

Draft Changes to Civil LR 11

11. ATTORNEYS

11-1. The Bar of this Court

- (a) **Members of the Bar.** Except as provided in Civil L.R. 11-2, 11-3, 11-9 and Fed. R. Civ. P. 45(f), an attorney must be a member of the bar of this Court to practice in this Court and in the Bankruptcy Court of this District.
- (b) **Eligibility for Membership.** To be eligible for admission to and continuing membership in, the bar of this Court, an attorney must be an active member in good standing of the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.
- (c) **Procedure for Admission.** Each applicant for admission must present to the Clerk a sworn petition for admission in the form prescribed by the Court. Prior to admission to the bar of this Court, an attorney must certify:
 - (1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of this Court;
 - (2) Familiarity with the Alternative Dispute Resolution Programs of this Court; ~~and~~
 - (3) Understanding and commitment to abide by the Standards of Professional Conduct of this Court set forth in Civil L.R. 11-4; ~~and~~
 - (4) **Familiarity with the Guidelines for Professional Conduct in the Northern District of California.**

...

11-4. Standards of Professional Conduct

- (a) **Duties and Responsibilities.** Every member of the bar of this Court and any attorney permitted to practice in this Court under Civil L.R. 11 must:
 - (1) Be familiar and comply with the standards of professional conduct required of members of the State Bar of California;
 - (2) Comply with the Local Rules of this Court;
 - (3) Maintain respect due to courts of justice and judicial officers;
 - (4) Practice with the honesty, care, and decorum required for the fair and efficient administration of justice;
 - (5) Discharge his or her obligations to his or her client and the Court; and
 - (6) Assist those in need of counsel when requested by the Court.

Commentary

The California Standards of Professional Conduct are contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and decisions of any court applicable thereto.

- (b) **Prohibition Against Bias.** The practice of law before this Court must be free from prejudice and bias. Treatment free of bias must be accorded all other attorneys, litigants, judicial officers, jurors and support personnel. Any violation of this policy should be brought to the attention of the Clerk or any Judge for action under Civ. L.R. 11-6.
- (c) **Prohibition against Ex Parte Communication.** Except as otherwise provided by law, ~~or~~ these Local Rules or otherwise ordered by the Court, an attorney or party to an action must refrain from making telephone calls or writing letters or sending copies of communications between counsel to the assigned Judge or the Judge's law clerks or otherwise communicating with a Judge or the Judge's staff regarding a pending matter, without prior notice to opposing counsel.

Commentary

This rule is not intended to prohibit communications with a Courtroom Deputy Clerk regarding scheduling.

...

11-6. Discipline

- (a) **General.** In the event that a Judge has cause to believe that an attorney has engaged in unprofessional conduct, ~~the Judge may,~~ in addition to any action authorized by applicable law, ~~the Judge may do either or both any or all~~ of the following:
 - (1) Refer the matter to the Court's Standing Committee on Professional Conduct; or
 - (2) Refer the matter to the Chief District Judge ~~with the recommendation that an order to show cause be issued under Civil L.R. 11-7.~~ If the alleged unprofessional conduct arises in the Bankruptcy Court the Judge shall first refer the matter to the Chief Bankruptcy Judge, who may in turn refer it to the Chief District Judge.
- (b) **"Attorney" Defined.** For purposes of Civil L.R. 11-6, the term "attorney" ~~refers to any attorney admitted to membership in the bar of this Court or admitted to practice in this Court pro hac vice pursuant to Civil L.R. 11-3. The term "attorney" may include law corporations and partnerships, when the alleged conduct occurs in the course and scope of employment by the corporation or partnership, and includes any attorney admitted to practice in this Court pro hac vice pursuant to Civil L.R. 11-3.~~
- (c) **Standing Committee on Professional Conduct.** The Court will appoint, as special counsel for disciplinary proceedings pending before the Court, a Standing Committee on Professional Conduct consisting of a minimum of 7 and a maximum of 11 members, depending on the number of disciplinary matters referred to or active before the committee, and the Chief District Judge will designate one of the members to serve as Chair. All members of the Standing Committee must be members in good standing of the bar who practice regularly in this court. Members shall serve staggered ~~4-year~~ terms in 2 approximately equal groups, such that the members of one group are replaced or reappointed every 2 years. The Standing Committee may organize itself and conduct its affairs by subcommittees of one or more members as it deems advisable. All final actions of the Standing Committee require a majority vote. The Standing Committee will submit a confidential report of its activities ~~semi-annually by December 31 or more often~~ to the Clerk, the Chief

District Judge, the Clerk of the Bankruptcy Court and Chief Bankruptcy Judge and the ~~Discipline Oversight Professional Conduct~~ Liaison Judge.

