

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS**

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for implementation and will be effective December 1, 2021, subject to a reasonable period for public notice and comment, as determined by the Clerk.¹ See 28 U.S.C. § 2071(b).

SECTION III: ATTORNEYS

LOCAL RULE AT-2 Attorney Discipline

- (a) **Generally.** The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this bar.
- (b) **Disciplinary Action Initiated in Other Courts.**
- (1) Except as otherwise provided in this subsection herein, a member of the bar of this court shall ~~automatically~~ lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements, or voluntary resignation unrelated to a disciplinary proceeding or problem. This rule shall include, but is not limited to, instances where an attorney: (A) is disbarred, (B) is suspended, (C) is removed from the roll of active attorneys, (D) resigns in lieu of discipline, (E) has his or her pro hac vice status revoked as a result of misconduct, or (F) has any other discipline affecting his or her right to practice law imposed, by agreement or otherwise, as a result of the attorney's failure to adhere to any applicable standard of professional conduct.

¹ New language appears in underlined text, and deleted language appears in strikethrough text.

(2) **Procedure.**

- (A) If it appears that there exists a ground for discipline set forth in paragraph (b)(1) above, the clerk shall serve a notice and order upon the attorney concerned, such order to become effective thirty days after the date of service, imposing identical discipline in this district.
- (B) Within twenty-one days of service of the notice and order upon the attorney, the attorney may file a motion for modification or revocation of the order. Any such motion must set forth with specificity the facts and principles relied upon by the attorney as showing good cause why a different disposition should be ordered by this court. The motion must also identify all cases currently pending in the Eastern District of Texas where the attorney has filed an appearance. For each matter, the motion should identify the attorney's client(s). The timely filing of such a motion will stay the effectiveness of the order until further order by this court.
- (C) If the attorney concerned files a motion seeking modification or revocation of the order, the matter shall be assigned to the chief judge, or a judge designated by the chief judge.
- (D) Discipline shall be imposed under this section unless the attorney concerned establishes that: (i) the procedure followed in the other jurisdiction deprived the attorney of due process, (ii) the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction, (iii) the imposition of the identical discipline would result in a grave injustice, (iv) the misconduct established by the other jurisdiction warrants substantially different discipline in this court, or (v) the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court.
- (E) As soon as practicable, the assigned judge shall consider the attorney's motion for modification or revocation on written submission. ~~If good cause is not established~~ Thereafter, the judge shall enter an appropriate order ~~directing that the clerk of the court may proceed to impose discipline set forth in the order described in paragraph AT 2(b)(2)(A) above~~ or take other such action as justice and this rule may require. ~~If the judge determines it is appropriate to hold a hearing, the judge may direct such a hearing pursuant to paragraph (b)(3) below.~~

(3) **Hearing.** If the judge determines that a hearing is appropriate, the concerned attorney shall have the right to counsel and at least fourteen days' notice of the date of the hearing. Prosecution of the reciprocal discipline may be conducted by an attorney specially appointed by the court. Costs of the prosecuting attorney and any fees allowed by the court shall be paid from the attorney admission fund.

(4) **Duty of Attorney to Report Discipline.** A member of this bar who has lost the

right to practice law before any state or federal court, either permanently or temporarily, must advise the clerk of that fact within thirty days of the effective date of the disciplinary action. For purposes of this rule, "disciplinary action" includes, but is not limited to, the circumstances set forth in paragraph AT-2(b)(1) above. The clerk will thereafter proceed in accordance with this rule. Absent excusable neglect, an attorney's failure to comply with this subsection shall waive that attorney's right to contest the imposition of reciprocal discipline.

(c) **Conviction of a Crime.** A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.

(d) **Disciplinary Action Initiated in this Court.**

(1) **Grounds for Disciplinary Action.** This court may, after an attorney has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any attorney:

(A) for conduct unbecoming a member of the bar;

(B) for failure to comply with these local rules or any other rule or order of this court;

(C) for unethical behavior;

(D) for inability to conduct litigation properly; or

(E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) **Disciplinary Procedures.**

(A) When it is shown to a judge of this court that an attorney has engaged in conduct which might warrant disciplinary action involving suspension or disbarment, the judge receiving the information shall bring the matter to the attention of the chief judge, who will poll the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the disciplinary matter will be assigned to the chief judge, or a judge designated by the chief judge, who will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing before the chief judge or a judge designated by the chief judge, if requested, or upon expiration of the time prescribed for a response if no response is made, the chief judge or a judge designate by the chief judge, shall enter an appropriate order.

(B) At any hearing before the chief judge or a judge designated by the chief

judge, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time of the hearing and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

- (e) **Notification of Disciplinary Action.** Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the United States Court of Appeals for the Fifth Circuit, and the National Discipline Data Bank operated by the American Bar Association.
- (f) **Reinstatement.** Except for suspensions as reciprocal discipline pursuant to paragraph AT-2(b), any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension, provided that the bar membership fee required by Local Rule AT-1(b)(3) has been paid. Any lawyer who was suspended as reciprocal discipline pursuant to paragraph AT-2(b) may apply, in writing, at the end of the period of suspension imposed by this court. In the application for reinstatement, the attorney shall advise the court of the status of the attorney's right to practice before the jurisdiction giving rise to reciprocal discipline in this court. The attorney shall also make a full disclosure of any disciplinary actions that may have occurred in other federal or state courts since the imposition of reciprocal discipline by this court. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

COMMENT: The proposed edits seek to address feedback received by the Committee since the adoption of the current version of AT-2(b) in 2019. Subsection 2(b)(1) is amended to remove the suggestion that reciprocal discipline is automatically imposed when the remainder of the rule provides a specific process to be followed before the imposition of any such discipline. Subsection 2(b)(2)(E) is amended to more broadly state the assigned judge's discretion in resolving an attorney's motion for modification or revocation of the order imposing reciprocal discipline.

So ORDERED and SIGNED this 21st day of October, 2021.



RODNEY GILSTRAP
Chief Judge