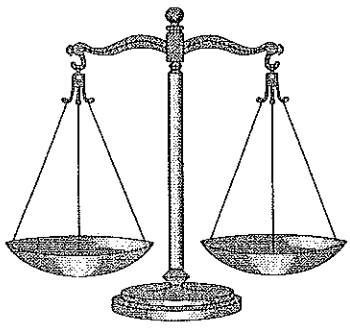
Working Papers of the Committee on Rules of Practice and Procedure

Special Studies of Federal Rules Governing Attorney Conduct



Leonidas Ralph Mecham, Director
Administrative Office of the United States Courts

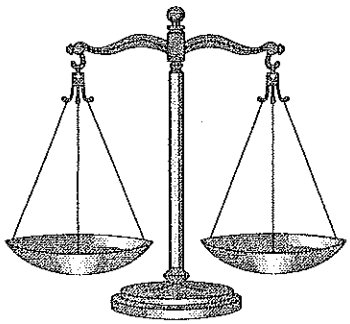
September 1997

Working Papers of the Committee on Rules of Practice and Procedure

Special Studies of Federal Rules Governing Attorney Conduct

Daniel R. Coquillette, Reporter
(Studies I, IIA, III, IV, V, VI)

Marie Leary, Federal Judicial Center
(Studies IIB, VII)



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Working Papers
Special Studies of Federal Rules
Governing Attorney Conduct

SUMMARY OF CONTENTS

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PREFACE by, Alicemarie H. Stotler

The materials pertaining to rules governing attorney conduct collected in this volume represent years of careful study and analysis on the part of Daniel R. Coquillette, Reporter to the Committee on Rules of Practice and Procedure, the Committee members, the staff of the Administrative Office of the United States Courts, the many participants at two major conferences on the subject, and the Federal Judicial Center. They are a direct outgrowth of the Local Rules Project, established in 1987 following authorization from the United States Judicial Conference for the Committee to study local rules in the federal courts, and the 1988 Congressional amendments to the Rules Enabling Act (28 U.S.C. 2071, *et seq.*) which were designed, in part, to regulate aspects of the local rulemaking process. It was clear at the outset of the Local Rules Project that the topic of Local Rules Governing Attorney Conduct was unique and special study was necessary before any action could be recommended.

Thus, at the direction of the Standing Committee, the Reporter instituted a series of intensive studies covering every aspect of the rules governing attorney conduct in the federal courts, including district, appellate, and bankruptcy courts. Two special conferences on the subject were convened in January and June of 1996. These conferences brought together a variety of distinguished experts from around the country to share their ideas and opinions on this complex and sometimes controversial subject. Participants included representatives from such diverse groups as the Department of Justice; the Federal Judicial Center; the American Bar Association; the American Law Institute; the Federal Bar Association; the Conference of Chief Justices; the American College of Trial Lawyers; the Association of Trial Lawyers of America; the National Association of Criminal Defense Lawyers; the Judicial Conference Committees on Court Administration and Case Management, Criminal Law, and Federal-State Jurisdiction; as well as ethics scholars, and members of the bar and the state and federal judiciary. A complete list of participants is included in the Introduction to Study III.

This volume contains the results of these unique efforts. The Committee decided to publish the collection so that the information gathered would be available, in one place, for those interested in the subject and those who will be involved in crafting solutions. It is our hope that these materials will foster wise and conscientious decisions and the continued cooperation of everyone involved in this far-reaching project.

The Committee owes a great debt of gratitude, first to Professor Coquillette, our esteemed Reporter, for his painstaking research and tireless dedication to this arduous task. In the Administrative Office, recognition must be given for the exceptional work done by Peter G. McCabe, John K. Rabiej, Mark D. Shapiro, and Patricia S. Channon. Also, two excellent studies, without which this volume would not be complete, were contributed by Marie Cordisco Leary of the Federal Judicial Center.

The study project benefitted greatly from the generous input of other Judicial Conference committees, particularly the Committee on Court Administration and Case Management and its chair, the Honorable Ann C. Williams; the Department of Justice, especially Ms. Jamie S.

Gorelick; Jeanne P. Gray and Margaret C. Love of the ABA; Geoffrey C. Hazard, Jr. of the ALI; and the Honorable Michael D. Zimmerman of the Conference of Chief Justices.

Finally, we wish to thank the chairs, members, and reporters of the five Advisory Rules Committees for their advice and contributions. The Honorable James K. Logan and Professor Carol Ann Mooney, chair and reporter, respectively, of the Advisory Committee on Appellate Rules, deserve special mention in this regard. From the Advisory Committee on Bankruptcy Rules, the Honorable Adrian G. Duplantier, chair; Professor Alan N. Resnick, reporter; and Mr. Gerald K. Smith, chair of the Subcommittee on Ethics, provided critical assistance with respect to the special issues pertaining to rules of attorney conduct in bankruptcy practice.

I am pleased to present this worthy example of teamwork and cooperation between the bench and bar which will result in long term progress and, in the end, rules governing attorney conduct in the federal courts that are clear, fair, and easy to follow.

Honorable Alicemarie H. Stotler, Chair,
Committee on Rules of Practice and Procedure,
Judicial Conference of the United States

INTRODUCTION by, Daniel R. Coquillette

INTRODUCTION CONTENTS

I. THE RESEARCH TEAM

These seven studies were undertaken at the direction of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (the Standing Committee) under its Congressional mandate to "maintain consistency and otherwise promote the interest of justice" with the Federal rules system. 28 U.S.C. § 2073 (b). The studies advance the Standing Committee's continuing duty to review local rules with a goal of national uniformity. (1996 Self-Study of Federal Judicial Rulemaking, 168 F.R.D. 679.) All seven studies were completed between July 1995 and June 1997. In addition to the empirical and legal research, two special invitational conferences were held under the auspices of the Standing Committee and with the generous support of the Administrative Office of the United States Courts. The first conference was held in Los Angeles, California, on January 9-10, 1996, and the second in Washington, D.C. on June 18-19, 1996. These conferences brought together experts in attorney conduct from the bench, the bar, other Committees of the Judicial Conference, the Department of Justice, and the Congress. More than sixty individuals were involved. Their names are set out in Studies II and III, together with the ambitious conference agendas. Without these public spirited and hard working volunteers, this project could not succeed.

This project has also been greatly assisted by the Federal Judicial Center. In particular, Study II (B), below, "Eligibility Requirements for, and Restrictions on, Practice Before the Federal District Courts" (November 7, 1995), and Study VII, below, "Standards of Attorney Conduct and Disciplinary Procedures: A Study of the Federal District Courts" (June 1997) were completed by Marie Leary of the Federal Judicial Center, at the request of the Standing Committee. The high quality of these studies speaks for itself. It has been an honor to be associated with Ms. Leary and these studies.

My work as Reporter would be impossible without the dedicated civil servants of the Administrative Office, beginning with the Director himself, Leonidas Ralph Mecham, and including Peter G. McCabe, Secretary to the Standing Committee, and all the extraordinarily helpful staff of the Rules Support Office, with particular thanks due to John K. Rabiej, Chief, Mark D. Shapiro, Judith W. Krivit, Anne Rustin, Catherine Campbell, and Patricia S. Channon of the Bankruptcy Judges Division. I am also deeply indebted to my learned colleague, Mary P. Squiers, and my able administrative assistant, Brendan Farmer.

I have had brilliant and deeply devoted research assistants. Particular thanks is due to Mr. Thomas Burton; James J.G. Dimas; and Thomas J. Murphy, all of Boston College Law School; and Ms. Rebecca Lampert, of Harvard Law School. Their intelligence and hard work are evident on every page.

Finally, all major Judicial Conference projects reflect the leadership of the Chair of the Standing Committee and its distinguished members. With a Committee

such as this, under the inspired leadership of the Honorable Alicemarie H. Stotler, work becomes a pleasure. Judge Stotler is a leader by example. Her wise judgment and ceaseless dedication to the public good has been an inspiration to us all. It has been a true privilege to serve such a Committee with such a leader.

II. THE MANDATE (28 U.S.C. § 2073 (b).)

Beginning in 1986, the Congress, through its Judiciary Committees, expressed concern about the proliferation of local rules in federal courts. There were over 5,000 of these rules, and the number was growing. Some of these rules were, at best, confusing to practitioners and, at worst, were in conflict with federal statutes or uniform federal rules enacted pursuant to the Rules Enabling Act, 28 U.S.C. § 2074. This Congressional concern was explicitly recognized by the 1988 Judicial Improvements and Access to Justice Act, 102 Stat. 4642 (1988), and by the establishment of the Local Rules Project in 1988, under the supervision of the Standing Committee. See the excellent account in Peter G. McCabe, "Renewal of the Federal Rulemaking Process," 44 *Am. U. L. Rev.* 1655, 1686-1687 (1995). See also Coquillette, Squiers, Subrin, "The Role of Local Rules," *A.B.A.J.* 62, 62-65 (January 1989).

The Standing Committee, unlike other Judicial Conference Rules Committees, has a direct Congressional mandate. See 28 U.S.C. § 2073 (b). The Committee's duties include a constant review of federal judicial rules "to maintain consistency and otherwise promote the interest of justice." 28 U.S.C. § 2073 (b). Rules are a special responsibility of the Standing Committee because they do not fall into the direct ambit of any Advisory Committee.

No area of local rulemaking has been more fragmented than local rules governing attorney conduct. This difficult subject was first raised at the outset of the Local Rules Project in 1988, and was then discussed extensively by the Standing Committee and invited experts at a Special Conference on Local Rules, convened by the Committee at Boston College on November 14, 1988. Many of the goals of the Local Rules Project, including uniform numbering, were relatively uncontroversial, but review of local rules governing attorney conduct proved to be highly contentious. Rather than jeopardize the early progress of the Local Rules Project, it was decided to defer this divisive issue to a later date.

By June 1994, the Local Rules Project had completed major studies of all other local rules, and had implemented an effective district-by-district project to reduce repetitious and inconsistent local rules. Only attorney conduct rules remained. The Standing Committee thus resolved to take up, once again, the problem of local rules governing attorney conduct, and to fulfill its statutory mandate from Congress to promote consistency and justice in this difficult area. As Reporter, I was directed to undertake a study of all local rules governing attorney conduct in the federal district

courts and the courts of appeals. The resulting research, Study I, was presented to the Committee on July 5, 1995, thus commencing this series.

III. THE STRUCTURE OF THE STUDIES

A. The Rules

Study I (July 5, 1995); Study II, B. (January 9, 1996)

Between July 1995, and June 1997, seven studies were completed, and all are included in this volume. The first two studies, Study I (July 5, 1995) and Study II, B (January 9, 1996), just focused on the local rules then in effect in the federal district courts and the courts of appeals. This may seem simplistic, but a look at Charts I, II, and III accompanying Study I (July 5, 1995) and the complex charts accompanying Study II (B) (January 9, 1996) will show an incredible balkanization among federal court local rules in this area. Indeed, the most recently completed study, Study VII (June 1997), shows that the earlier rule charts have already become outdated, and that the system has become even more confused. See Study VII, Table A-1, *infra*. Further, a number of federal districts have developed a "common law" to interpret and apply their rules, and a substantial group have no local rules governing attorney conduct at all, but rely solely on case law. All of these variants are analyzed in Study I and Study II (B). Study I concentrated on local rules governing attorney conduct, and Study II (B), ably done by Marie Leary, focused on local rules governing attorney admission and restriction on attorney practice.

In addition, Study VI (May 11, 1997) sets out the sources of all Bankruptcy Court local rules governing attorney conduct. It also includes an analysis of the relevant provisions for the Bankruptcy Code. 11 U.S.C. § 327. See Study VI, Chart II, *infra*.

Study I also contains an analysis of particular problem areas, illustrated by both case law and recent scholarly literature. There are specific examples of controversies caused by ambiguously drafted rules, absence of any rules, rule vagueness, lack of due notice, multi-forum complexity, and promulgation by federal agencies of their own rules governing attorney conduct. In addition, there is a discussion of some recent reform initiatives, including Resolution XII (1995) of the Conference of Chief Justices; the 1995 Resolution of the House of Delegates of the American Bar Association; the 1995 Congressional initiatives, including Senate Bill No. 3 (1995); and the draft rule prepared by the Illinois State Bar Association (February 14, 1995). There is also a discussion of prior efforts to adopt uniform rules, including the Federal Rules of Disciplinary Enforcement. These were promulgated in 1978 by the Committee on Court Administration and Case Management.

B. Recent Federal Case Law
Study II, A (January 9, 1996); Study III (June 18, 1996)

The Standing Committee was duly impressed by the baffling complexity of the rule systems described in Studies I and II, B, but asked the Reporter a sensible question: "Does this complexity actually cause problems in practice?" The Chair, the Honorable Alicemarie Stotler, had a related question: "If these balkanized attorney conduct rules do cause problems in federal courts, are the problems widespread, or do just a few rules or topics cause most of the federal problems?" The Deputy Attorney General, the Honorable Jamie S. Gorelick, also inquired as to "how many problems are caused by local rules restricting attorney conduct as to persons represented by another attorney?" See *ABA Model Rules of Professional Conduct*, Rule 4.2.

One obvious way to approach these questions was to review all recently reported federal cases. A major search, aided by a computer program, was made of all federal cases in the last five years (1990-1995). All cases citing rules regulating attorney conduct were examined, together with all cases using key words and phrases associated with attorney conduct. A large number of cases, 851, were identified, of which 443 directly involved the issues under scrutiny. These cases were then broken out into categories, based roughly on the *ABA Model Rules.* Cases citing the old *ABA Code* were "translated" into the most appropriate *ABA Model Rule* category. See Study II, A, Charts I and II, *infra.* A separate chart was made for cases involving F.R. Civ. P. R. 11 and other uniform or statutory rules governing conduct. See Study II, A, Chart III, *infra.*

This process was very labor intensive. Extraordinary work was done by my research assistants, James J.G. Dimas and Thomas J. Murphy. The results were striking. A large percentage of all federal cases involving attorney conduct fell into just a few categories. In particular, three *ABA Model Rule* categories — conflict of interest, communication with represented parties, and lawyer as witness issues — constituted 276 of the 443 cases, or over 62%. Most other categories had three or fewer cases. Seventeen *ABA Model Rule* categories had no federal cases at all in five years!

This survey was then repeated for the most recent federal cases, cases decided between July 1, 1995 and March 23, 1996. This resulted in Study III, "Supplement to Study of Recent Federal Cases (1990-1995)" (May 14, 1996). Over 70% of the most recent cases fell into just four *ABA Model Rule* categories — conflict of interest, represented parties, lawyer as witness and fees. Thirty *ABA Model Rule* categories never appeared at all. See Study III (May 14, 1996), Charts I, II, III, and IV.

One important result of these surveys is a complete set of files describing 520 cases decided between January 1, 1990, and March 23, 1996. These include abstracts of all reported federal cases directly involving issues of attorney conduct. This data base, standardized in the form provided as Illustration 1 to Study III, will continue to be

extremely valuable. Once again, much credit is due to my hardworking research assistants, James J.G. Dimas and Thomas J. Murphy.

C. Some Proposed Models for Reform
(Study IV, December 4, 1996)

The completion of Studies II and III, *infra*, coincided with the two special invitational conferences of experts, the first in Los Angeles on January 9-10, 1996, and the second in Washington, D.C. on June 18-19, 1996. The invited experts represented all constituencies of the bench and bar, and included delegates from the Department of Justice, the ABA, ATLA, the ALI, the American College of Trial Lawyers, the Conference of Chief Justices, Congress, and other Judicial Conference Committees, such as the Committee on Court Administration and Case Management.

Originally these experts considered four options:

1. A "National Standard" for Federal Courts, i.e., A Complete Code of Conduct Adopted by National Federal Rule;
2. A "State Standard" for Federal Courts, i.e., A National Uniform Federal Rule Adopting the State Standards of the Relevant State;
3. A "Model Local Rule," i.e., A Voluntary Local Model Rule similar to the "Federal Rules of Disciplinary Enforcement, Model Rule 4," (as promulgated by the Committee on Court Administration and Case Management in 1978 and adopted, in whole or part, by 15 of the 94 districts); and
4. Status Quo, i.e., "Do Nothing"

See Study I (July 5, 1995), Section G, "Practical Choices."

In light of Studies II and III, *infra*, a fifth option was added: i.e., adopting uniform national federal rules that only cover those "core" areas in which most reported federal controversies occur, leaving all other matters to state standards. Such a "core" would also include a national conflict of law rule. See *ABA Model Rule* 8.5. If the "core" rules included just these four categories: 1.) "Conflict of Interest," 2.) "Represented Parties," 3.) "Lawyer as Witness," and 4.) "Fees," they would cover 72% of all reported federal cases since 1990. See Study II, Section III, *infra*. If "Choice of Law" and other common litigation categories are added, 86.3% of all reported federal cases since 1990 would be covered. Providing that the remaining 13.7% be covered by state standards would seem a small concession, particularly since many of these cases are "Unauthorized Practice" and hard-core "Misconduct" cases, traditionally delegated to state enforcement agencies.

