

UNITED STATES COURT OF VETERANS APPEALS

Misc. No. 8-98

IN RE: RULES OF ADMISSION AND PRACTICE

Before NEBEKER, Chief Judge, and KRAMER, FARLEY,
HOLDAWAY, IVERS, STEINBERG, and GREENE, Judges.

ORDER

Pursuant to the authority of 38 U.S.C. §§ 7263(b) and 7264(a) and consistent with 28 U.S.C. § 2071(b) and (e), the Court has determined the need to revise its Rules of Admission and Practice. It is

ORDERED that the attached proposed revised Rules of Admission and Practice are hereby published. Public comment on this revision is invited. Such comment must be submitted to the Clerk of this Court at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, by December 28, 1998.

DATED: October 28, 1998

BY THE COURT:

FRANK Q. NEBEKER
Chief Judge

Attachment

**Attachment to USCVA Miscellaneous Order No. 8-98
Proposed Revision, Rules of Admission and Practice**

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RULE 1. ADMISSION AND DISCIPLINE STANDARDS

(a) Admission. Admission to practice before the Court is governed by Rule 46 of the Court's Rules of Practice and Procedure, as supplemented by Rule 3 of these rules.

(b) Discipline.

- (1) Unless otherwise provided by specific rule of the Court, the disciplinary standard for practice is the Model Rules of Professional Conduct adopted by the American Bar Association on August 2, 1983, as amended.
- (2) An attorney or non-attorney who has been admitted to practice under Rule 46(a) or (b) or permitted to appear under Rule 46(c) of the Court's Rules of Practice and Procedure--called "practitioner" in these rules--is subject to the Court's disciplinary authority for professional misconduct, which means:
 - (A) an act or omission that violates the Court's disciplinary standard or any other disciplinary rules applicable to the practitioner; or
 - (B) an act or omission that resulted in discipline by another jurisdiction at any time after the practitioner's admission to practice before the Court; or
 - (C) a failure to comply with these Rules.
- (3) Discipline imposed by the Court may be disbarment or suspension from practice before the Court, public reprimand, private admonition, or such other discipline as the Court deems appropriate. In the case of a non-attorney practitioner, the equivalent of disbarment is the revocation of admission to practice.
- (4) Nothing in these rules will be construed to deny the Court the powers--such as contempt powers under 38 U.S.C. § 7265(a)--necessary to maintain control over its proceedings.

(c) Proof.

- (1) In a proceeding for admission or reinstatement to practice, the applicant must establish by clear and convincing evidence that he or she has the requisite character and qualifications.
- (2) In a misconduct proceeding, discipline will be imposed only upon a finding of clear and convincing evidence that the practitioner committed the misconduct alleged.

(d) The Court. Unless these rules specify otherwise, action by the Court under these rules will be by a randomly selected panel of three active judges, acting in camera. A hearing before the Court is not authorized.

[Comment: This rule is expanded to include reference to admission standards, to set forth the burdens/standards of proof in a single rule, and to clarify that the Court handles these matters through a three-judge panel, in camera, with no hearing authorized. Failure to comply with an order or rule of practice and procedure is no longer a specific basis for discipline because such failures, if warranting discipline, are covered by the Model Rules. The content of old Rule 12 (relationship of these rules to the Court's general disciplinary powers) is moved to this rule.]

RULE 2. COMMITTEE ON ADMISSION AND PRACTICE

(a) Appointment.

- (1) The Chief Judge shall appoint three members of the Court's bar to serve as a Committee on Admission and Practice, designating one member as the Chair.
- (2) Each member is appointed for a term of three years, and may be reappointed to one additional term.

- (3) A member may serve until a successor has been appointed. If a member holds over after his or her term expires, the holdover period is part of the successor's term.
- (4) The Chief Judge or the Board of Judges may revoke an appointment at any time; the successor appointed will serve the unexpired term of his or her predecessor.
- (5) If, in any case, the Chair recuses him or herself, the next senior member (by longevity) will assume the responsibilities of Chair for that case only. If both members have equal service, the Chair will designate one to act as Chair when announcing his or her recusal.
- (6) If, in any case referred to it, two members of the Committee recuse themselves, the Chief Judge shall appoint a member of the Court's bar to serve on the Committee for that case only. If one of the recused members is the Chair, the remaining permanent member will assume the responsibilities of Chair for that case only.