(d) ~~Discipline Oversight Professional Conduct~~ **Liaison Judge**. The Chief District Judge shall appoint a District Judge to oversee the administration of this Local Rule and to serve as liaison to the Standing Committee. ~~The Chief District Judge may delegate some or all of the powers of the Chief District Judge under this rule to the Discipline Oversight Professional Conduct Liaison Judge.~~

(e) **Matters Referred To The Standing Committee**. Any Judge may ~~enter an order of initiate~~ a referral to the Standing Committee on Professional Conduct to ~~initiate an investigation into~~ investigate a charge or information that a member of the bar of this Court, an attorney appearing pro hac vice or an attorney employed or retained by the United States (see Civil L.R. 11-2) has engaged in unprofessional conduct in the practice of law before this Court. The Alternative Dispute Resolution Magistrate Judge may ~~enter an order of initiate~~ a referral based upon information provided by, and at the request of, the Alternative Dispute Resolution Department.

~~An order of To initiate~~ a referral to the Standing Committee on Professional Conduct ~~may be made on the public docket of an active , a Judge may either enter an order in the case or may be directed to the Clerk confidentially without a case number to refer the matter to the Standing Committee or submit to the Clerk of Court a written referral addressed to the Standing Committee.~~ Upon receipt of ~~either~~ an order of ~~or~~ a referral, the Clerk will open a new miscellaneous case under seal, file the original order of ~~or~~ referral and any accompanying exhibits thereto, and transmit a copy to ~~the chair of the members of~~ the Standing Committee ~~and, in the case of a referral from the Bankruptcy Court, the Chief Bankruptcy Judge.~~

Unless otherwise directed by the Court, the Standing Committee shall investigate the alleged or suspected unprofessional conduct in accordance with the following procedures:

(1) Investigations shall be conducted formally or informally as the Standing Committee deems appropriate to the circumstances of the case. Investigations shall be confidential unless the ~~Discipline Oversight Professional Conduct~~ Liaison Judge, upon application by the Standing Committee or the attorney who is subject to the investigation, determines that there is a compelling reason to make the matter public.

(2) At the written request of the Standing Committee, the Chief District Judge ~~(or in a matter referred by the Chief District Judge, the General Duty Judge)~~ may direct the issuance of subpoenas and subpoenas duces tecum.

(3) At the conclusion of its investigation, the Standing Committee may, if it deems appropriate, finally resolve any referred matter informally or by consent; if the attorney who was the subject of the investigation has admitted unprofessional conduct, however, the Standing Committee should obtain a written consent specifying a remedial plan. The Standing Committee shall prepare a **final** report summarizing its proceedings, its findings, any informal or stipulated resolution and its recommendation, if any, to the Court. If the Standing Committee's determination is to file a petition for formal discipline, it shall so state in the final report. ~~The final report shall be marked "CONFIDENTIAL: ATTORNEY DISCIPLINE MATTER" and shall include a proposed order directing the Clerk to close the file. The Standing Committee~~

~~shall direct the original final report to the Chief District Judge and a copy to the referring Judge. Upon The Standing Committee shall present to the Clerk for filing the original of its final report and a chambers copy for the referring Judge. Documents presented for filing in a sealed file under this rule shall be presented in the same manner as documents presented for filing under Civil L.R. 79-5(a) and shall be marked "CONFIDENTIAL: ATTORNEY DISCIPLINE MATTER. FILE UNDER SEAL." The Clerk shall file the original in the sealed file and direct the chambers copy to the referring Judge. Unless the final report of the Standing Committee recommends that the file remain open, the Clerk shall close the miscellaneous matter upon filing the final report and closing the file, the Clerk shall provide-serve the final report on notice to the attorney under investigation. and all persons who were given notice of the referral in the first instance. A case file in an attorney discipline matter that contains a report of the Standing Committee shall be maintained at the courthouse for a minimum of 5 years so as to be available for reference in the event of future discipline proceedings involving the same attorney.~~