Both conferences agreed that Option 1 (a complete "national federal code") and Option 4 ("do nothing") were undesirable. Expert opinion then divided between Option 2 ("state standard"), Option 3 ("model local rule") and Option 5 ("core national rules, with state standard otherwise"). A full description of the conferences and the views there expressed is contained in the Minutes of the Committee on Rules of

Practice and Procedure, June 19-20, 1996, at pages 31-33. (These Minutes are also included with Study IV, Interim Report on Study of Rules Governing Attorney Conduct, December 4, 1996.) It was also agreed that three further reports were needed: 1.) an empirical study of the actual experience in the federal district courts, including unreported cases; 2.) a report on attorney conduct issues in the bankruptcy system, with particular attention to the impact of Section 327 of the Bankruptcy Code, 11 U.S.C. § 372; and 3.) a report on attorney conduct issues in the courts of appeals, with particular attention to Fed. R. App. P. 46. The Federal Judicial Center generously volunteered to assist with the first report, due to their resources and expertise in doing empirical work. See Study IV, December 4, 1996, *infra*. The result was Study VII, *infra*.

D. Special Concerns
(Studies V (May 10, 1997); VI (May 10, 1997).)

Following these recommendations, the Standing Committee requested me to do special studies on Courts of Appeals and Bankruptcy Courts. The reasons were obvious. Unlike federal district courts, courts of appeals can cover many states, making a "state standard" more problematic. Further, courts of appeals already have a uniform national rule governing attorney conduct — the vague, but sweeping "conduct unbecoming" standard of Fed. R. App. P. 46. Bankruptcy courts must accommodate the language of the Bankruptcy Code, particularly 11 U.S.C. § 327. They also have conflict of interest problems quite unlike anything encountered elsewhere, with often hundreds of parties in a suit and many shifting allegiances.

Any attempt at improving consistency among local rules governing attorney conduct would have important implications for both courts of appeals and bankruptcy courts. Many courts of appeals have local rules of their own to give specificity to Fed. R. App. P. 46, and these follow many different models. See Chart III, Study I (July 5, 1995), *infra*. If uniform standards were adopted for the districts within the circuit, it would be self-defeating to have a substantially different system for the court of appeals itself. Likewise, 73% of the 94 bankruptcy courts have explicitly or implicitly adopted the local rules of attorney conduct of their respective district courts. See Study VI, Part II, B., *infra*. Changes in the federal district court local rules, either by promulgating a model local rule or by substituting a national uniform rule through the Rules Enabling Act, would have a direct effect on these bankruptcy courts. Whether these would be for the good or bad should be resolved before any changes in the district court rules.

1. Special Concerns Relating to Courts of Appeals

The appeals court study, Study V, was completed on May 10, 1997. It has three parts. The first is an analysis of Fed. R. App. P. 46, the uniform national rule governing attorney conduct in courts of appeals. That rule is essentially identical to Rule 8 of the Supreme Court Rules, and uses a vague guilty of "conduct unbecoming a

member of the bar" standard. That standard was carefully examined by the Supreme Court in *In re Snyder*, 472 U.S. 634 (1985), which is set out as Appendix 4 to Study V, *infra*. In *Snyder*, the Supreme Court interpreted the "conduct unbecoming" phrase to require "conduct contrary to professional standards that show unfitness to discharge the continuing obligations to clients or the courts or conduct inimical to the administration of justice." *Id.* at 645. The Supreme Court further stated that "case law, applicable court rules and 'the lore of the profession', as embodied in codes of professional conduct" provide guidance in determining the scope of the affirmative obligations. *Id.* at 645. See also *Matter of Hendrix*, 986 F.2d 195, 201 (7th Cir. 1993) (Fed. R. Civ. P. 11 and *ABA Model Rules* provide guidance as to conduct sanctionable under Rule 46); *In re Bithony*, 486 F.2d 319, 324 (1st Cir. 1973) (complex code of behavior embodied in the *ABA Code* helps define "conduct unbecoming a member of the bar"). See Study V, Section II, A., *infra*, for further discussion.

Study V then collects all circuit court local rules interpreting Fed. R. App. P. 46, and analyzes the very considerable differences between them. See Study V, Section II, B., *infra*. Finally, Study V collects every case since 1990 involving Fed. R. App. P. 46, and/or any court of appeal local rule governing attorney conduct, and/or the "conduct unbecoming" standard, and/or Supreme Court Rule 8. Again, the hard work of James J.G. Dimas and Thomas J. Murphy made this possible.

The conclusions of Study V are straightforward. There is considerable inconsistency between courts of appeals as a matter of theory, due to very different local rules interpreting Fed. R. App. P. 46. But there is little problem in practice. Indeed, there have been only 37 cases since 1990 in all circuits. See Study V, Section II, C., *infra*. These few cases also fall into very narrow categories, the most common being misrepresentation of law or fact to the court, failure to prosecute criminal appeals with due diligence, failure to follow court rules (Fed. R. App. P. 46 (c)), and filing of frivolous appeals. See Study V, Chart I, *infra*.[1] I am most grateful to the Chair of the Advisory Committee on Appellate Rules, the Honorable James K. Logan, and to the Reporter, Professor Carol Ann Mooney, for their wise help in completing this study.

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[1] Professor Gregory C. Sisk has recently completed a major study of the proliferation of disparate local rules among courts of appeals. See Gregory C. Sisk, "The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits," 68 Colorado L. Rev. 1 (1997). Professor Sisk has written to the Standing Committee that:

> "Ideally, the vague standard of Federal Rule of Appellate Procedure 46 should be deleted and replaced by a new standard through the Rules Enabling Act.. However, although FRAP 46 does contain a uniform national ethical standard, a model local rules approach could still be applied in this context, in the nature of a clarifying or specifying local rule giving meaningful context to the 'conduct unbecoming a lawyer' standard."
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> (Letter, June 26, 1996)

2. Special Concerns Relating to Bankruptcy Courts

The study of bankruptcy courts, Study VI (May 10, 1997), presents a very different picture. In theory, most bankruptcy courts (73%) simply follow the local rules of the federal district court of their district. In practice, there are very substantial problems. These problems are caused both by the extreme complexity of many bankruptcy cases, and by the Bankruptcy Code itself, which has its own provisions relating to attorney conduct. See Study VI, Section II (C.), *infra*.

Study VI collects all local rules governing attorney conduct in bankruptcy courts, drawing on an excellent earlier study by Patricia S. Channon of the Administrative Office. See Study VI, Chart II, *infra*. It also collects all reported cases involving such local rules from 1990 through 1996. See Study VI, Chart I, *infra*. Finally, there is an analysis of the influence of the Bankruptcy Code, particularly 11 U.S.C. § 327, on attorney conduct standards in the bankruptcy courts. Valuable files on 93 reported cases have also been prepared, following the form set out as Illustration I to Study VI, *infra*.

A tentative conclusion of Study VI is that most bankruptcy courts have, in fact, developed standards of attorney conduct quite different from federal district court practice, whatever the local rules say. Another conclusion is that great care must be taken not to impose inappropriate uniform rules on bankruptcy practice. See the discussion at Study VI, Section III, *infra*. Already, the Bankruptcy Advisory Committee has established its own subcommittee on attorney conduct, ably chaired by Gerald K. Smith and assisted by Patricia S. Channon of the Administrative Office. I have also been greatly assisted by the Committee Chair, the Honorable Adrian G. Duplantier, and Reporter, Professor Alan N. Resnick. It is clear that there are real problems in practice. Additional work is needed.

E. An Empirical Study of Federal District Court Practice
(Study VII, June 1997)

Both the Standing Committee and I were concerned that all prior studies were largely restricted to "legal" sources, such as rules and reported cases, without collecting information first hand from those "in the trenches," such as court clerks and chief judges. A major survey of this type, directed at federal district court practice, was certainly required before any changes could be wisely proposed. Fortunately, the Federal Judicial Center offered to conduct the study, which involved distributing and tabulating extensive questionnaires to each of the 94 federal districts in the spring of 1997.

This study, Study VII, infra, "Standards of Attorney Conduct and Disciplinary Procedures: A Study of the Federal District Courts," was ably directed by Marie

Leary.[2] It became a *tour de force*. There was exceptional cooperation from the district courts, with replies from 79 districts. The result was a body of reliable data never before collected. See Study VII, tables A-1 to A-18, *infra*.

It is impossible to summarize adequately such a major study here, but three basic points can be made. First, Study VII updates the surveys of local rules prepared earlier in Study I (July 5, 1995). Balkanization of these rules has not abated, and is gradually increasing. Second, while attorney conduct problems are not an urgent concern of the districts, there are persistent problems caused by poorly drafted and inconsistent local rules. In Study VII's words:

> Based upon an average response rate of 75 districts, a total of 40 districts (53%) reported having experienced one or more of the following five problems: problems created by ambiguously drafted rules, federal courts incorporating standards of conduct not included in any rule, due process and vagueness problems, multiforum problems, and problems resulting from the promulgation by federal agencies of their own attorney conduct rules. However, when each of the problems are examined individually, a small minority of the districts reported their occurrence. Using the average response rate of 75 districts, 17% of all districts responding reported the occurrence of conflicts or confusion derived from ambiguous language in their local rule; 9% reported that attorneys practicing in their district were prevented from relying on the explicit language of their local rules because their court used external standards to interpret the rules; 8% reported experiencing complaints regarding lack of attorney due process caused, in part, by the vagueness of their attorney conduct rule; 9% reported experiencing difficulties resulting from attorney conduct problems involving multiple venues; and only 9% of respondents reported that they had experienced problems due to conflicts between their local rules and rules of professional conduct adopted by a federal agency.
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> [Study VII, "Summary," *infra*.]

Finally, the Study questioned the district courts as to their desire for uniform standards. There was a clear split. "Out of 79 districts that responded, 24 (30%) indicated that they would be in favor of a national rule; 53 respondents (67%) did not support a national rule, and two had no opinion." Study VII, "Summary," *infra*.

Study VII is exceptional research which will reward much future study and analysis. The Standing Committee is very much indebted to the Federal Judicial Center and Marie Leary for this fine work.

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[2] Marie Leary also completed the excellent study of local rules governing admission to practice in the federal courts, set out as Study II, B., *infra*.

IV. THE NEXT STEPS

At the last meeting of the Standing Committee, on June 19-20, 1997, I was directed to prepare drafts of uniform national rules governing attorney conduct following the "core" approach, or "Option 5." See above at Section III, C., "Some Proposed Models for Reform." These drafts are to be ready for the next Standing Committee meeting in January 1998. These drafts are not finished yet, but Appendix VI of Study V, *infra*, sets out examples of how such rules might look. The approach taken there was to revise Fed. R. Civ. P. 83 to provide for ten Federal Rules of Attorney Conduct. These rules would form an appendix to the Federal Rules of Civil Procedure and would be formally adopted through the Rules Enabling Act process, 28 U.S.C. §§ 2073 — 2074. The ten rules would include choice of law and sanctions (Rule 1), confidentiality (Rule 2), conflict of interest (Rules 3, 4, 5), imputed disqualification (Rule 6), candor toward a tribunal (Rule 7), lawyer as witness (Rule 8) truthfulness in statements to other (Rule 9) and represented persons (Rule 10). See Study V, Appendix VI, *infra*.[3]

These ten rules would cover the topics identified by Studies II, III, and VII, *infra*, as the most important for the district courts. All other matters would be governed by the standards of the state in which the district is located. Note also that Study V contains a proposed revision of Fed. R. App. P. 46 to adopt the new standards in all courts of appeals. See Study V, Appendix III, *infra*. Whether the Standing Committee elects to follow such a core "national rule" route is, of course, a matter of complete conjecture.[4]

Whatever is decided, it appears that special provisions need to be made for bankruptcy courts. This matter will be discussed at the next meeting of the Bankruptcy Advisory Committee on September 11-12, 1997. It is possible that the Federal Judicial Center will be asked to complete an empirical study of bankruptcy practice similar to that done for district courts in Study VII, *infra*. In any event, Study VI suggests caution in automatically applying new uniform rules to bankruptcy proceedings. See the reasons discussed at Section III, D., above.

V. CONCLUSION

Attorney conduct in the federal courts is governed by a bewildering maze of inconsistent and sometimes poorly drafted local rules. These seven studies, and the two expert conferences, have examined every aspect of this problem. The Standing Committee has taken seriously its statutory mandate under 28 U.S.C. § 2073 (b) "to

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[3] I am particularly indebted to my talented former research assistant, Mr. Thomas Burton, for his help in drafting these examples.

[4] Study V also includes an example of a draft model local rule. See Study V, Appendix II, *infra*.

maintain consistency and otherwise promote the interest of justice." It has also heeded the Congressional concern about the proliferation and balkanization of local rules expressed during the adoption of the 1988 Judicial Improvements and Access to Justice Act, 102 Stat. 4642 (1988). See Section I, *supra*. But the Standing Committee has also moved with caution. It is carefully examining every option.

It has been a great pleasure to be part of this process. The teamwork between the Standing Committee, the Administrative Office, the Federal Judicial Center and the other experts from the bench, bar, Congress, Department of Justice, and other Judicial Conference Committees has really been exceptional. Again, the support of the Federal Judicial Center, through Marie Leary's fine work, has been excellent. Finally, it is a particular joy to work for this Standing Committee under its wise and farsighted Chair, the Honorable Alicemarie H. Stotler.

In the end, this team effort will succeed. The problems will be resolved. Practice will be easier for the average federal lawyer, and the public will have a better system of justice. My hope is that these studies will make a contribution to that goal.

Daniel R. Coquillette, Reporter,
Committee on Rules of Practice and Procedure,
Judicial Conference of the United States

Report on Local Rules
Regulating Attorney Conduct in the Federal Courts

Daniel R. Coquillette
July 5, 1995

I. INTRODUCTION

At the Committee's June, 1994 Meeting, I was directed to prepare a study of all federal local rules governing attorney conduct. An Interim Report was presented to this Committee on January 2, 1995, together with supporting charts. This is a final report, setting forth a series of options for long-term Committee action. I would like to specially thank my research assistants, Mr. Thomas Burton, Boston College Law School, class of '96, and Ms. Rebecca Lampert, Harvard Law School, class of '96, for their invaluable help in preparing this report. I am also particularly grateful to Linda S. Mullenix, Ward Centennial Professor of Law in the University of Texas, and her research assistant, Robert W. Musslewhite, Harvard Law School, class of '96, for sharing the research and insights which are set forth in Professor Mullenix's forthcoming article, "Multiforum Federal Practice: Ethics and Erie," presented at the Georgetown University Conference as "Legal Ethics Into the Twenty-First Century," March 17, 1995, and set out, with her kind permission as "Appendix IV", attached. I am, as always, deeply indebted to my colleague, Mary P. Squiers, and Peter G. McCabe and John K. Rabiej of the Administrative Office.

II. THE PROBLEM

This Committee has always had a special responsibility for local rules in the federal courts, a role explicitly recognized by Congress in the 1988 Amendments to the Rules Enabling Act, 28 U.S.C. § 2073, and in the establishment of the Local Rules Project in 1987. This is because local rulemaking does not fall into the direct ambit of any Advisory Committee and often effects a wide range of topics.

No area of local rulemaking has been more fragmented than local rules governing attorney conduct. This difficult subject was first raised at the outset of the Local Rules Project in 1988, and was then discussed extensively by the Standing Committee at a Special Conference on Local Rules, convened by the Committee at Boston College on November 14, 1988. Many of the goals of the Local Rules Project, including uniform numbering, were relatively uncontroversial, but review of local rules governing attorney conduct proved to be highly contentious. Rather than jeopardize the early progress of the Local Rules Project, it was decided to defer this divisive issue to a later date.

Since that time, the "balkanization" of local rules governing attorney conduct appears to have grown worse. The attached charts set out as Appendices I, II, and III, below, show that there are now seven fundamentally different approaches, and even within these "groups" there are great variations. The most common approach, local rules that incorporate the relevant standards of the state in which the district is located, actually divides federal districts because of the many differing state rules. See Section III, below. The Department of Justice, other major federal agencies, and many national legal organizations, including civil rights groups, national corporations, financial networks, large law firms, and groups facing multi-district litigation have been severely inconvenienced. See Section V, below. Further, the rise of legal malpractice actions has led to subsidiary dispute about choice of law — often of mind numbing complexity. This situation has led some

major governmental agencies, including the Department of Justice, to consider adopting their own professional standards. The Department of Justice has now actually done so with regard to communications with represented parties, promulgating new Department regulations that differ significantly from most state standards and the standards adopted by local rule in most Districts and Circuits. See Section V, E., below. This adds further to the number and variation of the rules.