(b) Referral. Normally, the Court will refer matters requiring action under these Rules to the Committee only when:

- (1) essential facts are in dispute; or
- (2) there is a question whether the evidence initially submitted is sufficient to support a decision; or
- (3) another matter concerning the same person is pending before the Committee; or
- (4) the Court concludes that the views of the Committee would materially assist it in deciding the matter.

(c) Action by the Committee

- (1) Upon receiving a matter referred by the Court, the Committee must notify the applicant or practitioner
 - (A) of the adverse matters; and
 - (B) that he or she may submit a response under oath to those matters within 30 days after the date of the notice, unless that time is extended by the Chair for good cause; and
 - (C) that he or she may request, in writing within 30 days after the date of the notice, a hearing before the Committee.
- (2) Service of any notice, inquiry, or report will be by certified mail.
- (3) The Committee must investigate the matter, to include the gathering of such additional evidence as it deems appropriate to fulfilling its responsibilities, and submit its report to the Court as soon as practicable. In investigating practitioner misconduct, the Committee must consider, but is not bound by, the American Bar Association Standards for Imposing Lawyer Sanctions.

(d) Hearings.

- (1) On its own initiative, the Committee may conduct a hearing into any matter referred to it.
- (2) All hearings are conducted in private, either in person at the Court's location or by telephone, at the option of the applicant or practitioner. Testimony must be under oath or affirmation and is subject to cross-examination. The applicant or practitioner is entitled, at no expense to the Court or the Committee, to
 - (A) be represented by counsel retained by him or her ; and
 - (B) submit any relevant information, including the testimony of witnesses.
- (3) A transcript of the hearing will be prepared at the Court's expense, and a copy provided to the applicant or practitioner.

- (e) **Duty to Cooperate.** It is the duty and responsibility of the applicant or practitioner and his or her counsel to cooperate with the Committee. If they fail to do so, the Committee may render its report to the Court without further input.
- (f) **Report and Rebuttal.** The Committee must serve on the applicant or practitioner a copy of its report, with a notice that any written rebuttal may be submitted directly to the Court within 30 days after the date of the report.

[Comment: Appointment authority is moved from the Court to the Chief Judge, but either can terminate an appointment. Appointment of a one-time substitute when two members recuse themselves is now provided. A provision on discretionary referrals to the Committee has been adapted from old Rule 2(d)(4). All Committee procedures are described here, with references in other rules. A single opportunity for a hearing is provided, with a waiver resulting from inaction. Rule 3(b)(1) applies the hearing rules to applicants for admission. To foster some consistency in discipline, the rule tells the Committee to consult the ABA sanction standards, but makes it clear that they are not binding.]

RULE 3. ADMISSION AND REINSTATEMENT

(a) Referral.

- (1) The Clerk must refer to the Chief Judge any application for admission to practice when it appears that the applicant may not be qualified under Rule 46(a) or (b) of the Court's Rules of Practice and Procedure.
- (2) If the Chief Judge determines that the matter raised is not disqualifying, the Clerk will be directed to grant admission; otherwise, the Clerk will be directed to docket the matter and refer it to a panel of the Court.
- (3) The Clerk must docket an application for reinstatement to practice and refer it directly to a panel of the Court.
- (4) The Court will (A) direct the Clerk to grant admission or reinstatement, or (B) issue an order describing the potential disqualification and directing the applicant to show cause why the application should not be denied, or (C) refer the matter to the Committee for action under Rule 2.

(b) Action by the Court. If a response to a show-cause order has been filed or the time for filing it has expired, the Court may act on the application or refer it to the Committee for action under Rule 2.

[Comment: Admissions and grievances (now called accusations) are treated separately in Rules 3 and 5. This rule is based on the admissions section of old Rule 2, and incorporates related information about petitions for reinstatement. It also makes clear that the Court can act without referral to the Committee, and provides for referral to the Chief Judge, who can decide that no action is needed.]

RULE 4. PRACTITIONERS CONVICTED OF CRIMES OR DISCIPLINED BY OTHER COURTS OR GOVERNMENTAL ENTITIES

(a) Evidence.

- (1) A certified court judgment showing that a practitioner has been convicted of a crime is conclusive proof of that fact for purposes of a disciplinary proceeding in the Court.
- (2) Credible evidence of a final determination in another court or government entity that a practitioner has committed and been disciplined for professional misconduct is conclusive proof of that fact for purposes of a disciplinary proceeding in the Court unless the Court finds, by clear and convincing evidence, that:
 - (A) the prior procedure was so lacking in notice or opportunity to be heard that it constituted a deprivation of due process; or
 - (B) there was such an infirmity of proof as to the misconduct that the Court could not, consistent with its duty,

accept as final the conclusion on that subject; or

(C) the imposition of discipline by the Court would result in a grave injustice.