- (4) If a majority of the members determine that public reprimand, suspension, disbarment, monetary sanctions or other formal discipline is warranted, and the respondent attorney does not consent, the Standing Committee shall institute a disciplinary proceeding by filing with the Clerk a sealed petition that specifies the alleged misconduct. Upon the filing of the petition, the Clerk shall assign a new civil case number to the matter and shall randomly assign it to a District Judge other than the referring Judge or the ~~Discipline Oversight~~ Professional Conduct Liaison Judge in the same manner as any other sealed civil action or proceeding. Unless otherwise directed by the assigned Judge, the proceeding shall then be presented by one or more members of the Standing Committee. For a matter arising in the Bankruptcy Court of this District, the assigned Judge may, sua sponte or upon motion by the respondent attorney, refer the matter to the Clerk of the Bankruptcy Court for assignment to a Bankruptcy Judge other than the referring Judge for hearing and a report and recommendation.
- (5) The Judge to whom ~~a civil case under this rule the proceeding~~ is assigned shall issue an order to show cause setting a date for hearing, addressed to the respondent attorney, requiring the attorney to appear and show cause why he or she should not be disciplined as ~~stated in the Judge's order prayed for in the petition~~. The order shall direct that a copy thereof, together with a copy of the petition, be served on the respondent in a manner permitted by Fed. R. Civ. P. 5(b) not less than 35 days in advance of the date specified for hearing. Any response must be filed no more than 14 days later. In the event the matter cannot be resolved solely based on the petition, the response and the hearing thereon, the Judge may order such additional proceedings as the circumstances of the particular case may warrant. Written findings of fact and an order based thereon shall be filed by the Judge when dismissing the proceeding or when imposing discipline. ~~Documents presented for manual filing in the case shall be marked "CONFIDENTIAL: ATTORNEY DISCIPLINE MATTER."~~ The entire case shall be maintained under seal and court proceedings shall be closed to the public unless, ~~upon written motion from either the Standing Committee or the respondent attorney, the Judge~~

determines that the interests of justice would be best served by opening all or part of the proceedings to the public. ~~the subject attorney voluntarily waives these requirements in writing; Documents shall be presented for filing in the manner specified in subparagraph (e)(23) of this Rule, except that t~~The Judge's final order, if imposing discipline, together with portions of the file deemed by the Judge to be appropriate for public disclosure, **will be unsealed and may be** made accessible to the public ~~on~~ **via** the Court's website and any other means ordered by the Judge **and will be disseminated to the Judges of the Northern District of California by the Clerk 7 days after the final order is filed, absent an extension by the Court. Upon motion by the respondent attorney, publication of the order imposing discipline may be stayed pending appeal, if an appeal of the discipline order is taken.** An order imposing discipline under this Rule may be appealed to the Court of Appeals.

- (6) Records other than court files, such as the confidential reports of the Standing Committee, shall be maintained as directed by the ~~Chief District Discipline Oversight Liaison~~ Judge.
- (7) After an order imposing discipline is filed, the Standing Committee ~~may~~ **shall** provide the Clerk with a list of other courts before which the Standing Committee knows the respondent attorney to have been admitted to practice. The list shall be compiled from information obtained in the course of the Standing Committee's work on the case and shall not require a separate investigation. The Clerk shall give prompt notice of the order of discipline to the disciplinary body of each such court.
- (f) **Costs.** ~~Any discipline or other resolution imposed under this Local Rule, including sanctions and punishment as provided for by Civil L.R. 11-8, may include an order that the respondent attorney pay costs of prosecution, including out-of-pocket expenses of the presenting attorney.~~ Out-of-pocket expenses necessarily incurred by the Standing Committee in carrying out its responsibilities under these rules, if presented for reimbursement within 90 days of the conclusion of the proceeding ~~and not taxed against the respondent attorney,~~ will be paid by the Court.

...