At the outset, it is important to distinguish between difficulties that are inherent in our federal system, and problems caused by poor draftsmanship or total lack of guidance to attorneys. Regulation of attorneys has traditionally been a function of the 51 states.[1] The American Bar Association has long attempted to establish national norms: first with the 1908 ABA Canons of Professional Responsibility (hereafter the "Canons"); next with the 1969 ABA Model Code of Professional Responsibility (hereafter the "Code"); and concluding with the 1983 ABA Model Rules of Professional Conduct (hereafter the "Model Rules"). These efforts have, at best, met limited success. Despite a national system of legal education and even a national standardized bar examination in professional ethics — the Multi-State Professional Responsibility Examination ("MPRE"), there remains wide diversity between the states. Even the majority of states which have adopted some form of the ABA Model Rules have often changed key sections, the latest example being Massachusetts, the Reporter's home state. See Report of the Committee on Model Rules of the Supreme Judicial Court of Massachusetts, February 1, 1995, "Major Departures from the ABA Model Rules," pp. 1-3. Any federal system of rulemaking that chooses to follow the rules of the state in which a District is located will inherit this balkanization. As will be seen, following state standards has some clear advantages. See Section VI and VII above. But state standards can present substantial problems, particularly in governing multi-forum complex litigation and for federal agencies. See Sections V-E, VI and VII, above.

Unfortunately, some federal local rulemaking has not only picked up the inherent fragmentation of the existing state rules, but has added to it by bad draftsmanship or by providing ambiguous guidance. As will be seen, court decisions in some districts have failed to resolve these ambiguities, leaving attorneys with no clear rules in matters of the greatest professional importance.

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[1]For a good introduction to the complexity of regulation of attorney conduct by local rules, see Fred C. Zacharias, "Federalizing Legal Ethics", 73 Texas Law Review 335 (December, 1994) and Linda S. Mullenix's "Multiforum Federal Practice: Ethics and Erie", March, 1995, set out below in Appendix IV. For how it looks from the perspective of the state bars, see Matthew F. Boyer's short, but cogent article, "The Impact on Delaware Lawyers of the District Court's Adoption of the Model Rules of Professional Conduct" March 31, 1995, currently awaiting publication. (Copy available from the Reporter). See also Geoffrey C. Hazard Jr.'s powerful commentary "Uniform Discrepancies" in The National Law Journal, March 20, 1995, A19-A20. Of course, attorney conduct in federal courts is also regulated by certain uniform rules, most notably Rule 11 of the Federal Rules of Civil Procedure. See Judith A. McMorrow, "Rule 11 and Federalizing Lawyer Ethics", 1991 Brigham Young University Law Review 959 (1991) and Carl Tobias, "The 1993 revision of Federal Rule 11", 70 Indiana Law Review 171 (1994). Recent Congressional initiatives could also directly regulate attorney conduct in federal courts, both through federal rules and otherwise. See Carl Tobias, "Common Sense and Other Legal Reforms", 48 Vanderbilt Law Review 699, 721-737(1995), analyzing the Attorney Accountability Act, H.R. 988, 104th Congress, 1st Session (Feb. 16, 1995), and other pending bills.

Some recent cases, discussed at length in Section V-C, infra, have suggested that attorney discipline in such situations may violate Due Process guarantees.

This Report will conclude by offering the Committee four fundamental options for long-term reform. One would be to adopt a uniform national set of rules governing attorney conduct in federal courts through the Rules Enabling Act, probably as an Appendix to the Civil Rules. A second option would be to establish a uniform national rule adopting relevant state standards in all Federal Courts. A third option would be to attempt the same results through model local rules, following the initiative first begun by the Committee on Court Administration and Court Management in 1978.

The fourth option is to do nothing. This Report will show that the "do nothing" option can only lead to a continuing deterioration of standards, to the disadvantage of all. Section III, infra, will demonstrate that the rate of fragmentation of professional standards is unabated. Sections IV and V will demonstrate that this is causing substantial litigation in the federal courts, and Section VI will demonstrate the concern of Congress and other major national and governmental groups.

Inherently, this is a rules problem, and this Committee, with its Congressionally mandated processes and responsibilities, is particularly well-suited to deal with it. For this reason, this Report concludes by recommending to the Chair a special invitational session, to immediately precede the next Standing Committee Meeting on Tuesday, January 9, 1996. Invitees would include the Committee members and representative of each of the major effected constituencies, including Congressional staffs and the Department of Justice. The purpose would be to discuss the fundamental options set out in Section VII, below, and to develop a long-term solution through the Judicial Conference.

III. THE CURRENT SITUATION IN EACH DISTRICT AND CIRCUIT

For convenience, this data is set out in 26 pages of charts and tables, attached as Appendices "I", "II" and "III". Appendix I (Chart One) is a summary of the District Court data in Appendix II (Chart Two), and Appendix III (Chart Three) sets out Circuit Court rules.

Basically, there are seven variant models in the District Courts:

1. Districts that adopt, by local rule, state standards based on the ABA Model Rules;

2. Districts that adopt, by local rule, state standards based on the ABA Code;

3. California Districts which have adopted, by local rule, the unique California Rules of Professional Conduct, either exclusively or in connection with ABA models;

4. Districts which have adopted ABA models directly;

5. Districts which have adopted both an ABA model and state standards;

6. Districts with no local rule at all; and

7. A District which adopted its "version" of the ABA Model Rules which varies substantially both from the ABA model and the state standards. See Chart II, page 9; General Order of the Northern District of Illinois, March, 1991.

Again many states have changed the ABA models. Thus the rules in a District adopting state standards may differ greatly from rules in Districts based directly on the ABA models, even if the state uses a variant of the same ABA model. Here is a breakdown of the contents of the charts, as updated to May 24, 1995.

A. THE CHARTS

1. Chart One (2 pages)

"Summary: Rules of Professional Conduct in the Federal District Courts"

Column 1 — Forty eight Districts have adopted local rules that incorporate state standards in states that, in turn, have adopted some version of the ABA Model Rules of Professional Conduct (1983). Note: The adopted versions of the ABA Model Rules in some of these states often vary widely, and the federal local rules adopting the state standards also differ widely. Some are poorly drafted.

Column 2 — Twelve Districts have adopted local rules that incorporate state standards in states which have retained some version of the old ABA Code of Professional Responsibility (1969), which was replaced by the ABA with the Model Rules in 1983. These local rules also vary widely in form, although some were based on a "Uniform Local Rule" suggested by the Committee on Court Administration and Case Management ("CACM") as Rule 4(B) of the Model "Federal Rules of Disciplinary Enforcement" in 1978. See "Appendix V", attached.

Column 3 — Two Districts, both in California, have adopted by local rules the California Rules of Professional Conduct (approved 8/13/92, effective 9/14/92). The reason is that, alone among all states, California's state system is different from either of the ABA models. Two other California Districts, (E.D. Ca. and S.D. Ca.), have adopted local rules referring both to the California Rules and to the ABA Code.

Column 4 — Ten Districts have local rules that refer directly to an ABA model, rather than to the state standards. Of these, four refer to the ABA Code (symbol "ac"), three refer to the ABA Model Rules (symbol "ar") and one ("Guam") refers to

both the ABA Code and the ABA Model Rules (symbol "ac & ar"). Two Districts, Montana and the South District of Georgia, actually refer to the old ABA Canons of Professional Ethics (1908) (symbol "canons"). The Canons, a very old model, were replaced by the ABA in 1969 with the ABA Model Code.

Column 5 — Ten Districts have local rules that refer to both an ABA model and to the state standards. In states whose variants on the ABA model are substantial, these rules generally give the federal district court discretion to look at both the state rule and the national model, although the state standard is often preferred. Some of these rules are poorly drafted, and must be very confusing to practitioners. Of these Districts, six refer to the ABA code (symbol: "ac"), and four refer to the ABA Model Rules (symbol: "ar"). Three of these Districts are in ABA Code states (symbol: "c"), two are in California's unique system (symbol: "o"), and five are in ABA Model Rules States (symbol ("r"). To add to the confusion, two Districts in ABA Model Rules states refer to the ABA Code, and one District in an ABA Code state refers to the ABA Model Rules! The two California Districts in this category (E.D. Ca. and S.D. Ca.), refer to both the ABA Model Code and the California Rules of Professional Conduct.

Column 6 — Eleven Districts have no local rules governing attorney conduct. Of these, a number have adopted standing orders. For example, the Western District of North Carolina, which has not amended its local rules since 1965, has a standing order stating that the standards shall be the "Canons of Ethics of the North Carolina Supreme Court, and the ABA." The Western District of Virginia has adopted the model "Rules of Attorney Disciplinary Enforcement" as an appendix to the local rules. Most of these Districts also have "informal" policies looking to state standards. For example, the Southern District of Mississippi does not have a local rule proscribing standards of conduct for attorneys practicing in their court. According to the Clerk, the standard practice is as follows: "if an attorney needs to refer to substantive standards of conduct, upon inquiry to one of the district court judges, the matter will be settled by the judge, or the attorney will be referred to the substantive rules of attorney conduct that are applicable to the Mississippi State Bar." (Letter, Mr. T. Noblin, Clerk, Nov. 18, 1994). Other Districts, without either a local rule or a standing order, have indicated that they will not necessarily follow state standards. For example, the Western District of Wisconsin has reported that they treat "ethical issues on an ad hoc basis with complete discretion in the judge." Researching the relevant standards in Districts without local rules has proven difficult, and correspondence with clerks is still ongoing.

Column 7 — One District follows neither state standards nor an ABA model. The Northern District of Illinois adopted a Standing Order on October 29, 1991 which incorporates a version of the ABA Model Rules that has been very substantially changed from the ABA model. It is also quite different from the version adopted by the Illinois Supreme Court.

2. Chart Two (18 pages)

"Break Down" of the Individual "Local Rules and Standing Orders for Each of the Ninety-four Districts." This exhaustive 18 page chart gives a brief summary of the local rule or standing order in each district, with districts arranged by Circuit, and then alphabetically within each Circuit.

3. Chart Three (2 pages)

"Rules of Professional Conduct in the Federal Circuit Courts". Courts of Appeal are not presented with attorney conduct problems in the volume found routinely in the state courts or in the Districts. They also have Rule 46 of the Federal Rules of Appellate Procedure with its provisions for suspension or disbarment for "conduct unbecoming a member of the bar." Nevertheless, four Circuits have quite specific local rules that refer to applicable state standards. See the District of Columbia, First, Tenth and Eleventh Circuits. For example, the Tenth Circuit applies "the Code of Professional Responsibility adopted by the highest court of the state(s) in which the attorneys in admitted to practice." Two others have Internal Operating Procedure that do the same. For example, Internal Operating Procedure Rule 46.6(a)(3) of the Fourth Circuit applies "the Rules of Professional Conduct or Responsibility in effect in the state... in which the attorney maintains his or her principal office." One Circuit, the Eleventh, refers to both state standards and an ABA model. It applies "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 these state rules are not inconsistent with the ABA Model Rules... in which case the Model Rules shall govern."

Two Circuits, the Second and the Sixth, have a local rule that refers to an ABA model. The Second Circuit's rule refers to the ABA Code (which is still in effect in New York), and the Sixth Circuit refers to both the ABA Model Rules and the ABA Canons.

On the other hand, two Circuits have no relevant local rule. Clerks of these circuits, in reply to our inquiries, refer to the Rule 46 standard of "conduct unbecoming a member of the court." (Ninth Circuit). This standard also appears in (Rule 8, Rules of the Supreme Court of the United States. The Clerk of the Fifth Circuit also referred to a "long standing court practice to look to and to follow the ethical rules adopted by the highest court in the state of an attorney's domicile, while always being mindful of the ABA Model Rules". One Circuit has drafted a completely unique document "Standards for Professional Conduct Within the Seventh Federal Judicial Circuit." These Seventh Circuit "standards" are neither based on an ABA model, nor on a state standard, and are included as "Appendix 3" to the Seventh Circuit Local Rules.

4. Back up Files

Behind each chart is an extensive research file containing the rules and the history of the rules for each District or Circuit, and often correspondence with

individual clerks. There are also files on rulemaking proposals by individual federal agencies.

B. RECENT LOCAL RULE REVISIONS

The above charts were updated following the Interim Report of January 2, 1995. Indeed, the local rule picture changes monthly, and it is very difficult for loose leaf services to remain accurate.[2] Even where federal local rules are unchanged, state standards incorporated by such rules may change, as is currently the likelihood in Massachusetts.[3] The problem for practitioners is obvious.

What is worse, a brief examination of changes between December, 1993, and December, 1994, show that there is no uniform trend in these changes. For example, the District of Delaware, which formerly followed state standards, has now adopted the ABA Model Rules, effective January, 1975. Delaware is an ABA Code state, so now state and federal standards are no longer the same.[4] See Chart II, pg. 3. At the same time, the District of Oklahoma went the opposite way, adopting the state standard. (The District of Oklahoma had previously adopted to ABA Model Code by local rule, while the state of Oklahoma had adopted the ABA Model Rules). See Chart II, page 18.

The Southern District of West Virginia has amended its local rule to indicate that the models listed in its rule, (the ABA Code, the Model Federal Rules of Disciplinary Enforcement and the West Virginia state standards) are only to "provide minimal standards" of attorney conduct. District of West Virginia Local Rule L.R. Gen. 301.[5] See Chart II, pg. 5. Both the District of Vermont and the District of Nebraska added language making clear that they adopted the standards of their states "as amended from time to time by the state court," not just of the date of the local rule. See Chart II, pg. 12; District of Nebraska Local Rule 83.4(d)(2) and Chart II, page 2, District of Vermont Local Rule 1(d)(4)(b). Both states also indicated that they would adopt the state standards "except as otherwise provided by specific rule of this court after consideration of comments by representatives of the state bar associations." Id. These language changes track Model Rule IV of the Federal Rules

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[2]One such service is Federal Local Court Rules (ed. Pike & Fischer, Inc.) Callaghan & Co. and Lawyers Cooperative Pub. Co., 1993 and updated, which strives valiantly. There are also computer services.

[3]Report of the Supreme Judicial Court's Committee on the Model Rules of Professional Conduct, February 1, 1995, 1-5.

[4]This could be troublesome in practice. See Mathew F. Boyer, "The Impact on Delaware Lawyers of the District Court's Adoption of the Model Rules of Professional Conduct," supra, note 1.

[5]A typical version of the Model Federal Rules of Disciplinary Enforcement is set out in Appendix V, below. The District of West Virginia also changed the numbering of their attorney conduct rule from "Local Rule 1.03(h)" to "L.R. Gen. 301." So did the District of Vermont, which changed its attorney conduct rule number from "Rule 4" to "Rule 1(d)(4)(b)." Neither change is in the form "approved and urged" by the Judicial Conference of the United States. See Report of the Judicial Conference (September, 1988) pg. 2.

of Disciplinary Enforcement as first published by the Committee of Court Administration and Case Management in 1978. See Appendix V, below.

Many other recent changes have been incorporated in Charts I, II, and III since the versions circulated on January 2, 1995, and these charts are being continually updated. This is a serious chore, and probably beyond the means or energy of most practitioners and law firms.

C. SOME CIRCUIT COURT ISSUES

The current situation in the Circuit Courts of Appeal is set out in Chart III. Theoretically, there is as much diversity as among the Districts. (Four Circuits have local rules looking primarily to state standards; three have local rules looking primarily to ABA models; and one has an appendix to its local rules which looks primarily to the Federal Rules of Disciplinary Enforcement described above — a primarily state standard rule.) Two Circuits, the Fifth and the Ninth, have no local rule. This can create the same problems discussed at length in Section IV in the context of Districts without rules. Again, according to the Clerk's Office of the Fifth Circuit, "it is longstanding court practice to look to and follow the ethical rules adopted by the highest court of the state of the attorney's domicile, while always being mindful of the ABA Model Rules." See Chart III, page 2. The Clerk's Office of the Ninth Circuit said that "it relies on existing cases." Id., page 3.

The remaining two Circuits, the Fourth and the Eighth, have incorporated their attorney conduct rules into Internal Operating Procedures. See Fourth Circuit Internal Operating Procedure Rule 46.6(a)(3) and Eighth Circuit Internal Operating Procedure Rule II-D. These are set out on Chart III, pages 2 and 3, respectively. Internal Operating Procedures are not normally used for matters requiring notice to attorneys. Pending changes in Rule 47 of the Federal Rules of Appellate Procedure would require uniform numbering for local rules when prescribed by the Judicial Conference and actual notice before sanctions are imposed for conduct not defined by uniform or local rule. This new version of Rule 47 may require changes in these Circuits.