(b) Conviction of a Serious Crime.

- (1) Upon receiving evidence that a practitioner has been convicted of a serious crime, as defined in (3) below, in any court of the United States, of the District of Columbia, or of any state, territory, commonwealth, or possession of the United States, the Clerk must
 - (A) issue an order immediately suspending the practitioner from practice, regardless of the pendency of any case in the Court, and refer the matter to a panel of the Court; and
 - (B) serve a copy of the order to the practitioner, to any appellants represented by the practitioner, and to a sponsoring attorney or organization, as appropriate.
- (2) The Court will issue an order directing the practitioner to show cause why a specific discipline should not be imposed. Upon receipt of a response or the passage of the time for a response, the Court will
 - (A) revoke the suspension in the interest of justice; or
 - (B) impose discipline, subject to the limitations in (a)(2) above; or
 - (C) refer the matter to the Committee for action under Rule 2.

In any case, discipline will not be imposed until all appeals from the conviction are concluded.

(3) The term "serious crime" includes:

- (A) a felony in the jurisdiction where the judgment was entered; or
- (B) a lesser crime that involves moral turpitude; or interference with the administration of justice; or false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, or theft; or
- (C) an attempt, or a conspiracy or solicitation of another, to commit a "serious crime."

(4) A practitioner suspended under (1) above will be reinstated immediately upon a showing that the underlying conviction has been reversed. However, such reinstatement will not preclude initiation or continuance of a disciplinary proceeding under Rule 5. In such a proceeding, evidence of the conduct that resulted in the conviction may be considered despite the reversal of the conviction.

(c) Conviction of Any Other Crime. Upon receiving evidence that a practitioner has been convicted of a crime (other than minor traffic offenses) not defined in (b)(3), above, as a "serious crime," the Clerk must refer the matter to the Chief Judge. If the Chief Judge determines that the misconduct may potentially affect the practitioner's professional character, the Clerk will be directed to refer the matter to a panel of the Court for a proceeding as in the case of a "serious crime." Otherwise, the Clerk will be directed to close the matter and notify the practitioner.

(d) Reciprocal Discipline.

(1) Upon receiving evidence that a practitioner has been disciplined for misconduct by another court or governmental entity, the Clerk must refer the matter to the Chief Judge. If the Chief Judge determines that no action is required or that the matter can best be resolved by a private admonition, he may take appropriate action and direct that the case be closed; otherwise, the Clerk will be directed to refer the matter to a panel of the Court.

- (2) The Court may (A) take no action and close the matter; or (B) issue an order to show cause why the identical discipline should not be imposed by the Court, enclosing a copy of the judgment or order from the other court or entity; or (C) refer the matter to the Committee for action under Rule 2.
- (3) If the Court has issued an order to show cause, and a response has been filed or the time for filing it has expired, the Court may
 - (A) take no action and close the case; or
 - (B) impose the identical or a lesser degree of discipline; or
 - (C) if it finds that the misconduct warrants a greater degree of discipline or that there is evidence of additional misconduct before the Court, refer the matter to the Committee for action under Rule 2.
- (4) If the discipline imposed in the other jurisdiction has been stayed, the Court may, in its discretion, defer any reciprocal discipline until the stay expires.

[Comment: This rule combines the similar proceedings for discipline for criminal convictions and reciprocal discipline. In both, the Court accepts the adjudications of other bodies as conclusive proof of the underlying misconduct. The rule allows action on "credible" evidence because a certified document is not always available, especially when an attorney consented to discipline based solely on a bar committee decision. A copy of that decision under a bar committee cover letter should be sufficient to institute action. Like Rule 3, this rule gives the Chief Judge authority to close or take minor action in a case other than one involving a serious crime. Cases arising under this rule do not ordinarily require an evidentiary hearing, as the underlying facts are already proven; the rule provides for Court action without referral to the Committee except in a mixed case of reciprocal discipline plus a violation of our rules.]

