LR83.7 Attorney Discipline

(a) Conduct Subject to Discipline. The Court may impose discipline on any member of its bar who has violated the Rules of Professional Conduct as adopted by the Supreme Court of Tennessee, or has engaged in unethical conduct tending to bring the Court or the bar into disrepute. The Court may also discipline any member who has been suspended or disbarred from the practice of law by the state in which he or she is a member, or by any court of record. Discipline which may be imposed includes disbarment, suspension, reprimand, or such other further disciplinary action as the Court may deem appropriate and just. Nothing in this rule shall be construed as limiting in any way the exercise by the Court of its inherent contempt power or its authority to impose other sanctions provided under federal law and the Federal Rules of Civil or Criminal Procedure.

(b) Initiation of Disciplinary Proceedings. Formal disciplinary proceedings shall be initiated by the issuance of an order to show cause signed by the Chief Judge. An order to show cause may be issued by the Chief Judge on his or her own initiative or upon a complaint filed by any counsel of record or party to an action in this Court. When such order is issued on the Court's initiative, no separate complaint need be filed. All complaints relating to disciplinary matters under this rule shall be filed under seal with the Clerk. All records pertaining to attorney disciplinary proceedings, except with respect to reinstatement proceedings, shall be confidential and kept under seal in the Clerk's Office unless otherwise ordered by the Court.

All complaints of attorney misconduct shall include:

(1) The name, address, and telephone number of the complainant;

(2) The specific facts that require discipline, including the date, place and nature of the alleged misconduct, and the names of all persons and witnesses involved;

(3) Copies of all available documents or other evidence that support the factual allegations, including a copy of any rule or order of the Court that is alleged to have been violated; and

(4) At the end of the complaint, a statement signed by the complainant under penalty of perjury that the complainant has read the complaint and the factual allegations contained therein are correct to the best of the complainant's knowledge.

(c) Initial Action on the Complaint. Upon filing, the complaint shall be sent to the Chief Judge for initial review.

(1) If the Chief Judge determines that the complaint on its face or after investigation is without merit or does not warrant action by the Court, the complaint shall be dismissed by order of the Chief Judge.

(2) If following review it is determined that reasonable grounds exist for further investigation, the Chief Judge may order such investigation or may issue an order to show cause if the complaint appears to be meritorious. A copy of the order to show cause, the

complaint, and accompanying documents shall be served on the member who is the subject of the complaint. The member shall also receive a copy of this rule and a written statement that the member shall have 21 days from the date of entry of the order to show cause in which to respond.

(3) Alternatively, the Chief Judge may refer the matter to a state disciplinary board for such action as it determines is appropriate.

(4) Once a disciplinary action is initiated and while such action is pending, no certificate of good standing shall be issued to the attorney until the matter is resolved.

(5) In exceptional circumstances and upon receipt of sufficient evidence demonstrating that an attorney poses a substantial threat of serious harm to the public or the administration of justice, the Chief Judge may place the attorney on interim suspension or impose other restrictions on the attorney's rights to practice in this Court pending a final determination in any proceeding under this Rule.

(d) Attorneys Convicted of Crimes.

(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Chief Judge shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty, or *nolo contendere* or from a verdict after trial or otherwise, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Chief Judge may set aside the suspension when it appears in the interest of justice to do so.

(2) The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Chief Judge shall, in addition to suspending that attorney in accordance with the provisions of this Rule, institute a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all direct appeals from the conviction are concluded.

(5) Upon the filing of a certified copy of a judgment of conviction of any attorney for a crime not constituting a "serious crime," the Chief Judge may consider whatever action is warranted, including the institution of a disciplinary proceeding; provided, however, that the Chief Judge may make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney based on the conduct that resulted in the conviction.

(e) Response. A member against whom an order to show cause is issued shall have 21 days from the date of the entry of the order in which to file a response. The response shall be filed, under seal, with the Clerk, and shall contain the following:

(1) The name, address and telephone number of the respondent.
(2) A specific admission or denial of each of the factual allegations contained in the complaint and order to show cause and, in addition, a specific statement of any facts on which respondent relies, including all other material dates, places, persons and conduct relevant to the allegations of the order.
(3) All documents or other supporting evidence not previously filed with the complaint or order that are relevant to the charges of alleged misconduct.
(4) A specific request for a hearing or a statement specifically declining a hearing.
(5) A statement signed by the respondent under ~~the~~ penalty of perjury indicating that the respondent has read the response and that, to the best of respondent's knowledge, the facts alleged therein are correct.

(f) Summary Dismissal. If the response discloses that the complaint is without merit, it may be dismissed by the Chief Judge.

(g) Conformity with State Discipline. When the respondent has been disbarred or suspended from the practice of law by a state in which the member practices, and the respondent admits the action complained of, or does not respond to the order to show cause, the Chief Judge may enter a final order of the Court imposing similar discipline.

(h) Judicial Officer. Upon filing of the response, the Chief Judge may appoint a judge or other judicial officer from within the Eastern District of Tennessee to investigate the allegations of the complaint and the response. The judicial officer shall review all sealed documents related to the disciplinary charges, conduct hearings if necessary, and issue a written recommendation.