In general, however, the Circuit rules are much easier to follow and update than the Districts. In addition, there are far fewer reported problems and reported cases relating to attorney conduct than in the Districts, which bear the burden of supervising trials, discovery procedures, and most settlements. Nevertheless, there is much fragmentation, at least in theory, even among the twelve Circuits, and a need for clearly promulgated local rules in at least four.

IV. DISTRICTS WITH NO LOCAL RULE

Determining the standards that govern attorney conduct is particularly problematic in Districts with no local rule at all. There are eleven of these Districts, and we have been in direct contact with the Clerk in almost every case. In these Districts, attorneys must rely on informal communication or case law. Not

surprisingly, this has led to confusion in practice and a variety of solutions when ethical problems do arise. When this happens, some of these Districts have looked to the standards of their state, but others have considered only ABA models. Still others have considered a variety of standards, based on case law, ABA models, and state standards, and it is not uncommon to see decision in such Districts that refer to standards set in case law by other Districts and states.

For example, the District of Alaska has no local rule. (It will be considering adopting a "state standard" local rule this month, June, 1995). Instead, it follows courts in other jurisdictions. U.S. v. Barnett, 814 F. Supp. 1449 (D. Alaska, 1992) is a typical case. In a motion to suppress a confession, the defendant in U.S. v. Barnett argued that the government attorney violated Disciplinary Rule 7-104 of the ABA Code. 814 F. Supp. 1449 (D. Alaska 1992). The court acknowledged that it did not have a local rule adopting standards of conduct, but went on to decide that DR 7-104 was not applicable to the situation at hand. Id. at 1453 (court looks to other jurisdictions and finds that a majority do not apply this directive to pre-indictment non-custodial interrogation). In another case, two attorneys were sanctioned for "filing a needless motion for entry of default... and then persevering with vexatious opposition to defendant's motion to set aside the entry of default." Cox v. Nasche, 149 F.R.D. 190, 192 (D. Alaska 1993). The court believed that the plaintiffs should have first checked with the defendant to see if the party was planning to litigate. The court relied on a state case, City of Valdez v. Salomon, 637 P.2d 298,299 (Alaska 1991), finding that a violation of American College of Trial Lawyers Code of Trial Conduct rule 14 (a) (prohibiting "taking advantage" of a known lawyer "by causing any default... without first inquiring about the opposing lawyer's intentions") also constituted a violation of DR 7-106(c)(5) of the ABA Code. Cox, 149 F.R.D. at 192 n2. Acknowledging that the District did not have a local rule referring to state standards, the court found that the plaintiffs were not "legally obligated to notify defendants before seeking the entry of default" and declares that "[it] is not adopting the rule of Salomon by court decision." Id. Instead, the court held that the plaintiffs were being sanctioned for "litigating in bad faith and for violating local federal rules prohibiting the vexatious conducting of a litigation." Id. at 196 n8. The court, however, also found that it is "particularly significant [to show that the plaintiffs conduct did not reflect common practice] that the Alaska Supreme Court's decision in Salomon indicates that [the plaintiffs] would be in violation of the Code... had they done in state court what they did in this Court." Id.

The Western District of Missouri also lacks a local rule or standing order. In a case involving disqualification of an attorney, the parties disputed whether the ABA Code, which was in effect at the time of the underlying dispute, or the ABA Model Rules, which was later adopted by the state supreme court, applied to a conflict of interest allegation. Shadow Isle Inc. v. American Angus Association, 1987 WL 17337 (W.D. Mo.). The court found that the standard by which the law firm 's representation should be judged has "little significance..., as both sets of standards forbid the conflict of interest" involved in the allegation. Id. at 1. The court, however, goes on to discuss the two different standards at length and adopts the ABA Model Code because "there is no apparent reason to make this determination according to standards which have been revised or superseded." Id. at 3.

When contacted, the Clerk of the District of South Dakota said that the court has a general practice of following the rules promulgated by the state bar. Yet, in a case disqualifying a lawyer who was representing both an insurer and an insured in the underlying tort action under a reservation of rights by the insurer, the court looked to a variety of rules. State Farm Mutual Automobile Insurance Co. v. Armstrong Extinguisher Service, Inc., 791 F. Supp. 799 (W.D. South Dakota 1992). First, the court pointed out that under the state Rules of Professional Conduct the lawyer cannot represent parties of conflicting interest without the consent of all parties. Thus, the court finds, "at the very least,... an appearance of impropriety." Id. at 801. Then, it looked to California precedent holding that when an insurance company interposes a reservation of rights creating a conflict of interest, it must provide separate counsel. Finally, it argued that a Circuit precedent, applying "several canons of the Code of Professional Responsibility relating to conflict of interest when representing multiple clients," mandated that "an attorney cannot represent two clients whose interests are actually...conflicting." Id. at 802, citing U.S. Fidelity v. Roser, 585 F.2d 932 (8th Cir. 1978).

The District of North Dakota has no local rule. When ethical issues arise, they are "primarily addressed to the court or sent to the State Bar Counsel." Clerk's Office. In Halligan v. Blue Cross Blue Shield, the plaintiff alleged a conflict of interest between the defendant insurance company and its law firm. 1994 WL 497618 (D. N.D.). The Plaintiff had previously contacted the defendant's law firm seeking representation and had given them a substantive account of his case. The defendant law firm refused to accept a contingency fee based representation. Here, the court adopted the state Rules of Professional Conduct, and then looked to the state and other federal courts for standards to determine when an attorney client relationship exists Id. at 2.

Districts such as the Southern District of Mississippi determine ethical standards on a "case by case basis." (Clerk's Office). In a recent disqualification motion for potential violation of client confidences, the court looked to the following rules: the Mississippi Rules of Professional Conduct, the state bar comments to the Rule, and the ABA Model Rules. Pearson v. Singing River Medical Center, 757 F. Supp. 768 (S.D.Ms. 1991). The court also looked to 7th and 5th Circuit precedent for a disqualification test of "a genuine threat that confidences revealed to his former counsel will be divulged to his present adversary". Id. at 770. The court ultimately held that disqualification was unnecessary despite the fact that the attorney formerly represented plaintiff in another case.

Some Districts have standing orders that govern attorney conduct. The Western District of North Carolina, which last amended its rules in 1965, has a standing order asserting "that the standards shall be the Canons of Ethics of the North Carolina Supreme Court and the ABA." Yet, in recent disqualification cases, the court has cited various other authorities as well. See e.g. Barentine v. United States, 728 F. Supp. 1241 (W.D. N.C.)(court referred to the conflict of interest rule of the ABA Model Rules and the principles of the ABA Standards for Criminal Justice when advising that an attorney should be disciplined for having an affair with his

client's girlfriend during the representation period.); and In Re Southeast Hotel Properties, 151 F.R.D. 597 (W.D. N.C. 1993)(court stated that the "ABA ethical rules and the North Carolina Rules of Professional Conduct apply to practice" in the court, and referred to the state code and the ABA Model Rules.

Districts without a local rule governing attorney conduct would benefit from almost any of the reform options in Section VII, above, whether they be in the form of uniform national rules or uniform local rules. Even a uniform local rule simply adopting current state standards would be a substantial improvement in giving fair notice to practitioners.

V. EXAMPLES OF RECENT PROBLEMS IN THE DISTRICTS

Recent experience, particularly in the form of a growing number of reported cases, shows that all is not well with the practical application of attorney conduct rules in the Districts. Ambiguously drafted rules have led to unnecessary litigation, wasting the time of courts and lawyers alike. In addition, some courts have ignored even unambiguous local rules and applied standards from many other sources. As Geoffrey Hazard has observed, "[a]pparently, in legal ethics there is a brooding omnipresence in the sky over Texas."[6] In turn, these ambiguities have led to due process and "void for vagueness" challenges in increasing numbers and also litigation over Erie, Supremacy Clause, and conflict of laws issues. In frustration, many federal agencies have begun to promulgate their own attorney conduct rules, adding yet another layer of complexity and potential conflict.

Even a very extensive Report cannot document all of these problems, but a series of examples have been selected that provide good, and typical, illustrations. Part "A" of this section examines four basic conflicts that arise due to ambiguously drafted local rules. First, the local rule may prescribe one standard of conduct, but it is unclear whether the standard is the ABA Model Rules, or the ABA Model Code. Second, the local rule may prescribe one standard of conduct, but it is unclear whether the standard is the ABA version, or the state's amended version. Third, local rules may prescribe state standards of conduct as the standards of conduct for federal court, but the applicable state standard may be ambiguous. Fourth, local rules may refer to multiple standards of conduct for attorneys practicing in a particular district without specifying which standard takes precedent.

Part "B" examines how inconsistent federal interpretations of local rules governing attorney conduct lead to incorporating ABA models as standards of conduct, even in Districts where the court's rules fail to refer to ABA models. These cases often reason that because federal case law utilizes ABA versions of the Model Rules or Model Code for interpretative purposes, and because attorneys are held to consult the case law, the ABA versions of the Model Rules or Model Code should also govern attorney conduct. This can lead to serious confusion, particularly when the ABA Models themselves conflict.

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[6]Geoffrey C. Hazard Jr., "Uniform Discrepancies," note 1 supra, A20, commenting on a recent Fifth Circuit holding.

Part "C" examines the possibility that conflicting attorney conduct standards and ambiguously drafted rules may not satisfy procedural due process requirements. Part "D" briefly describes some of the inherent Erie, Supremacy Clause, and conflict of law problems to be encountered, and Part "E" describes the growing difficulties when federal agencies, in reaction, begin to adopt their own attorney conduct rules.

A. AMBIGUOUSLY DRAFTED RULES

Ambiguously drafted local rules prescribing attorney standards of conduct create four basic conflicts between applicable standards of conduct for attorneys practicing within a single district. First, a local rule may adopt an ABA model as its standard of conduct, but the rule fails to specify whether the Model Rules or the Model Code are the applicable standard. See Isador Paiewonsky Associates, Inc., v. Sharp Properties, Inc., 1990 WL 303427 (D. Vir. Is. 1990); Culebras Enterprises Corp., v. Rivera-Rios, 846 F.2d 94, 96 (1st Cir. 1988). Second, the local rule may adopt the Model Rules as its standard, but fails to specify whether the standard is the ABA version, or the amended version of the state in which the district court sits. See United States v. Walsh, 699 F. Supp. 469, 470 (D. N.J. 1988). Third, the local rule may adopt the standards of the state in which the district court sits, but it is unclear whether the state's standards conform to the Model Rules or the Model Code. See Green v. Montgomery County, Alabama, 784 F. Supp. 841, 843 n.4 (M.D. Ala. 1992). Finally, conflicts may arise when the local rule prescribes multiple standards of conduct for its district, without specifying which standards take precedent. See In Re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation v. United States District Court for the Central District of California, 658 F.2d 1355, 1359 (9th Cir. 1981).

1. Local Rules Which Adopt An ABA Model But Fail to Indicate Whether the Applicable Model Standard is the ABA Model Rules or Model Code

Attorneys may encounter conflicting standards when the district court's local rule adopts a standard of conduct drafted by the ABA, but the rule fails to clearly indicate whether the standard is the Model Rules or Model Code. See Paiewonsky, supra, 1990 WL 303427 at 6; Culebras, supra, 846 F.2d at 96-97. Isador Paiewonsky Associates v. Sharp Properties best exemplifies this type of conflict. See 1990 WL 303427 (D. Vir. Is. 1990). The District of the Virgin Islands adopted the following local rule in 1982: "Acts or omissions by an attorney admitted to practice in this court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline.... The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the American Bar Association, as amended from time to time by that body." Id. at 6. The court defined the threshold issue. "Whether Local Rule 57(e) countenances application of the ABA Code of Professional Responsibility or the ABA Model Rules of Professional Conduct to ethical matters before this court is a question for which there is no simple answer." See id. at 7.

The court concluded that the local rule empowered the district court to utilize the ABA Model Rules. Id. at 7. The court reasoned that although the local rules use the language "Code of Professional Responsibility," the language was not intended to be the proper name of any particular standard. Id. Thus, the applicable standard was clearly ambiguous. See Id., 6-7. Because of the ambiguity, the court relied on the likely intent of the framers of the local rule: "Most likely the framers of the local rule intended to ensure that this court would remain responsive to developments in the law of professional responsibility and that the court's ethical rules would comport with those most recently adopted by the ABA, which has long been the vanguard in the creation of model rules of ethics for lawyers." Paiewonsky, supra, 1990 WL 303427 at 7. The ABA Model Rules replaced the ABA Model Code in 1983, and the local rule, by clear implication, provided for the ABA's amended versions of its standards. See Id. Thus, the ABA Model Rules had replaced the ABA Model Code within the local rule. See Id., 6-7.

2. Local Rules Which Adopt The Model Rules but Fail to Specify Whether the Applicable Standard is the ABA Model Rules or a State Version of the Model Rules

Even if the local rule clearly adopts the Model Rules as the court's standard of conduct, the local rule may fail to specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits. United States v. Walsh, 669 F. Supp. 469 (D.N.J., 1988) demonstrates this type of conflict in the context of attorney disqualification proceedings. In Walsh, the government moved to disqualify a former assistant United States attorney and his law firm from representing a defendant charged with racketeering activity. 699 F. Supp. at 470. The government alleged that because the attorney representing the defendant had exercised supervisory authority over activities closely related to the case at hand while with the Justice Department, the attorney was barred from representing the defendant. See Id., 471-472.

As in Paiewonsky, the threshold issue was the applicable standard of conduct. See Paiewonsky, supra, 1990 WL 303427 at 7. The importance of resolving the issue was emphasized by the court, "Resolution of this issue prior to ruling on the disqualification motion is imperative as the [ABA] Model Rules provide a different standard in determining disqualification than would the rules as amended by the New Jersey Supreme Court." Id. The ABA Model Rules provided that a lawyer shall not represent a private client in connection with a matter in which the lawyer participated "personally and substantially as a public officer or employee." Id. at 471-72 n.1 (quoting from the 1988 version of the ABA Model Rules, Rule 1.11). The New Jersey state version of the rules provided an additional and more demanding test that prohibited the former government employee from representing the private client if there was an "appearance of impropriety." Walsh, supra, 699 F. Supp. at 472 n.2 (quoting from the 1988 New Jersey Rule 1.11). Furthermore, the ABA Model Rules permits screening of attorneys in order to avoid disqualification of law firm for whom the former government attorney works. Id. at 472. The New Jersey version, on the other hand, did not provide for screening of former government attorneys; thus, disqualification would always be imputed to the law firm. Id.

Local Rule Six for the District of New Jersey stated: "The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association shall govern the conduct of Judges and the members of the bar admitted to practice in this court." Id. at 471. The court held that the District Court's local rules incorporate the ABA Model Rules without amendment. Id. at 475. The court reasoned as follows: (1) supervision of the professional conduct of attorneys practicing in a federal court is a matter of federal law; (2) it is well settled law that the federal courts have "autonomous control" in supervising the conduct of attorneys who practice before their courts; (3) the autonomous power of the federal court supports the decision that the court is not bound to apply the ABA Model Rules as amended by the New Jersey Supreme Court. See id. at 473.

A portion of the government's argument demonstrates the inherent ambiguity of the District of New Jersey local rule. See Walsh, supra 699 F. Supp. at 472-73. The government argued that Local Rule Six had to be read in light of Local Rules Seven and One. Id. at 473. Local Rule Seven provided that an attorney may be disciplined for violating the "disciplinary rules." Id. at 472. Local Rule One defined "disciplinary rules" as "the rules of Professional Conduct of the American Bar Association as amended by the Supreme Court of New Jersey." Id. at 472-73. The government argued that Local Rule Six could not be read in isolation, but must be read in harmony with Rule Seven and the definitional section. Id. at 473. Thus, the only way to reconcile Rule Six with Rule Seven was to interpret Rule Six as referring to the New Jersey version of the rules. Id. Nevertheless, the court found the government's argument, "ambiguous at best." Id.

3. Local Rules Which Adopt State Standards, But Fail to Indicate Exactly Which State Standards Apply

A local rule may clearly state that the applicable standards of conduct are the state's standards of conduct, but it still may be unclear whether the state's standards are a version of the Model Rules or the Model Code. A good example in Green v. Montgomery Courts, Alabama, 784 F. Supp. 841 (M.D. Ala. 1992). Green, like United States v. Walsh, involved an attorney disqualification issue. Green, supra, 784 F. Supp. at 842; Walsh, supra, 699 F. Supp. at 470. The plaintiff, Green, contended that under the Alabama Rules of Professional Conduct, the defendant's law firm should be disqualified from representing the defendant because a member of the defendant's law firm represented Green in prior cases. See id. at 842. Local Rule 1(a)(4) for the Middle District of Alabama stated: "Any attorney who is admitted to the bar of this court or who appears in this court... shall be deemed to be familiar with and governed by... the ethical limitations and requirements governing the behavior of members of the Alabama State Bar, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct." Id. The Alabama Rules of Professional Conduct replaced the Alabama Code of Professional Responsibility on January 1, 1991. See id. at 843 n.4.

