment of any expenses incurred by the Committee and of any fees authorized to be paid to Special Counsel pursuant to these rules.

RULE 12.



Service of Papers and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court. Service of any other paper or notice required by these rules shall be deemed to have been made if such paper or notice is mailed by first-class mail to the attorney at the address shown on the roll of attorneys admitted to practice before the Court, or to the attorney's counsel at the address indicated in the most recent pleading or document filed by such counsel in the course of any proceeding pursuant to these rules.

RULE 13.

Additional Duties of the Clerk

A. When informed that an attorney admitted to practice before the Court has been convicted of a serious crime as defined in Rule 4., supra, the Clerk promptly shall obtain and file with the Court a copy of the judgment of such conviction.

B. When informed that an attorney admitted to practice before the Court has been disciplined by another court, the Clerk promptly shall obtain and file with the Court a copy of the judgment or order imposing such discipline.

C. Whenever it appears that an attorney who has been disbarred, suspended, or publicly reprimanded by the Court is admitted to practice law in another jurisdiction or before another court, the Clerk shall, within 14 days of such public discipline transmit to the disciplinary authority in such other court or jurisdiction, as well as to the disciplined attorney as provided in Rule 12., supra, a copy of this Court's order imposing public discipline. A copy of an order imposing discipline other than disbarment, suspension, or public reprimand shall not be transmitted to the disciplinary authority in such other court or jurisdiction unless so ordered by the Court.

D. The Clerk promptly shall notify the National Discipline Data Bank of the American Bar Association of any order imposing public discipline on an attorney admitted to practice before the Court.



ADDENDUM 9 | REGULATIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FOR THE SELECTION AND APPOINTMENT OR THE REAPPOINTMENT OF BANKRUPTCY ADMINISTRATORS

PURPOSE

United States bankruptcy administrators oversee trustees and estate administration in bankruptcy cases for the three judicial districts in Alabama. Their duties are essentially the same as those of the U.S. trustees in the Department of Justice, who serve in all other judicial districts in the Eleventh Circuit. It is imperative that only highly qualified individuals be selected as bankruptcy administrators. These regulations supplement the Regulations of the Judicial Conference of the United States for the Selection, Appointment and Reappointment of Bankruptcy Administrators, the Guide to Judiciary Policy, and governing statutes. These regulations set forth procedural guidelines that create no vested rights for any prospective or incumbent bankruptcy administrator.

Bankruptcy administrators will be appointed without regard to race, color, sex, religion, or national origin.

Confidentiality of Public Comments

If a member of the public makes a comment concerning the qualifications of the incumbent bankruptcy administrator or an applicant for that position, in response to a survey solicitation, public notice, or otherwise, the person making the comment may request that their identity be kept confidential. The incumbent or applicant will, however, be provided with a general description of the source and nature of any comments.

The Court of Appeals may determine, at its sole discretion, that the identity of a person making a comment should be disclosed to the incumbent or applicant in order to afford that person a fair opportunity to respond to the comment. In that event, the person making the comment will be given an opportunity to withdraw the comment before the commenter's identity is disclosed to the incumbent or applicant. If the comment is withdrawn, it will not be considered by the Court of Appeals, and the identity of the person making the comment will remain confidential. If the person making the comment waives confidentiality, the commenter's name will be revealed



to the incumbent or applicant, along with the substance of the comment.



APPENDIX



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