(i) Hearings on Disciplinary Charges. A disciplinary hearing shall be held when the member under investigation has requested such a hearing in a timely response or when the judge or the judicial officer has determined that such a hearing is necessary for the proper disposition of the charges.

(1) **Hearing Procedures.** When it has been determined that a hearing is necessary,

the judicial officer shall provide the member with written notice of the hearing a minimum of 21 days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the member is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.

(2) **Hearing Panel.** The Chief Judge will assign a three-judge panel to hear and determine the matter. The panel must include at least one active district judge. The other members of the panel may include senior judges, bankruptcy judges, and magistrate judges. The three judicial officers shall be randomly selected, except that the judicial officer who made the request for discipline or before whom the conduct giving rise to the request took place may not be appointed. If the alleged misconduct occurred in relation to a bankruptcy proceeding, the panel must include one bankruptcy judge. If the alleged misconduct occurred in relation to a magistrate judge's proceeding, the panel must include one magistrate judge.

(3) **Conduct of the Hearing.** The hearing shall be conducted by the panel, who shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the hearing. All witnesses shall testify under penalty of perjury. Such hearings, at the discretion of the panel, shall be confidential and shall be recorded. The record of the hearing shall be kept on file in the Clerk's Office, under seal.

(4) **Rights of the Complainant and the Respondent.** During the hearing, the respondent shall be entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine any adverse witnesses. The panel may permit the complainant to participate in the proceedings through counsel.

(5) **Burden of Proof.** The respondent's violation of the Rules of Professional Conduct or rule or orders of the Court or the respondent's engagement in unethical conduct tending to bring the Court or the bar into disrepute shall be proven by clear and convincing evidence. A certified copy of a final order of disbarment or judgment of conviction for a criminal offense, entered in any state or federal court, shall be considered clear and convincing evidence.

(6) **Failure to Appear.** The failure of the respondent to appear at the hearing shall itself be grounds for discipline under Subsection (a) of this rule.

(j) Recommendation. The panel shall prepare a written recommendation which shall include a proposed disposition of the disciplinary charges.

(1) **Filing of the Recommendation.** The recommendation shall be filed, under seal, in the Clerk's Office and copies distributed to the Court and the respondent.

(2) **Exceptions to the Recommendation.** The respondent shall have 14 days from the date of service of the recommendation in which to file with the Clerk a written response to the recommendation. The response shall not exceed 25 typewritten pages and shall state concisely any inaccuracies, errors or omissions which warrant a disposition other than that recommended.

(k) Final Action on the Recommendation. Within 30 days of the filing of any exceptions to the recommendation, the Court shall enter a final order of disposition. Notice of the final order shall be sent to the respondent and the complainant. Any attorney who is disciplined

pursuant to this Rule may be directed by the Court to pay all or part of the fees and expenses incurred by the Court and/or by any counsel appointed by the Court to investigate allegations of misconduct and/or to prosecute or defend the disciplinary proceedings.

(l) Reinstatement. Reinstatement shall be had only upon a petition by the disciplined member. A former member who has been suspended or disbarred from the practice of law by this Court because of suspension or disbarment in another court of record may, upon reinstatement to the other court, file a petition for reinstatement to this Court. Each petitioner shall pay an application fee to the Clerk which is not refundable. The petition shall be filed with the Clerk and shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed, and the grounds that justify reinstatement. The petition shall be signed by the petitioner under penalty of perjury stating that he or she has read the petition and that the factual allegations contained therein are correct to the best of the petitioner's knowledge. The petitioner has the burden of proving by clear and convincing evidence that he or she has the requisite good moral character, ethical standards, professional competence, and learning in the law necessary to serve as an officer of the Court and to be readmitted to the practice of law.

(1) A petitioner who has been suspended for a definite term may be automatically reinstated at the end of the period of suspension upon filing the petition for reinstatement accompanied by an affidavit showing compliance with the provisions of the order of suspension.

(2) Reinstatement of disbarred or indefinitely suspended lawyers shall not be automatic. Reinstatement of these disciplined members shall be had only upon a petition for good cause shown. Upon the filing of such a petition, the Court shall review it to determine whether there is clear and convincing evidence that the petitioner meets the qualifications for reinstatement. The Court in its discretion may order such investigation as it deems necessary and may order that a public hearing be conducted regarding any petition.

(3) If a petition is denied after an investigation or hearing, the Court may assess the costs of the proceedings against the petitioner.

(4) No petitions for reinstatement under this rule shall be filed within one year following an adverse determination upon a prior petition filed by the same petitioner.

(m) Appointment of Counsel. The Chief Judge may appoint counsel pursuant to this Rule to investigate allegations of misconduct, to prosecute disciplinary proceedings, to respond to the respondent-attorney's filings, and/or to represent the Court in any appeal. Whenever counsel is appointed pursuant to this Rule, the Court shall appoint as counsel one or more members of the Bar of this Court, provided, however, that the respondent-attorney may move to disqualify a lawyer so appointed who is or has been engaged as an adversary of the respondent-lawyer in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court. Counsel so appointed is authorized to engage investigators and/or experts at Court expense to assist counsel in the performance of counsel's duties.