The District Court found that the applicable standard was the Alabama Rules of Professional Conduct. Id. The court held that because the plaintiff Green filed his complaint after January 1, 1992, the defendant's law firm did not accept employment in the matter until after that time. See Green, supra, 784 F. Supp. at 843. Thus, the possible conflict of interest was governed by the Alabama Rules of Professional Conduct, as adopted on January 1, 1991. Id. Furthermore, the court noted that all parties had relied on the Alabama Rules in making their arguments on the disqualification issue. See id. The court did, however, recognize the inherent difficulty of the issue: "it is not self evident whether the Alabama Rules or the prior Alabama Code should apply to the ethical question under analysis." See id.

4. Local Rules That Incorporate Multiple Standards of Conduct

Finally, there are District Local Rules which contain multiple standards of conduct. This can cause confusion and direct conflict between differing obligations for attorneys. A good example is In Re Coordinated Pretrial Proceedings, in Petroleum Products Antitrust Litigation v. United States District Court for the Central District of California, 658 F.2d 1355 (9th Cir., 1981). Local Rule 1.3(d) for the Central District of California provided as its standards "the rules of professional conduct of the state Bar of California.... In that connection, the Code of Professional Responsibility of the American Bar Association should be noted." Id., at 1358. The issue was again attorney disqualification. Id. at 1358-1359. The Court raised the possibility that two different standards may apply to the attorneys in the case: '[b]ecause the local rule refers to both, a possible difficulty arises because of the difference between the ABA Code and the analogous provision of the Rules of Professional Conduct of the State Bar of California." Id. at 1358-59. The court eventually failed to resolve which standard takes precedent by finding that neither the ABA Code nor the California Bar Rules operated to disqualify counsel. Id. at 1359.

B. FEDERAL CASES INCORPORATING STANDARDS OF ATTORNEY CONDUCT NOT INCLUDED IN ANY RULE

Attorneys cannot safely rely on the explicit language of local rules governing attorney conduct. Many recent federal decisions have "incorporated" external standards into local rules that are simply not apparent in the rules themselves. See, e.g., Iacono Structural Engineering, Inc. v. Humphrey, 722 F.2d 435, 438-40 (9th Cir. 1983); Nelson v. Green Builders, Inc., 823 F. Supp. 1439, 1443 (E.D. Wis. 1993); Polycast Technology Corp. v. Uniroyal, Inc., 129 F.R.D. 621, 625 (S.D. N.Y. 1990). The relevant law can become particularly perplexing where federal courts have explicitly incorporated ABA versions of the Model Rules or Model Code into local rules governing attorney conduct, even though those local rules fail to mention either. See Iacono, supra, 722 F.2d at 440; Nelson, supra, 823 F. Supp. at 1443. Other courts, have used ABA standards not expressed in the local rule as a means "to interpret" the local rule. See, e.g., Resolution Trust Corp., v. "Bum" Bright, 6 F.3d 336, 341 (5th Cir. 1993); In Re American Airlines, Inc., 972 F.2d 605, 610 (5th Cir. 1992); McCallum v. CSX Transportation, Inc., 149 F.R.D. 104, 108 (M.D. N.C. 1993). Some federal courts have taken the exactly opposite approach, and refused to incorporate standards of

conduct not explicitly stated in the local rules. See, for example, Mason Dixon Lines, Inc., v. Glover, 1989 WL 135219 at 1 (N.D. Ill. 1989). Compare Polycast, supra, 129 F.R.D. at 624 (adopting the standard stated in local rule, but acknowledging court's ability to utilize other standards not declared in local rule).

1. Federal Courts That Expressly Incorporate ABA Models Into Their District's Local Rules

Some District Courts have expressly incorporated ABA models into their district's local rules, even though those rules fail to mention ABA models. A good example is Iacono Structural Engineering Inc. v. Humphrey, 722 F.2d 435 (9th Cir., 1983); see also Nelson, 823 F. Supp. at 1443 (indicating that ethical questions before court were governed by federal precedent and the ABA Model Rules, even though local rule adopted the ABA Model Rules as modified by Supreme Court of Wisconsin). In Iacono, the court held that the ABA Model Code was a source of ethical standards under the local rule in the district court, even though the local rule made no mention of the ABA Model Code. Id. at 440 (case arose from attorney disqualification action; on appeal the issue was whether district court erred in applying ABA Model Code as source of ethical standards for attorney in federal court). Local Rule 110-3 of the Northern District of California stated: "Every member of the Bar of this court and any attorney permitted to practice in this court under local rule 110-2 shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California and decisions of any court applicable thereto which are hereby adopted." Id. at 439. The court observed that: "Recent decisions of the California courts ruling on the professional standards required of California lawyers use the Model Code as a source of ethical standards to supplement and explicate the principles and rules set forth in the California State Bar Act and Rules of Professional Conduct of the State Bar of California covering certain conduct where the state bar act and rules are imprecise or incomplete." Id. 339-40. Thus attorneys in the federal courts should be on notice that the Model Code could be used as a source of ethical standards even though it is not explicitly mentioned. See id. 339-40.

While the Iacono court held that the Model Code could be used as a source of ethical standards under the local rule, the court was obviously concerned about fair notice. The court held that use of the Model Code should be limited to situations where the standards in the local rule are imprecise or incomplete. See Iacono, supra, 722 F.2d at 338-40. The court further observed that the Model Code was used when state courts interpret the state standards of conduct. See Id. at 339. Thus, in order to maintain consistent application of the Model Code, the Code should be used at the federal level as well, but only for the same purposes. See Id. 339-40. Otherwise, attorneys will lack notice of the ethical standards that apply to their conduct. See id. at 338 (stating that advance notice to attorneys of conduct standards is essential to a rule of law).

2. Federal Courts That Do Not Explicitly Incorporate ABA Models, But Look To Those Models to "Interpret" Local Rules

Some federal courts have stopped short of outright "incorporation" of ABA models into their local rules, but still look to ABA models to "interpret" local rules and resolve ambiguities — even if the local rules make no mention of ABA models and rely, instead, on state standards. Three recent Fifth Circuit cases are good examples: Resolution Trust, supra, 6 F.3d at 341; American Airlines, supra, 972 F.2d at 610; In Re Dresser Indust., 972 F.2d 540, 543 (5th Cir. 1992). These cases hold that state standards adopted by District local rules cannot be the sole authority governing a motion to disqualify. Resolution Trust, 6 F.3d at 341; American Airlines, 972 F.2d at 610; Dresser, 972 F.2d at 543. They reason that motions to disqualify are substantive motions affecting the rights of parties and, thus, standards developed under federal law apply. See Dresser, supra, 972 F.2d at 543. Federal law may incorporate ABA standards not set forth in local rules. See Resolution Trust, supra, 6 F.3d at 341 (source for professional standards is canons of ethics developed by ABA); American Airlines, supra, 972 F.2d at 610 (precedent has applied ethical canons contained in ABA Model Code); Dresser, supra, 972 F.2d at 544 (utilizing ABA Model Code and ABA Model Rules).

In Dresser, the defendant moved to disqualify plaintiff's counsel in a class action antitrust suit. 972 F.2d at 541. The defendant, Dresser Industries, claimed that the concurrent representation of Dresser in two unrelated pending lawsuits by plaintiff's counsel, Sussman Godfrey, warranted disqualification. Id. Local Rule 4(b) of the Southern District of Texas provides that the standards of conduct for lawyers practicing in the District Court should be the Code of Professional Responsibility of the State Bar of Texas. Nevertheless, the court utilized both the ABA Model Rules and ABA Model Code. Id. at 544 (relying on precedent to incorporate the ABA models). The local rule was not the sole governing authority because disqualification motions "affected the substantive rights of individuals." See id. at 543. Furthermore, the court reasoned: "[the district court's] local rules alone cannot regulate the parties' rights to counsel of their choice." Id.

Other federal courts have broadly incorporated standards of conduct not enunciated in the district's local rules. A good example is McCallum v. CSX Transportation, Inc. McCallum, supra 149 F.R.D. at 108. In McCallum, the court utilized standards present in the local rule as well as the ABA Model Rules to issue a protective order against the plaintiff's attorney for ethical violations stemming from ex parte contact with the defendant's employees. See id. at 104. In justifying the use of standards of conduct not mentioned in the court's local rules, the court stated: "Inasmuch as neither Congress nor the Supreme Court have adopted a uniform set of federal ethical standards governing attorneys practicing in the federal courts, the various federal courts may look to the rules of the state in which that court sits or widely accepted national rules, such as the American Bar Association Model Rules of Professional Conduct." Id. at 108. While Local Rule 505 for the Middle District of North Carolina utilized the Code of Professional Responsibility promulgated by the Supreme Court of North Carolina, the court looked to federal law as a means to interpret and apply the rules. See id. The court reasoned: "even

when a federal court utilize state ethic rules, it cannot abdicate to the state's view of what constitutes professional conduct ... [the court] still must look to federal law for interpretation of those canons and in so doing may consult federal case law and other widely accepted national codes of conduct, such as the ABA Model Rules." Id. See also Polycast, supra, 129 F.R.D. at 625 (for the proposition that a federal court is not bound, as a matter of law, by state interpretations of standards of conduct despite the exact wording of the District local rule.)

3. Federal Courts That Refuse to Incorporate Standards Not Declared in Local Rules

Some federal courts, however, have resisted incorporating ABA models into the interpretation local rules when these models are not expressly enunciated. A good example is Mason Dixon Lines, Inc. v. Glover, 1989 WL 135219 at 1 (N.D. Ill. 1989). In Mason Dixon Lines, the defendants moved to disqualify the plaintiff's law firm. Id. 1989 WL 135219 at 1. According to the court, the ABA Model Rules would require disqualification, but the ABA Model Code would not. Id. The court then turned to the relevant local rules of the Northern District of Illinois, which provided that the Model Code was the relevant standard. In adhering strictly to the standards set forth in the local rule, the court reasoned: "... this court cannot permit conduct that would be a violation of its own disciplinary rules. Thus, to the extent certain conduct would violate the Model Code, this court cannot follow the Model Rules instead." Id. at 1.

The case of Polycast Technology Corp. v. Uniroyal, Inc., supra, is another good example of a court's refusal to adopt standards of conduct not expressed in the District's local rules. 129 F.R.D. at 623-25. The issue before the court was whether the language "in force" in Local Rule 4(f) of the Southern District of New York permitted utilization of the ABA Model Rules when the local rule specifically adopted the Model Code and the state's interpretation of the Model Code. Id. at 623. The court held that the Code, not the Rules, was applicable in its district. Id. at 624. See also Emons Indust., Inc. v. Liberty Mutual Insurance Co., 747 F. Supp. 1079, 1085 (S.D. N.Y. 1990) (citing Polycast for proposition that Model Code not the Model Rules are primary source of guidance with respect to attorney conduct). The Polycast court reasoned that construing the rule to utilize the standard presently adopted by the state facilitated in identification of the ethical principles actually in effect. Furthermore, according to the court, "this construction avoids subjecting attorneys to potentially inconsistent sets of ethical requirements in the state and federal courts within the same geographic area." Id., at 623-625.

On the other hand, the Polycast court held that it was not bound by state court "interpretations" of the Model Code. Polycast, supra 129 F.R.D. at 625. See McCallum, supra, 149 F.R.D. at 108. Thus, while the ABA Code was the applicable standard of conduct under the local rules, the court, for interpretive purposes, could utilize the ABA Model Rules. See Polycast, supra, at 625. The court stated: "When we find an area of uncertainty, we must use our judicial process to make our own decision in the interests of justice to all concerned.... In determining the reach of DR 7-104(A)(1), then, it is appropriate to refer to the policies that underlie it, to state and

federal cases construing it, and to the analogous Model Rule 4.2 that is derived from it." Id., at 625. See also Kitchen v. Aristech Chemical, 769 F. Supp. 254, 258 (S.D. Ohio 1991) (citing Polycast for the proposition that the ABA Model Rules and policies may be utilized for interpretation despite a local rule which identifies the ABA Model Code as the standard of conduct).

C. DUE PROCESS AND VAGUENESS PROBLEMS

The conflicting decisions described above are more than just a nuisance to practicing lawyers and a waste of judicial energy. In serious cases, poorly drafted local rules and conflicting interpretations can cause genuine hardship. A lawyer's ability to practice law is more than a matter of honor, it is a livelihood, and a sanction that suspends that livelihood needs to be based on sufficient notice to meet constitutional due process guarantees.

The Supreme Court has twice visited lack of notice issues in the context of vague standards for attorney conduct. In re Ruffalo, 390 U.S. 544 (1968) dealt with a case in which an attorney was disbarred from the federal courts of Ohio, following disbarment in the state courts. In Ruffalo, the Supreme Court held that, while a state disbarment action is entitled to respect, it is not binding on the federal courts. Id. 547, citing Theard v. United States, 354 U.S. 278, 281-282. (For an inverse case where federal discipline was imposed despite the failure to complete a state investigation, see In the Matter of Rufus Cook, __ F.3d __ (1995), 1995 WL 73098 (7th Cir.).) The majority further held that a lawyer charged with misconduct is "entitled to procedural due process, which includes fair notice of the charge." In re Ruffalo, supra, 390 U.S. at 550. The Ruffalo majority held that the state disbarment proceedings failed to provide fair notice because the petitioner had no notice that his acts were considered a disbarment offense until after he had testified. (The petitioner had hired a railroad employee to investigate "after hours" accidents in different yards of the same railroad.) The majority opinion quoted Judge Edwards below that "[s]uch procedural violation of due process would never pass muster in any normal civil or criminal litigation." In re Ruffalo, 370 F.2d 447 (6th Cir. 1967), at 462 (dissent).

In a concurring opinion, Justice White went even further. White noted that the 6th Circuit majority had disbarred the petitioner pursuant to their then Local Rule 6 (3), which read as follows:

> "When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be forthwith suspended from practice before the court and notice of his suspension will be mailed to him, and unless he shows good cause to the contrary within 40 days thereafter, he will be further suspended or disbarred from practice before the Court." Rule 6 (3), Court of Appeals for the Sixth Circuit.
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> Id., at 554-555.

White observed:

> Even when a disbarment standard is as unspecific as the one before us, members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as malum in se. It also includes conduct which all responsible attorneys would recognize as improper for a member of the profession.
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> The conduct for which the Court of Appeals disbarred petitioner cannot, however, be so characterized. Some responsible attorneys, like the judge who refused to order petitioner disbarred from practice in the Northern District of Ohio, 249 F. Supp. 432 (1965), would undoubtedly find no impropriety at all in hiring a railroad worker, a man with the knowledge and experience to select relevant information and appraise relevant facts, to "moonlight" — work on his own time — collecting data. On the other hand some, like the officials of the Mahoning County and Ohio State Bar Associations, would believe that encouraging a man to do work arguably at odds with his chief employer's interests is unethical. The appraisal of petitioner's conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question.
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> Id. at 555-556

White concluded:

> I would hold that a federal court may not deprive an attorney of the opportunity to practice his profession on the basis of a determination after the fact that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct. I express no opinion about whether the Court of Appeals, as part of a code of specific rules for the members of its bar, could proscribe the conduct for which petitioner was disbarred.
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> Id. at 556. (emphasis added)

The Supreme Court has more recently returned to this issue in another Ohio case, Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626 (1985). In Zauderer the Supreme Court was asked whether the Ohio Board of Commissioners had lawfully reprimanded an attorney for certain advertising practices. Id. at 635-36. The majority opinion, by Justice White, upheld the reprimand against due process challenges, even while it struck down the Ohio ban on the use of illustrations in legal advertisements on first amendment grounds. See id., at 636. In so holding, the court concluded that the Ohio Supreme Court and the State Board of Commissioners did not violate the attorney's due process rights

because they had provided the attorney with adequate notice of the standards and an "ample opportunity" to respond to allegations. Id. at 654-55.

In dissent, Justice Brennan joined by Justice Marshall, concluded that the Ohio standards of conduct failed to adequately notify the attorney of ethical requirements; and thus, the state violated the attorney's due process rights. Id. at 664. The Ohio standards required disclosure in attorney advertising in order to ensure honest advertising, but the standards never gave Zauderer notice of what he was "required to include in the advertisement." See id. at 665-666, relying on Justice White's concurring opinion in In Re Ruffalo, supra. Furthermore, the conduct in question was not conduct which all reasonable attorneys in the profession would recognize as improper, thus, professional norms also did not provide proper notice. Zauderer, 471 U.S. at 666. According to Brennan, Zauderer's right to due process of law was violated. Id. at 664.