RULE 5. ACCUSATIONS OF MISCONDUCT

- (a) Screening.** Upon receiving an accusation of a practitioner's misconduct (sometimes called a grievance), the Clerk must evaluate the information provided. If the actions described would not constitute misconduct even if true, or if the matter is not within the Court's disciplinary authority, the Clerk shall return the matter, with an explanation of his findings, to the person who made the accusation. If the accusation has prima facie validity as a matter within the Court's disciplinary authority, the Clerk must refer the matter to a panel of the Court.
- (b) Action by the Court.**
 - (1) The Court may:
 - (A) find that the actions described would not constitute misconduct if true, or that the matter is not within the Court's disciplinary authority, and direct the Clerk to return the matter to the filing party with notice of that finding;
 - (B) refer the accusation to the Committee for action, if appropriate, under Rule 2; or
 - (C) issue an order to show cause why a specific discipline should not be imposed by the Court..
 - (2) Upon receiving the Committee report and any rebuttal or upon the running of the time for rebuttal, or upon receiving a response to a show-cause order, the Court may:
 - (A) dismiss the accusation as unfounded or unsupported by sufficient evidence;
 - (B) determine that private discipline is appropriate and issue an order of admonition to the practitioner; or
 - (C) determine that public discipline is appropriate and, subject to (c) below, issue an order setting forth the essential facts of the misconduct, the rationale for imposing sanctions, and the sanction imposed, to include any

conditions thereon.

- (c) **Reconsideration or review.** If the Court decides to impose public discipline, it will first advise the practitioner of that determination in an unpublished order, providing the practitioner 14 days from the date of the order to file a motion for reconsideration or en banc review. The motion must identify, with reasonable specificity, the alleged error(s) requiring reconsideration or review.

[Comment: This rule, when read together with new Rule 2, is based on the grievance section of the old Rule 2. It provides for initial informal screening by the Clerk, and for formal inquiry by referral to the Committee as well as action by the Court without Committee referral. See also Rule 12 regarding orders for public discipline.]

RULE 6. DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

- (a) **Consent to Disbarment.** The Clerk shall issue an order disbaring a practitioner who is the subject of an investigation or proceeding involving allegations of misconduct when the practitioner files an affidavit stating that he or she:
- (1) is aware of the pending investigation or proceeding, the nature and allegations of which must be specifically set forth in the affidavit; and
 - (2) acknowledges that the material facts so alleged are true or that he or she has no defense to the allegations; and
 - (3) consents freely and voluntarily to disbarment, with full awareness of its implications.
- (b) **Reciprocal Action.** The Clerk shall issue an order disbaring an attorney admitted to practice before the Court upon the receipt of a notice showing that the attorney was disbarred on consent or resigned from the bar of either (A) any other court of the United States or (B) the District of Columbia or any state, territory, commonwealth, or possession of the United States, while an investigation into allegations of misconduct was pending.

[Comment: No substantive change. Confidentiality provision now covered in new Rule 12.]

RULE 7. REINSTATEMENT AFTER DISBARMENT OR SUSPENSION

- (a) **General Rule.**
- (1) A practitioner suspended for a definite period may resume practice at the end of the suspension period. If any conditions were imposed in the suspension order, the practitioner may resume practice only after filing with the Clerk an affidavit of compliance with those conditions.
 - (2) A practitioner whose suspension was directed to run concurrently with a suspension mandated by another court may resume practice only after filing with the Clerk an affidavit that he or she has been reinstated by the other court.
 - (3) A practitioner suspended indefinitely or disbarred may not resume practice before the Court until reinstated by order of the Court.
- (b) **Application for Reinstatement.**
- (1) A disbarred or indefinitely suspended practitioner seeking reinstatement must file an application with the Clerk, but not within one year after the date of the disbarment or suspension order.
 - (2) Upon receiving the application, the Clerk must promptly refer the petition to a panel of the Court for action under Rule 3 above.
- (c) **Conditions of Reinstatement.** The Court may condition reinstatement on (1) the payment of all or part of the costs of the proceedings and (2) partial or complete restitution to parties harmed by the misconduct that led to the suspension or

disbarment.

- (d) Successive Applications.** A subsequent application for reinstatement may not be filed within one year after a denial of a prior application filed by or on behalf of the same person.

[Comment: No substantive change.]

RULE 8. PERSONS SPECIALLY ADMITTED

A person admitted to practice before the Court for a particular case (pro hac vice) under Rule 46(c) of the Court's Rules of Practice and Procedure is subject to the disciplinary authority of the Court for any alleged misconduct in the course of, in the preparation for, or in connection with that case.

[Comment: No substantive change. Note that this numbering preserves the cross-reference in Rule 46(c) of the Court's Rules of Practice and Procedure.]

RULE 9. PROCEEDINGS WHEN PRACTITIONER DECLARED MENTALLY INCOMPETENT OR ALLEGED TO BE INCAPACITATED

- (a) Practitioner Declared Mentally Incompetent.** Upon receiving evidence that a practitioner has been

- (1) judicially declared incompetent; or
- (2) involuntarily committed to a mental health facility,

the Clerk shall issue an order suspending the practitioner from practice for an indefinite period and shall serve a copy of the suspension order upon the practitioner, the guardian, the director of the mental health facility, any appellants represented by the practitioner, and to a sponsoring attorney or organization, as appropriate.

- (b) Practitioner Alleged to be Incapacitated.**

- (1) Upon receiving information that
 - (A) a practitioner's physical or mental condition may adversely affect the practitioner's ability to practice law; or
 - (B) a practitioner may be incapacitated for the practice of law by reason of the use of drugs or intoxicants,

the Clerk must inform the Court, which may take or direct action to determine whether the practitioner is so incapacitated, including examination by qualified medical experts designated by the Court. Failure or refusal to submit to such examination is prima facie evidence of incapacity.

- (2) If it appears that the practitioner is incapacitated, the Court will order the practitioner to show cause why he or she should not be indefinitely suspended. After consideration of any response, if the Court finds that the person is incapacitated and should not be permitted to continue to practice, the Court will enter an order suspending the practitioner for an indefinite period. Copies of the order will be sent to any appellants represented by the practitioner, and to a sponsoring attorney or organization, as appropriate.

- (c) Claim of Disability during Disciplinary Proceedings.** Whenever a practitioner contends, during a disciplinary proceeding, that he or she is incapacitated for any of the reasons listed in (b) above and that this disability makes it impossible to present an adequate defense, the Court will immediately suspend the practitioner from practice until a determination is made, under the provisions of (b) above, that the incapacitation has ended or no longer impedes the ability to participate in the disciplinary proceeding.

- (d) Application for Reinstatement.**

- (1) A former practitioner suspended for mental incompetency or incapacitation may apply for reinstatement once a year or at such shorter intervals as the Court may direct in its suspension order.
 - (2) The applicant must show by clear and convincing evidence that the disability has been removed and the applicant is fit to resume practice before the Court.
 - (A) The filing of the application waives any doctor-patient privilege with respect to treatment pertinent to the disability received during the period of disability underlying the suspension. The applicant may be required to disclose the name of every medical practitioner and facility by whom or in which he or she was examined or treated for the disability, and to furnish the Court with written consent for those persons or facilities to divulge information or records concerning that examination or treatment if requested by the Court's medical experts.
 - (B) The Court may take or direct appropriate actions to determine whether the disability has been remedied, including an examination, at the applicant's expense, by qualified medical experts designated by the Court.
 - (3) When a person suspended due to either a judicial declaration of incompetence or an involuntary commitment to a mental hospital has been judicially declared to be competent, the Court may accept that declaration as conclusive evidence of the removal of the disability and may direct the reinstatement of the person upon such terms as it deems appropriate.
- (e) **Confidentiality.** Orders announcing suspensions under this Rule will state only that the Court finds that the person has a disability which precludes his or her continued practice before the Court. See Rule 12(b).

[Comment: Provides for suspension by Clerk in cases of judicially-determined incompetence or involuntary hospitalization.]

RULE 10. LOSS OF SPONSORSHIP BY NON-ATTORNEY PRACTITIONER

- (a) **Initial Action.** Upon receiving information that a non-attorney practitioner is no longer
- (1) under the direct supervision of an attorney admitted to the Court's bar; or
 - (2) employed by an organization chartered by Congress and recognized by the Secretary of Veterans Affairs for claims representation,
- the Clerk shall issue an order directing the practitioner to show cause why he or she should not be suspended from practice until the deficiency is remedied.
- (b) **Recertification.** If the non-attorney practitioner is under a new sponsorship arrangement, he or she must file a new certificate by the appropriate attorney or organization officer, identical to that required for admission.
- (c) **Suspension.** If the non-attorney practitioner fails to respond to the order, or verifies the loss of sponsorship, the Clerk shall suspend him or her from practice until a new sponsorship certificate, identical to that required for admission, is received.

[Comment: This is a new rule, allowing the Clerk to deal with non-attorney practitioners who move or change jobs and need to be recertified as to sponsorship/supervision.]

RULE 11. DUTIES OF PRACTITIONERS

- (a) **Notice of Convictions or Discipline.** A practitioner before the Court must, within ten days after the occurrence, notify the Clerk, all clients presently represented before the Court, and all adverse parties in those cases, in writing, of any:
- (1) public discipline for professional misconduct;
 - (2) indictment for or charging with a serious crime (as defined in Rule 4(b)(3));

- (3) conviction of any crime (other than minor traffic offenses);
- (4) disbarment on consent; or
- (5) resignation from the bar of any court while an investigation into an allegation of misconduct is pending.