Several Circuit courts have also addressed the issue of impermissibly vague standards governing attorney conduct. See In Re Bithony, 486 F.2d 319, 324 (5th Cir. 1973); and United States v. Wunsch, ___ F.3d ___, 1995 WL 246066 (9th Cir.). See also United States v. Hearst, 638 F.2d 1190, 1197 (9th Cir. 1981) (holding Federal Rule of Appellate Procedure Rule 46a not unconstitutionally vague). Bithony was an attorney suspension/disbarment action. 486 F.2d at 320. An attorney had filed frivolous petitions for review in immigration cases solely to delay deporting the aliens he represented. Id. at 321. The attorney was charged with violating the Federal Rules of Appellate Procedure Rule 46. (Rule 46 incorporating the "unbecoming a member of the bar" standard in subsections (b) and (c).) Id. "[The attorney] did not demean himself uprightly and according to the law... [he was] guilty of conduct unbecoming a member of the Bar of the Court." Id. Ultimately the court suspended the attorney for six months. Id. at 325.

In order to suspend the attorney, the court addressed and dismissed the attorney's argument that the rule was so vague that it violated the attorney's due process of law because it failed to notify the attorney of prohibited conduct. Bithony, 486 F.2d at 324. The court acknowledged that the language in the abstract might present a colorable due process claim. When placed in the context of the legal profession, however, the rule took on definiteness and clarity. Id. 324-325. As the legal profession is a discrete professional group with a complex code of behavior, including the ABA Code, the court reasoned that "conduct unbecoming a member of the court" provided sufficient notice to the attorney that his actions were prohibited. See id. 324. The court concluded that no ambiguity existed when the rule was applied according to the ascertainable standards of the legal profession. The court did not address the issue of what happens when standards become so confusing that an attorney cannot reasonably parse out the applicable rule of conduct.

Analogous due process concerns have arisen in other professions, including the medical and educational fields. See U.S. v. Rosenburg, 515 F.2d 190, 197 (9th Cir. 1975); Wishart v. McDonald, 500 F.2d 1110, 1117 (1st Cir. 1974); and Margarete v. Edwards, 488 F. Supp. 181, 209 (E.D. La 1980). Where the conduct is such that all

reasonable people practicing in the particular profession would agree that it violates accepted standards, the courts will not scrutinize a vague statutory standard. Rosenberg, supra, 515 F.2d at 197 (holding statutory language limiting conduct of doctors not unconstitutionally vague when read in context of medical community standards); Wishart, supra, 500 F.2d at 1117 (holding "conduct unbecoming a teacher" provides adequate notice to members of profession in light of community standards). In Margarete v. Edwards, however, the court struck down vague legislation that required doctors to divulge information to their patients, but did not adequately define the specific information to be divulged. Margarete, supra, 488 F. Supp at 209.

Very recently, the Ninth Circuit set aside an attorney sanction based on Local Civil Rules 2.5.1 and 2.5.2 of the Central District of California. United States v. Wunsch, ___ F.3d ___, 1995 WL 246066. Local Rule 2.5.1 of that District incorporates Cal. Bus. & Prof. Code § 6068 (F) requiring an attorney "to abstain from all offensive personality." See Swan, United States v. William W., 833 F. Supp 794, 798. The Ninth Circuit set aside the sanction based on the "offensive personality" rule.

> "Clearly, 'offensive personality' is an unconstitutionally vague term in the context of this statute. See e.g., Cohen v. California, 403 U.S. 15, 25 (1971) (disturb[ing] the peace... by ... offensive conduct' fails to give sufficient notice of what was prohibited). As 'offensive personality' could refer to any number of behaviors that many attorneys regularly engage in during the course of their zealous representation of their clients' interest, it would be impossible to know when such behavior would be offensive enough to invoke the statute. For the same reason, the statute is 'so imprecise that discriminatory enforcement is a real possibility[,]' Gentile, 501 U.S. at 1051 (Kennedy, J., minority opinion), and is likely to have the effect of chilling some speech that is constitutionally protected, for fear of violating the statute." United States v. Wunsch, supra, 1995 WL 246066, at 5. Cf. Standing Committee on Discipline of the United States District Court for the Central District of California v. Yagman, 850 F. Supp 1384, (1994) 1389-1390; 1393-1394. (Applying discipline under Local Rule 2.5.2).

In so doing, the Ninth Circuit restated the traditional due process law relating to professional discipline:

> "The Fifth Amendment due process requires a statute to be sufficiently clear so as not to cause persons 'of common intelligence... necessarily [to] guess at its meaning and [to] differ as to its application[.]' Connally v. General Constr. Co., 269 U.S. 385, 391 (1926). Laws that are insufficiently clear are void for three reason: (1) To avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on arbitrary or discriminatory interpretations by government officers; and (3) to avoid

any chilling effect on the exercise of First Amendment freedoms. Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972)."

Id. at 5.

In contemplating the increasing confusion caused by ambiguous, vague and balkanized rules governing attorney conduct, these due process standards must be taken seriously.

D. MULTIFORUM PROBLEMS

This Report has already described the numerous difficulties, both theoretical and practical, that can arise within a single District under the present system of rules. But it is increasingly common for complex federal cases to involve more than one state or District. What if attorney conduct problems involve multiple venues? Given the fragmented state of standards between the 51 states and 94 Districts, described above, difficult choice of law problems are inevitable and have, in fact, been increasing in practice.[7]

Most fortunately, Linda S. Mullenix, the Bernard J. Ward Centennial Professor of Law at the University of Texas and a leading authority on federal rules, has just completed an authoritative study of this problem, "Multiforum Federal Practice: Ethics and Erie."[8] During this study, she generously shared research and insights with the Reporter. Her research assistant, Mr. Robert W. Musslewhite, Harvard Law School '96, was also of the greatest help. Rather than have an inferior synopsis repeated here, Professor Mullenix has generously permitted her entire draft

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[7]These problems have led, in part, to the American Bar Association to adopt a new "choice-of-law" rule, Rule 8.5. See ABA Model Rules of Professional Conduct (1994) 106-107; ABA Report No. 114 (August 11, 1993). As will be seen in Professor Mullenix's analysis in Appendix IV, "Multiforum Federal Practice: Ethics and Erie" there are potential Erie and Supremacy Clause issues present, as well. For a good example of Supremacy Clause problems, see the equally divided court affirmance of the First Circuit in United States v. Klubock, 832 F.2d 664 (1987), (sustaining the validity of a local rule of the District of Massachusetts) and the dissent by Breyer, C.J., id., 671-675. Now see Whitehouse v. U.S. District Court of Rhode Island, __F3d.__ (1st. Cir, 1995) 63 LW 2680 (May 9, 1995), sustaining the validity of a similar local rule of the District of Rhode Island as applied to Federal prosecutors. Id. 2680-2681. Cf. Baylson v. Pennsylvania Supreme Court Disciplinary Board, 975 F.2d 102 (2d Cir., 1992) striking down a similar local rule. For Erie problems, see Appendix IV, 23-53. Some federal courts have held that Erie does not require adherence to state standards in federal proceedings, or does not apply to determine applicable federal ethical standards. Id., 24-25. See Unified Sewage Agency v. Jelco, 646 F.2d 1339 (9th Cir. 1980); Cord v. Smith, 338 F.2d 516, 524 (9th Cir. 1964); 730 F.2d 418 (9th Cir. 1966); Courts of Suffolk v. Long Island Lighting Co., 710 F. Supp. 1407, 1413-1414 (E.D.N.Y. 1989). See Stephen Birbank "State Ethical Codes of Federal Practice: Emerging Conflicts and Suggestions for Reform," 29 Fordham L.J. 969 (1992).

[8]This study was presented as part of the Georgetown University Conference on "Legal Ethics Into the Twenty-First Century," March 17, 1995, and will appear shortly in the Georgetown Journal of Legal Ethics. Appendix IV is the text of the study as of March 17, 1995. The Charts cited were developed in cooperation with the Reporter and his research assistants. Updated versions are provided as Appendices I, II, and III attached.

study to be attached as Appendix IV to this Report, with the consent of the Georgetown Journal of Legal Ethics, where it will shortly appear.

Professor Mullenix's study leaves no doubt but that the troubling issues described above in this Report are greatly exacerbated in multiforum practice. The recent case of Georgine v. Amchem Products, Inc., 157 F.R.D. 246 (E.D. Pa. 1994) is but one example of the difficulties involved, and Professor Mullenix provides many more.[9] She concludes:

> Scanning the array of possible professional ethical standards in federal court, one is reminded of the old adage that no person can serve two masters. Or three, or four, for that matter. And in those federal outposts where the local district court has not adopted standards of professional responsibility, federal practitioners should not be subjected, after the fact, to a federal judge's transcendental "common sense" notion of ethics, as "justice requires." Federal ethics are not and should not be a brooding omnipresence in the sky.
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> Clearly, federal practitioners need one — and only one — defined code of professional ethics. This code should apply in all federal courts. In the federal system, at least, ethical standards should not vary according to what local district or circuit a federal lawyer practices. A uniform code of conduct will eliminate all problems relating to interdistrict and intercircuit conflicts. A federally-adopted universal code also would supersede conflicting state codes.
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> Whatever may be the virtues of allowing the ninety-four federal district courts to promulgate local rules of federal procedure according to local practice, the notion of competing local rules of federal ethics is nothing short of sheer madness. The need for a truly universal set of federal rules is apparent, and should be promulgated as soon as possible.[10]

In the concluding Section VII of this Report, Professor Mullenix's recommendation for a uniform code of conduct in federal courts will be examined, as will her forcefully argued interim recommendations: 1) adopting "a uniform conflicts provision that would assist federal judges in resolving which jurisdiction's conduct rules govern an alleged disciplinary violation"; 2) developing "a means of characterizing ethical duties that are separable from and collateral to the merits of a legal dispute and those that are inextricably bound to substantive legal claims"; and 3) separating the federal judiciary's "attorney discipline function from its adjudicatory role," as distinguished in Metromedia Co. v. Fugazy, 1988 WL 140773 at

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[9]See Appendix IV, pp. 23-53.

[10]Id., at 61.

*4 (S.D.N.Y. 1988).[11] Even if one did not accept all of Professor Mullenix's recommendations, and they are most cogently argued, the basic findings of her study are undeniable. Multiforum federal practice, challenging under ideal conditions, has been made increasingly complex, wasteful, and problematic by the disarray among federal local rules and state ethical standards. The Reporter is most grateful for her assistance.

E. PROMULGATION BY FEDERAL AGENCIES OF THEIR OWN ATTORNEY CONDUCT RULES

Conflicts between different state standards, between different District and Circuit local rules, and between federal and state standards within the same state are problematic enough. But now frustration with conflicting rules has led key federal agencies to adopt their own rules of professional conduct. As the Deputy Attorney General, Jamie S. Gorelick, observed:

> "[T]he Department does not assert that its attorneys are exempt from state ethics rules. To the contrary, the department directs that its attorneys should conduct themselves at all times in conformity with the highest standards of ethical conduct. Unfortunately, there are 50 different sets of state ethics rules, subjecting department attorneys to conflicting requirements."[12]

These agency rules make life more bearable for the government agencies, but they increase the burden on the practicing lawyer—and may well lead to serious Supremacy Clause and separation of powers litigation.[13] When a practitioner faces a government lawyer in a federal proceeding, there may be three arguably relevant sets of rules — the state standard; the federal court local rule; and the agency rule — and they may all conflict. Examples of federal agencies adopting their own attorney conduct rules include the Department of Justice, the Securities and Exchange Commission, the Patent and Trademark Office, the Immigration and Naturalization Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco, and

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[11] See id., 60. The last recommendation would create "federal disciplinary committees within the federal districts or circuits." Professor Mullenix observes that this "will permit the development of expertise in professional responsibility issues at the federal level, similar to the kind of expertise that dedicated state bar grievance committees accomplish through the existence of institutionalized, independent bar grievance offices." Id., at 60.

[12] Washington Post, May 21, 1995, Co 7, 1995 WL 2094845.

[13] For a vision of the inherent Separation of Power and Supremacy Clause conflicts, see Whitehouse v. U.S. District Court of Rhode Island, supra at note 7, 63 LW2680; see United States v. Klubock, supra at note 7, 671-675 (Breyer, C.J. disserting); United States v. Colorado Supreme Court, 871 Supp 1328 (D. Colo. 1994); and United States v. Ferrara, 847 F. Supp. 964 (D.D.C. 1993), all discussed below. These issues were nearly reached in United States v. Ferrara, __F.3d. __, (May 19, 1995) 1995 WL 301679 (D.C. Cir.), which was decided on jurisdictional grounds and is discussed below.

Firearms, the Federal Deposit Insurance Corporation, and the Interstate Commerce Commission.[14]

The usual form taken by the "agency rules" is to condition practice before the agency on observing standards that the agency promulgates.[15] This often takes the form of a duty of disclosure which exceeds relevant state standards or federal local rules, and can actually conflict directly with client confidentiality provisions in these other standards and rules. For example, the specialist practitioner before the Patent and Trademark Office, the Immigration and Naturalization Service, or the Security of Exchange Commission, can face an agonizing choice.[16] Should the practitioner risk suspension from lucrative agency work, or risk disciplinary censure or malpractice liability under the competing state or local rule standards? Meanwhile the agency can argue that it does not cause any direct conflict with competing standards. Nothing it does prevents an attorney from following such standards. The attorney simply cannot practice before the agency.

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[14]See Department of Justice "Communication with Represented Persons: Commentary to 28 C.F.R. 77" (June, 1993), discussed at length above; "Security and Exchange Commission — Canons of Ethics," 17 C.F.R. § 200.50-§ 200.72; Patent and Trademark Office "Code of Professional Responsibility," 37 C.F.R. 10.20-10.112; Immigration and Naturalization Service Regulations, 8 C.F.R. § 292.3; Internal Revenue Service "Rules Applicable to Disciplinary Proceedings," 31 C.F.R. (A) 10.50-10.59; Bureau of Alcohol, Tobacco and Firearms, "Duties and Restrictions Relating to Practice," 31 C.F.R. (A) § 8.31-8.42; Federal Deposit Insurance Corporation, "Rules of Practice Before the FDIC and Standards of Conduct," 12 C.F.R. § 308.108-308.109; and Interstate Commerce Commission, "Canons of Ethics," 49 C.F.R. § 1103.10-1103.34. For some of the context behind this agency rule making, see A.A. Somers, "The Emerging Responsibility of the Securities Lawyer," (1974) Fed. Sec. L. Rep. § 72.631; Arthur Best, "Shortcomings of Administrative Agency Lawyer Discipline," 31 Emory L.J. 535 (1982); and Robert G. Heiserman and Linda K. Pacun, "Professional Responsibility in Immigration Practice, and Government Service," 22 San Diego L. Rev. 971, 980-86 (1985); "Comment, SEC Disciplinary Proceedings Against Attorneys Under Rule 2 (p)," 75 Mich. L. Rev. 1270 (1981). See also In re Carter and Johnson, 1981 Fed. Sec. L. Rep. § 82.847 (SEC 1981).

Even some state administrative agencies have tried to regulate lawyer conduct. For example, by letter of January 6, 1988, the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts ("DEQE") "expressed the view that both the governing statute and the rules of professional responsibility require lawyers to notify the DEQE of toxic waste spills when their clients do not." Andrew L. Kaufman, Problems in Professional Responsibility (3d ed., 1989), 303.

[15]The Internal Revenue Service provisions are typical:

> **§ 10.50 Authority to disbar or suspend.**
> Pursuant to 31 U.S.C. 330(b), the Secretary of the Treasury after notice and an opportunity for a proceeding, may suspend or disbar any practitioner from practice before the Internal Revenue Service. The Secretary may take such action against any practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation in this part, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. 31 C.F.R.(A)g10.50. [59 FR 31528, June 20, 1994].

[16]See the articles and cases cited in note 14, supra. For two extensive studies, yet to be published, see Anita L. Mecklejohn "If a Little Positivism is Good, Is More Better? Administrative Agency Regulation of Lawyer Conduct" (1995 Study of the Patent and Trademark "Code of Professional Responsibility") and Adam C. Wit, "Civil Disobedience of the Immigration Attorney" (1995 Study of Immigration and Naturalization regulations). Copies available, subject to authors' permission, from the Reporter.

There has been much recent controversy about the Department of Justice's foray into rule making governing attorney conduct.[17] To be fair to the Department, however, the rules promulgated in 28 C.F.R. 77 (1994) relating to represented parties are actually quite narrow and limited compared to other federal agency rules, which often incorporate entire codes of attorney conduct. On the other hand, the Department is particularly prominent as a professional symbol. In addition, the new Department rules are different in one key respect from the usual agency rules. Most federal agency rules do not purport to "override" state standards or federal local rules, or to shield agency lawyers from such rules or standards. The new Department of Justice rules, on the other hand, do just that. For this reason, it is necessary to examine those Department of Justice initiatives in more detail.

There has long been professional concern about a lawyer contacting a party known to be represented by another lawyer, without that other lawyer's consent. The ABA Code of 1969 stated:

> "During the course of his representation of a client a lawyer shall not ... [c]ommunicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such party or is authorized by law to do so." ABA Code, DR-7-104(A)(1).

The ABA Model Rules of 1983 contain a very similar provision in Rule 4.2:

> "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

These rules are "designed both to protect the represented individual from overreaching opposing counsel and to ensure that the adverse party's attorney can function properly." United States v. Lopez, 765 F. Supp. 1433, 1449 (N.D. Cal. 1991), vacated and remanded, 989 F.2d 1032 (9th Cir. 1993), amended and superseded, 4 F.3d 1455 (9th Cir. 1993).

In 1989, then Attorney-General Richard Thornburgh issued the "Thornburgh Memorandum," asserting the Justice Department policy on attorneys' contacts with represented clients. The Justice Department's version of the contact rule, however, was significantly different from those standards adopted by most District and Circuit

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[17]For a few typical examples, see Samuel Dash, "An Alarming Assertion of Power," 78 Judicature (vol. 3), 137 (Dec. 1994); Jamie S. Gorelick and Geoffrey M. Kineberg, "A Sensible Solution," 78 Judicature (vol. 3), 136 (Dec. 1994); Gerald H. Goldstein, "Government Lawyers Above the Law?" Washington Post A19 (May 2, 1995), 1995 WL 2091431; Answer: Jamie S. Gorelick "Within the Law", Washington Post Co. 7 (May 21, 1995), 1995 WL 2091431; and William G. Otis, "Prosecutors on Trial," Washington Post, Op.Ed., (May 30, 1995).

Courts. The report stated that "an attorney for the government is authorized to direct and supervise the use of undercover law enforcement agents... regardless of whether the person is known to be represented by counsel." Memorandum of Attorney General to All Justice Department Litigators, June 8, 1989, page 5 (emphasis added).

The rules were issued largely due to the Justice Department's increased role in law enforcement investigations. According to Deputy Attorney General of the United States, Jamie Gorelick, these new standards are necessary because

> [t]here continue to be many different versions of the anti-contact rule itself, and there are even greater differences in how these rules have been interpreted. Without a uniform federal rule, prosecutors would inevitably reduce their participation in the investigative phase of law enforcement, leading to a loss in the effectiveness of criminal law enforcement and a decline in the level of compliance with legal and ethical standards on the part of police and federal agents.

Gorelick and Geoffrey Klineberg, "Regulating Contacts with Represented Persons: A Sensible Solution" 78 Judicature 136, 142-3 (1994).

In applying the rules to the law enforcement context, courts have generally concluded that prosecutors are not exempt from coverage under a court's local rule governing contact with represented parties, but some courts have limited the rule's applicability in the pre-indictment investigative context. See e.g. United States v. Ryans, 903 F.2d 731, 739 (1990 10th Cir.)("We are not convinced that the language of the rule calls for its application to the investigative phase of law enforcement"), cert. denied, 498 U.S. 855, 111 S.Ct. 152 (1990); United States v. Sutton, 801 F.2d 1346,1365-66 (D.C. Cir. 1986)(DR 7-104 "was never meant to apply to [pre-indictment, non-custodial] situations such as this one"); United States v. Vasquez, 675 F.2d 16, 17 (2d Cir. 1982)(no violation of DR 7-104 where government informant taped conversation with represented individual in absence of counsel prior to indictment); Cf. United States v. Hammad, 858 F.2d 834,839 (2d Cir. 1988)(Prosecutor violated DR 7-104 in pre-indictment phase when an informant "elicited admissions from a represented suspect;" however, court urged restraint in applying rule during this phase); District of Columbia Rules of Professional Conduct Rule 4.2 cmt. ¶ 8 (prosecutors are not subject to contact rules). For most courts, however, prosecutorial contact with represented parties that occurs during the post-indictment phase would constitute a violation of the conduct rule. See, e.g. Lopez 765 F. Supp. 1433 (dismissing indictment where federal prosecutor spoke directly to represented defendant who was under indictment) vacated and remanded, 989 F.2d 1032 (1993), amended and superseded, 4 F.3d 1455 (1993); United States v. Lemonakis 485 F.2d 941, 955 (2d Cir. 1973).

In contrast, the Justice Department position taken in the Thornburgh memorandum was that

> the 'authorized by law' exemption in DR 7-104 applies to all communications with represented individuals by Department attorneys...[thus] mak[ing] clear...that the purported exemption exists after indictment.

Lopez at 1446. (citing the Department's brief). Consequently, in response to the Thornburgh memorandum, the ABA House of Delegates unanimously adopted a resolution opposing "any attempt by the Department of Justice unilaterally to exempt its lawyers from the professional conduct rules that apply to all lawyers under applicable rules of the jurisdiction in which they practice" Report of February 12, 1990. The courts were equally hostile. According to Judge Patel of the Northern District of California, if one accepts the Department's controversial claims,

> it is not clear that there would be any conduct the prosecutor could not undertake, as long as it was pursuant to his or her responsibility to investigate and prosecute crimes. DOJ attorneys would be exempt from rules adopted by federal courts to govern ethical conduct of attorneys practicing before them. This is, quite simply, an unacceptable result.

Lopez, 765 F. Supp. at 1448 (prosecutor was not exempt from state bar conduct rules adopted in District Court's local rules despite reliance on the Department's policy in Thornburgh Memorandum). Many courts also rejected the Department's legal argument that the Thornburgh Memorandum fit the "authoriz[ation] under the law" exception in the Model Rules because "none expressly or impliedly authorize government attorneys either to disregard court-adopted rules or to violate ethical rules regarding contact with represented individuals," Lopez at 1447. In another case, the court rejected the Thornburgh Memorandum because it was "an unpromulgated policy memorandum that did not rise to the level of 'federal law.'" United States v. Ferrara, 847 F. Supp. 964 (D.D.C. 1993)). The Conference of Chief Judges agreed that for a substantive regulation to have force and effect of law the regulation had to be rooted in a specific grant of power. Additionally, they claim that a statutory scheme must expressly permit the Justice Department contacts with represented persons. Report of the Special Committee of the Conference of Chief Justices, March 31, 1994.

The Justice Department later modified its original position and on August 4, 1994, issued final regulations in the Federal Register. 59 Fed. Reg. 39911. According to the Deputy Attorney General, these regulations are more "narrowly focused on law enforcement activity" rather than being a blanket exception for all Justice Department lawyers, and are more in line with the principles behind Rule 4.2. Gorelick and Klineberg, supra, at 143. Despite this contention, the Department maintains that it at all times "has the authority to exempt its attorneys from the application of DR 7-104 and Model Rule 4.2 and their state counterparts." 59 Fed. Reg. at 39912. Essentially, the Department claims that these regulations supersede all state and federal local rules relating to communication with represented parties either by acting as "laws" within the meaning of the "authorized by law" exception in the Model Rules, by preemption under the supremacy clause, or by a "proper exertion of delegated legislative authority." 59 Fed. Reg. 39917.

Thus, in the Department's view, even if a federal court did not adopt the "authorized by law" exception in its local rules, the Department rules would preempt the federal district court local rule. In support, the Department asserts that "any local rule inconsistent with a regulation lawfully issued under statutory authority must yield to Congress's paramount authority." 59 Fed. Reg. at 39917. According to the Department, Congress has delegated this legislative power to the Attorney General under 5 U.S.C. § 301 (authorizing the Attorney General to prescribe regulations for the Department) and under general statutory provisions enabling the Department to prosecute civil and criminal matters in 28 U.S.C. §§ 515(a), 516, 533, 547. 59 Fed. Reg. at 39917.

Additionally, these new regulations would stay all judicial disciplinary proceedings against Justice Department attorneys until the Department conducts its own internal hearing. 59 Fed. Reg. 39911. According to the regulations, the Attorney General must first find "that a Department attorney has willfully violated these new rules ... [before] that attorney be subject to state disciplinary jurisdiction." Id. at 39912.

Some have questioned the authority of the Attorney General to issue these rules, see, e.g. Samuel Dash, "An Alarming Assertion of Power," 78 Judicature 137 (1994). The Conference of Chief Justices stated that "[w]e are concerned that if the Department's position is not reconsidered, there will be a confrontation of constitutional proportions." Special Committee of the Conference of Chief Justices, March 31, 1994, page 21-23. The state Chief Justices further asserted that "the proposed regulation flies in the face of principles of ethics ingrained in state law, it violates principles of federalism and separation of powers." Id., 23 .

In any event, it is practically certain that the Department's initiatives will lead to litigation resolving the full extent of the Department's rule making powers under constitutional and federal law. See, for example, United States v. Ferrara __F.3d__ (May 19, 1995), 1995 WL 301679 (Attempt by Department to enjoin Disciplinary Board of New Mexico Supreme Court from investigating Assistant U.S. Attorney who was a member of New Mexico bar for violation of New Mexico's represented party rule. Resolved against Department on jurisdiction. Department's Supremacy Clause argument not reached.) But it is important to remember that this issue goes far beyond the Department of Justice's concern with represented parties, and includes the rules promulgated by many other federal agencies, set out in part above. In addition, the Department of Justice has sought to enjoy other state standards as applied to its lawyers. See United States v. Colorado Supreme Court, 871 F. Supp. 1328 (D. Colo. 1994) (Department exerts Supremacy Clause to dispute application of Model Rules 3.3(d) and 3.8(f) to federal prosecutors); United States v. Klubock, 832 F. Supp. 664 (1st Cir. 1987) (Department seeks declaratory judgment against Board of Bar Overseers of Massachusetts Supreme Judicial Court to invalidate SJC Rule 3:08, PF 15 — stating it is "unprofessional" for a "prosecutor to subpoena an attorney to a grand jury without prior judicial approval.") This has now lead to a split between Circuits. See Whitehouse v. U.S. District Court for the District of Rhode Island, __F.3d__ (1st Cir., 1995), supra, (upholding R.I. Local Rule

3.8(F) as applied to Federal prosecutors). Cf. Baylson v. Penn. Sup. Ct. Disciplinary Bd., 975 F.2d 102 (3d. Cir., 1992), (striking down a similar local rule).

As will be seen, there is now legislation pending in the Senate, Senate Bill No. 3, which would give the Department direct legislative authority to establish agency rules that supersede state standards.[18] It is, however, the Departments position that the legislation is superfluous and that the Department already has the statutory authority. As the Deputy Attorney General recently stated: [T]he attorney general already has the authority to establish uniform rules for Department of Justice attorneys engaged in law enforcement functions across the country, the provisions of the bill currently pending in the Senate (§ 3)... simply makes that authority explicit."[19]

The underlying legal issue is important in addressing ultimate solutions to the chaos of federal attorney conduct rules, as will be done in Section VII below. One possible long term option would be to promulgate model federal local rules, of the kind first articulated by the Committee on Court Administration and Case Management in 1978. See Appendix V, attached, with a sample version of the model "Federal Rules of Disciplinary Enforcement." Would federal agency rules override such model local rules? Local Rules are adopted pursuant to 28 U.S.C. § 2071 which states, "such rules shall be consistent with Acts of Congress and the rules of practice and procedure prescribed under section 2072 of this title." 28 U.S.C. § 2071 (1995). Because local rules must be consistent with Acts of Congress, local rules which contravene existing federal statutory law would seem to lack effect. See 28 U.S.C. 2071. Thus, with proper authority, through an Act of Congress, federal agencies could pass valid regulations which supersede local rules governing attorney conduct.

While the Justice Department argues that it possesses the clear requisite congressional authority to create regulations governing attorney conduct, it is not such an easy question. The Department claims authority under 5 U.S.C. § 301 and Title 28 of the United States Code. See 5 U.S.C. § 301 (authorizing the attorney general to "prescribe regulations for the government of [her] department, and the conduct of its employees. The Department also relies on Georgia v. United States, 411 525, 536 (1973). (5 U.S.C. § 301 is ample legislative authority for substantive and procedural regulations so long as they do not conflict with the Voting Rights Act.) See Jamie S. Gorelick, Justice Department Contacts with Represented Persons: A Sensible Solution, 78 Judicature 136 at 5 (Nov. - Dec. 1994).

The exact language of 5 U.S.C. § 301, however, does not authorize government attorneys to disregard federal court local rules, nor is there anything more specific in the general enabling statutes under Title 28. See 28 U.S.C. §§ 515(a), 516, 533, and 547. A good example is Chrysler Corporation v. Brown, 441 U.S. 281 (1978). Brown arose in the context of the Trade Secrets Act. Id. 308-310. The

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[18]See the full discussion of Senate Bill No. 3 at Section VI, infra.

[19]See Washington Post, May 21, 1995, Co. 1, 1995 WL 2094845.

Secretary of Labor argued that 5 U.S.C. § 301 permitted him to issue a regulation requiring corporations to disclose trade secrets under the "authorized by law" exception of the Trade Secrets Act. Id. The court disagreed and held § 301 was a housekeeping statute: "It is indeed a housekeeping statute, authorizing what the APA terms 'rules of agency organization, procedure or practice' as opposed to 'substantive rule.'" Id. at 310. The court based its holding on the antecedent history of § 301 where statutes were enacted to give department heads of early government departments authority to govern internal governmental affairs. Id. at 309. Thus, the Secretary lacked the authority to pass regulations limiting the scope of the Trade Secrets Act. Id. While Brown arose in the context of trade secrets, its principles may be transferable to attempts to regulate attorney conduct. See id. at 308-310. Dicta in prior cases have supported this view. See United States v. Ferrara, 847 F. Supp. 964, 969 (Dist. of Columbia 1993) (without clear and manifest purpose of Congress, DOJ policy [Thornburgh Memoranda] cannot supercede state codes of ethics); Lopez, 765 F. Supp. at 1448 ("DOJ attorneys would be exempt from rules adopted by federal courts to govern ethical conduct of attorneys practicing before them. This is quite simply, an unacceptable result. Local Rules are clearly meant to apply to all attorneys practicing in federal court, regardless of the client they represent."); In Re John Doe Esquire, 801 F. Supp. 478, 486 (Dist. N. Mex. 1992) (citing Lopez).

On the other hand, the Department will rely on Georgia v. United States, 411 U.S. 526 (1973) (upholding Attorney General's administrative regulations under 5 U.S.C. § 301 to effectuate § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, although the Voting Rights Act itself did not authorize such regulations). But see United States v. Lopez, supra, 765 F. Supp. at 1447 (Title 28 fails to grant adequate authority to Attorney General to promulgate regulation of attorney conduct.) If the Department's statutory case prevails, it will argue that the Congressional grants of authority give its internal regulation the force and effect of federal law. See Gorelick, supra, 78 Judicature 136, at 137; 59 Fed. Reg. 39916. It will then argue that these internal rules would, in turn, supercede any conflicting federal local rules adopted under 28 U.S.C. § 2071 because the latter must be "consistent" with "acts of Congress."

If this is the outcome of test litigation, the future solution to Federal attorney conduct standards may not lie in the kind of model local rules proposed by the Committee of Court Administration and Case Management in 1978, as typified by the Model Federal Rules of Disciplinary Enforcement. Again, this is not just because of the Department of Justice's specific initiatives regarding represented parties, but also because of the many other federal agency rules that purport to govern attorney conduct. If agency rules can "trump" federal local rules, then more attention must be paid to long term solutions in Congress or through the Enabling Act process, 28 U.S.C. §§ 2071-2077, with its "supercession" clause, 28 U.S.C. § 2072.

VI. SOME RECENT REACTIONS: RESOLUTION XII OF THE CONFERENCE OF CHIEF JUSTICES(AUGUST 4, 1994); THE RESOLUTION OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION (1995); AND CONGRESSIONAL INITIATIVES, INCLUDING SENATE BILL NO. 3 (1995)

Not surprisingly, the problems described above have begun to attract the attention of Congress, as well as leading professional and public interest groups. Three of these reactions have been selected for discussion because they represent fundamental concern. These must be addressed by any long term solution.

A. RESOLUTION XII OF THE CONFERENCE OF CHIEF JUSTICES (AUGUST 4, 1994)

The Conference of Chief Justices represents the interests of the state courts.[20] Traditionally, the state supreme courts have regulated the American legal profession, usually through the appointment of boards of bar overseers and bar counsel.[21] Resolution XII, adopted unanimously by the 51 Chief Justices at their last Conference on August 4, 1994, reasserts that traditional role. The Resolution also specifically addresses the new Department of Justice rule on represented parties discussed in Section V. E., above. The Resolution asserts that, "[E]ach state, under the authority of its highest court, is exclusively responsible for regulating the professional conduct of the members of its bar and establishing appropriate ethical standards and enforcement mechanisms...."[22] Lawyers employed by the Department of Justice are required by federal law to "be a member of the bar of a state, territory or the District of Columbia," and "[e]very lawyer admitted to practice by a state supreme court, including federal and state government lawyers, must abide by and be governed by that court's ethical rules." "As a matter of policy and ethics, as well as principles of federalism and separation of powers, the state supreme courts have the sole and exclusive responsibility to supervise the practice of law in each

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[20]See "The Chief Justices Find a National Voice," The National Law Journal, October 17, 1994, A1 at A26.