(b) Notice of Address Change. A practitioner before the Court must promptly notify the Clerk of any change of address. Absent such notice, the mailing of documents to the most recently provided address of that practitioner will be fully effective.

[Comment: This rule has been expanded to place an obligation on all practitioners to keep the Court advised of their address, and to provide that a failure to provide that notice will not affect attempted communications with the practitioner. This parallels the provision in Rule 2(e) concerning cooperation with the Committee.]

RULE 12. ACCESS TO DISCIPLINARY INFORMATION

(a) Confidentiality.

- (1) The charges, investigations, hearings, and other proceedings under these Rules are confidential except as otherwise provided in this Rule, but in no case will the affidavit required under Rule 6(a) be released.
- (2) For purposes of this Rule:
 - (A) "nonpublic information" means all documents in a case other than public orders issued by the Court in imposing sanctions; and
 - (B) "predecisional or advisory documents" include, but are not limited to, the report of the Committee, if any, and communications between the Clerk and the Court.

(b) Public Nature of Sanctions and Orders. Disbarments, suspensions, and public reprimands will be announced in public orders which, except for suspensions under Rule 9, will set forth the rationale for imposing the sanction in that particular case. Orders announcing suspensions under Rule 9 will state only that the Court finds that the person has a disability which precludes his or her continued practice before the Court.

(c) Request for Nonpublic Information. Except as provided below, the Clerk shall deny a request for nonpublic information.

- (1) On request, the practitioner concerned will be provided a copy of the Court's file, including the Committee report but not other predecisional or advisory documents.
- (2) The Clerk will disclose the pendency, general subject matter, and status of an ongoing proceeding if:
 - (A) the practitioner has waived confidentiality, in writing, or
 - (B) there is an immediate need to notify another person or organization in order to protect the interests of that person or organization other than in a case pending before the Court.
- (3) Subject to the limitations in (d) below, the Clerk may provide the evidentiary and procedural portions of the file (but not predecisional or advisory documents) to another federal court to which the person is admitted or has applied for admission, or a state agency authorized to investigate attorney conduct for admission or discipline.

(d) Notice to Practitioner.

- (1) Before a release under (c)(3) above, if the practitioner has not provided a written waiver of confidentiality, the Clerk shall notify him or her, at the last known address, of the request and the general identity of the documents intended to be released. The notice will advise that the information will be released 21 days after the date of the notice unless

the practitioner objects. If an objection is filed, the information will remain confidential unless the requesting agency obtains a court order requiring its release.

- (2) Without notice or waiver, the Clerk may release the minimum nonpublic information necessary to respond to a request under (c)(3) above if the requesting court official or head of the agency certifies in writing that
- (A) the request is made as part of an ongoing investigation into the practitioner's misconduct, and
 - (B) the information is essential to that investigation, and
 - (C) disclosure of the investigation to the practitioner would seriously prejudice that investigation.

(e) Records of Disclosures. All requests for information and responses thereto, with any internal advice on the propriety and extent of any release, will be maintained as a part of the disciplinary file concerned.

(f) Duty of Participants. All participants in a proceeding under these Rules shall maintain the confidentiality mandated by this Rule.

[Comment: This is essentially a new rule. It is taken from Rule 16 of the ABA's MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT.]

RULE 13. DUTIES OF THE CLERK

(a) During Disciplinary Proceeding. During the pendency of any proceeding under these rules concerning a practitioner 's misconduct or incapacity, the Clerk shall not refer that practitioner's name to appellants before the Court.

(b) Notice to Other Jurisdictions. The Clerk shall promptly provide a certified copy of any order imposing public discipline to another court or governmental entity if there is reason to believe that the practitioner is admitted to practice before that body.

(c) Notice to National Discipline Data Bank. The Clerk shall promptly notify the American Bar Association's National Discipline Data Bank of any public discipline imposed by the Court upon an attorney practitioner.

[Comment: This is old Rule 11 with a new section (a). Old section (a) has been covered in new Rule 4(a). The new (a) provides for administrative suspension from the public list, to protect appellants who generally have little contact with the legal profession and who generally assume--despite contrary declarations--that placement on the list is also a blessing. It does not mention the public list, lest that list gain more officiality than it deserves as a courtesy for appellants, but not the bar.]