[21]See Conference of Chief Justices, "Comment on Proposed Regulation Governing Contacts by Department of Justice Attorneys with Represented Persons," Special Committee of the Conference of Chief Justices (Chief Justice E. Norman Veasey, Chair), March 31, 1994, 12, quoting Leis v. Flynt. 439 U.S. 438 (1979).

> "Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct."
>
> Leis v. Flynt, 439 U.S. 438, 442 (1979).

See also Nix v. Whiteside, 475 U.S. 157, 165 (1980) ("a Court must be careful not to... intrude into the state's proper authority to define and apply the standards of professional conduct applicable to those it admits to practice in its courts.") Id., 165.

[22]Resolution XII, supra at pg. 1.

jurisdiction."[23] The conclusion is that the Department of Justice's new rule is "(a) contrary to ethical considerations; (b) violates principles of federalism and separation of powers; and (c) is promulgated without appropriate authority."[24]

As discussed at length above (Section V.E.), the Department of Justice's authority to issue the new rules in 28 C.F.R. 77 will be tested by litigation, or bolstered by additional congressional action, or both. Resolution XII is, however, very significant in a broader context. The Resolution, and the Conference of Chief Justices' "Comment" of March 31, 1994, forcefully argue the "state standard" approach to the underlying problem of attorney conduct in federal courts.[25]

It has already been seen that a majority of federal District courts have local rules which explicitly adopt the state standards of the state in which the District is located. See Section III A., supra. A number of Circuits also look to state standards, often the standards "adopted by the highest court of any state in which the attorney is admitted to practice." See Local Rules of the Tenth Circuit, Add. III, Sec. 2.3, and Local Rules of the Eleventh Circuit, Add. VIII, Rule 1A; Appendix III, page 3, attached. This not only resolves any conflict between the state and the District, but also often permits use of the state's disciplinary and enforcement system in many cases. A violation of a federal standard will usually be found to be a violation of a state standard.[26]

Of course, this system has not worked perfectly. As seen above, some federal courts have incorporated ABA Models into interpreting local rules, even when the local rule refers only to the state standards. See Section V.B., supra. Occasionally, state enforcement systems have failed to punish egregious conduct, even in Districts incorporating state standards. See In the Matter of Rufus Cook, ___ F.3d ___ (1995), 1995 WL 73098 (7th Cir.) But the advantages of a "state standards" system are strong. Indeed, the last effort by a Judicial Conference Committee to solve the underlying problems, the "Federal Rules of Disciplinary Enforcement" promulgated by the Committee at Court Administration and Case Management in 1978, adopted a "state standards" approach. See Appendix V, attached. Resolution XII symbolizes this approach.

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[23]Id., at pg. 2.

[24]Id. at pg. 3.

[25]See Conference of Chief Justices "Comment on Proposed Regulation Governing Contacts by Department of Justice Attorneys with Represented Persons, 28 C.F.R. Part. 77," March 31, 1994, Special Committee of the Conference of Chief Justices on the Proposed Regulation (Chief Justice Norman E. Veasey, Delaware, Chair).

[26]As will be seen in Section VII, supra, the Illinois State Bar Association has proposed a "Federal Rule Respecting Discipline of Attorneys Practicing in Federal District Courts" that incorporates these "state standard" principles. The Illinois State Bar Association has formally asked us to consider its proposal. Letter of February 14, 1995, and it is set out as Appendix VI, attached.

B. RESOLUTION OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION (1995)

While the American Bar Association has generally supported the view of the Conference of Chief Justices as to the new Department of Justice rules, the ABA has also pushed for the use of uniform national standards for the regulation of attorneys.[27] At the Association's Mid Year Meeting last February, 1995, the House of Delegates adopted the following Resolution:

> BE IT RESOLVED, THAT the American Bar Association supports efforts to lower barriers to practice before U.S. District Courts based on state bar membership by eliminating state bar membership requirements in cases in U.S. District Courts, through amendment of the Federal Rules of Civil and Criminal Procedure to prohibit such local rules.

The Resolution was accompanied by a Report from Donna A. Killoughey, Chair, Section of Law Practice Management, dated November 21, 1994. It argued that required state bar membership is an "exclusionary and anti-competitive practice" that "inhibits competition, restricts lawyers from representing clients without incurring the substantial cost of local counsel and drives up costs to clients." Id., page 1. The Association has officially written to this Committee, requesting that the Committee consider this Resolution. Letter of April 3, 1995.

The above ABA Resolution is consistent with the Associations long efforts, beginning with the ABA Model Canons of Professional Ethics in 1908, to establish national bar regulation and to reduce regional barriers to practice. The Association's primary strategy, represented by the ABA Model Code of 1969 and the ABA Model Rules of 1983, has been to persuade states to adopt a uniform system of attorney conduct rules by following an ABA model. These efforts, as described above in Section III, have met with mixed success, but other ABA initiatives, including uniform regulation and accreditation of law schools, have strongly encouraged national standards.

One fundamental option, to be discussed in Section VII, would be the adoption of a national federal rule governing attorney conduct in all federal courts. This rule would, most likely, incorporate by reference the ABA Model Rules or a federal "version" of the ABA Model Rules. Without such a "national" result, it is hard to see how the above ABA Resolution could be effectively implemented. For example, if a lawyer need not be a member of the bar of the state in which a District is located, how could that District systematically refer discipline problems to the state bar agencies? Perhaps a rule could be adopted which refers to the standards of the

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[27]The Department of Justice rules on represented parties in 28 C.F.R. 77 are not consistent with the ABA Model Code or Model Rules. See Section V (E), supra. On Feb. 12, 1990, the ABA House of Delegates unanimously adopted a resolution opposing "any attempt by the Department of Justice unilaterally to exempt its lawyers from the professional conduct rules that apply to all lawyers under applicable rules of the jurisdictions in which they practice." See also ABA Discussion Draft on Rule 4.2, February 10, 1995, for submission to the House of Delegates in Chicago in August, 1995.

attorney's "state of bar admission," but that could certainly be problematic in the case of an attorney with multiple state bar admissions. In any event, all the problems described in Section V D., supra, would be exacerbated. The 1978 model "Federal Rules of Disciplinary Enforcement" focused on a close relationship between state standards and federal rules. See Appendix V, attached. The American Bar Association, for the reasons inherent in its 1995 resolution, would probably prefer to see a national standard for all federal courts, particularly if it followed the ABA Model Rules. This would certainly reduce the need for state bar membership to practice in a particular District, and would probably hasten the day when all states adopt the ABA Model Rules.

C. RECENT CONGRESSIONAL INITIATIVES, INCLUDING SENATE BILL NO. 3 (1995)

Given the extent and importance of the problems described above, it is not surprising that Congress has begun to express concern. Currently pending is Senate Bill No. 3, which contains the following provision:

> Sec. 502. Conduct of Federal Prosecutors
> Notwithstanding the ethical rules or the rules of the court of any State, Federal rules of conduct adopted by the Attorney General shall govern the conduct of prosecutions in the courts of the United States.

This provision is obviously intended to resolve the controversy over the Department of Justice's new represented party rules, discussed at length at V. E., above. The bill itself has caused controversy, and its future is uncertain.[28] More

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[28]The bill was attacked by Gerald H. Goldstein, the President of The National Association of Criminal Defense Lawyers. See Gerald H. Goldstein, "Government Lawyers: Above the Law?," May 2, 1995 Washington Post, page A19. Goldstein observed:

> While the new Republican majority publicly promises to whittle down the federal government and shift power back to the states, fine print in the new crime bill pending in the Senate (§ 3) would do the opposite — with a vengeance.
>
> Under the guise of "reforming " federal criminal procedure, the bill's section 502 would exempt federal prosecutors from any and all state ethics rules governing lawyers' conduct. Instead of following the rules all other lawyers must obey, attorneys for the federal government would be subject only to "rules of conduct adopted by the Attorney General." Nothing more.
>
> ****
>
> This astounding proposal to remove all state controls governing federal prosecutors and consolidate more power in the Justice Department should be stopped in its tracks. As a society committed to due process, we should waive the government's sovereign immunity in instances of conscious disregard of citizens' fundamental rights. Then financial penalties would help to enforce the rules of court and deter unethical behavior. Id. A19

In return, Goldstein's arguments were challenged by the Deputy Attorney General, Jamie S. Gorelick, "Within the Law," May 21, 1995 Washington Post, C7, and by William G. Otis, former Special Counsel to President Bush, "Prosecutors on Trial," May 30, 1990, Washington Post, op. ed. The latter articles have been discussed at Section V. E., above. In particular, Gorelick makes the important point that the Department of Justice believes that the bill merely makes "explicit" powers the Department already enjoys.

importantly, it is unclear what its effect would actually be on federal local rules adopted pursuant to 28 U.S.C. § 2071. Senate Bill No. 3 refers only to "the ethical rules or the rules of the court of any State." Its purpose is apparently to shield federal prosecutors from state bar disciplinary proceedings, not to derogate from the authority of the federal courts.

Senate Bill No. 3 follows on other recent Congressional initiatives. One example is House of Representatives No. 988 (104th Congress, 1st Session, Feb. 16, 1995) the "Attorney Accountability Act" which attempts to strengthen Rule 11 of the Federal Rules of Civil Procedure. See Carl Tobias "Common Sense and Other Legal Reforms," 48 Vanderbilt Law Review 699, 721-737 (1995). Of course, Rule 11 is not involved directly in problems of federal local rules and state standards, but it does regulate attorney conduct and would supercede any conflicting local rules, including those incorporating relevant state standards. See Judith A. McMorrow's excellent article "Rule 11 and Federalizing Lawyer Ethics," 1991 Brigham Young University Law Review 959 (1991) and Carl Tobias' fine analysis, "The 1993 Revision of Federal Rule 11," to Indiana Law Review 171 (1994).

Of greater concern, however, was an attempt in 1993 to introduce a new "Rules of Professional Conduct for Lawyers in Federal Practice." See House of Representatives No. 688 (103d Congress, 1st Session, January 27, 1993). This bill's Section 124 introduced new duties for "lawyers in their representation of clients in relation to proceedings and potential proceedings" in the Federal Courts. These duties would have been in direct conflict with parts of the ABA Model Code, the ABA Model Rules, many sets of state standards, and many existing federal local rules. Section 124 included: 1) a duty "to elicit from the client a materially complete account of the alleged criminal activities or civil wrong if the client acknowledges involvement in the alleged activity or wrong;" 2) a broad discretionary power for attorneys to disclose such information to prevent "crimes and other unlawful act," and 3) a mandatory duty to disclose such information to the extent necessary to prevent "(1) the commission of a crime involving the use or threatened use of force against another, or a substantial risk of death or serious bodily injury to another; or (2) the commission of a crime of sexual assault or child molestation." H.R. 688, Sec. 124, Rule 5.[29]

The point here is not to debate the merits of any of these Congressional initiatives. Certainly, the current disarray and the problematic application of rules governing attorney conduct in the federal courts should legitimately worry Congress. But, so far, individual Congressional initiatives have addressed symptoms of the underlying problems, rather than the problem themselves. The issues described at length above, and dramatically raised by Resolution XII of the Conferences of Chief Justices and by the 1995 Resolution of The House of Delegates

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[29]One Senate version of 1993 H.R. 688 requested that the Judicial Conference "review and make recommendations" and report to Congress "regarding the advisability of creating Federal Rules of Professional Conduct for Lawyers in Federal cases involving sexual misconduct ...." Senate No. 11 (103d Congress, 1st Session, November 19, 1993, Sec. 3711). This bill was not passed, but a new bill, Senate No. 694 "Sexual Violence Prevention and Victims Act of 1995" (104th Congress, 1995) has now been introduced with language similar to the old 1993 H.R. 688, above.

of the American Bar Association, can only be answered by examining the entire system of federal local rules governing attorney conduct. It is necessary to make some fundamental choices. Those choices will be discussed next.

VII. CONCLUSION: PRACTICAL CHOICES

This Report describes a genuine problem, and a growing problem. While there are passionate disagreements about the solution, no one really defends the status quo.[30] For this Committee, and the Judicial Conference, there are four fundamental options: 1) to develop a uniform rule adopting a "national standard" for attorney conduct in all federal courts; 2) to develop a uniform rule adopting relevant "state standards" to govern attorney conduct in all federal courts; 3) to promulgate model local rules to govern attorney conduct — similar to the model local rules in the Federal Rules of Disciplinary Enforcement of 1978; or 4) to take no action. The Judicial Conference might also wish to follow Professor Mullenix's interim suggestions by 1) promulgating a uniform conflicts rule, 2) promulgating standards to distinguish core and collateral ethical issues and 3) promulgating rules that distinguish between dispute resolution and disciplinary functions. See Appendix IV, pp. 55-60.

A. A "NATIONAL STANDARD" FOR FEDERAL COURTS [Option 1]

The "cleanest" theoretical solution would be to adopt a single set of rules governing attorney conduct in all federal courts. This could be done by special act of Congress, as envisioned by Professor Zacharias,[31] or through the existing Rules Enabling Act procedures, 28 U.S.C. §§ 2071-2077. Given the importance and longterm significance of the change, the extended public hearing and deliberation built into the Rules Enabling Act process would seem particularly appropriate.

As a practical matter, this solution would probably take one of two forms. One form would be to add a short rule to the uniform federal rules that simply incorporated the ABA Model Rules "as amended from time to time by the American Bar Association, except as otherwise provided by specific federal rule." (This, of course, adopts the language incorporating state standards found in the Federal Rules of Discipline of 1978). If it is concluded that this format gives too much short term authority to the American Bar Association, a second approach could be used. A short rule could be added to the uniform federal rules incorporating an Appendix, similar to the "Appendix of Forms" already attached to the Federal Rules of Civil Procedure pursuant to Rule 84. This Appendix could contain a "federal" version of the ABA Model Rules. The ABA model could be adapted to meet Department of Justice concerns and other special needs. Of course, there may be other suggestions.

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[30]See Fred C. Zacharias, "Federalizing Legal Ethics," 73 Texas Law Review (1994), 335, 338-344; Linda S. Mullenix, "Multiforum Federal Practice: Ethics and Erie," 1-27, Appendix IV, attached.

[31]See Fred C. Zacharias, "Federalizing Legal Ethics," note 30, supra, 379-407.

There are five basic arguments for this "national" approach. First, it is the only approach which eliminates completely — within the federal system — the galaxy of problems described above in Sections III, IV, and V. Secondly, if the "national" rule is based on the ABA Model Rules, it would be the solution which causes the minimum actual change in the current substantive law. This is because 48 Districts have incorporated state standards that are based on the ABA Model Rules, 4 Districts have adopted the ABA Model Rules directly, and 5 Districts refer to both state standards and the ABA Model Rules, for a total of 57 Districts. Third, only this approach provides the Circuits with a single standard throughout the Circuit. Fourth, this approach fits the "national" system of legal education established through the American Association of Law Schools and the American Bar Association, as represented by the Multistate Professional Responsibility Examination. Fifth, and perhaps most controversial, this approach might prod the remaining states that have not adopted a version of the ABA Model Rules into so doing, including California.[32] Thus it holds forth the possibility of a single set of standards for all attorneys in all courts, making possible the kind of national mobility in law practice envisioned by the 1995 Resolution of the ABA House of Delegates as described in Section VI, B., above.

The arguments against this approach are essentially the ones contained in the Resolution XII of the Conference of Chief Justices, described above in detail at Section VI, A. Regulation of the bar has traditionally been a function of the states. It is the states that have organized and financed system of bar examinations, boards of bar overseers, bar counsel "prosecutors" and the mechanism for hearing and resolving bar discipline cases. Despite the Congressional initiatives described in Section VI, C., above, is Congress really ready to establish and fund a parallel federal system? Finally, while a majority of states have adopted an ABA Model Rule format, many have made variations in particular rules. It could be argued that the vision of a single national standard is an illusion. If so, the best to be hoped for is a uniform state standard.

B. A "STATE STANDARD" FOR FEDERAL COURTS [OPTION 2]

This approach would be to adopt a short uniform federal rule that directed federal courts to relevant state standards. This could be expressed either in terms of the state of the relevant District, or the state of the admission of the attorney; or a combination of those factors, as set out in the ABA's recently amended Rule 8.5.[33]

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[32]This was at least one articulated argument in the recent Massachusetts decision to abandon the ABA Code and move to the ABA Model Rules. Report of the Supreme Judicial Court's Committee on the Model Rules of Professional Conduct, February 1, 1996, 1-2.

[33]RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW.

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.

Two possible models have already been presented to this Committee. One is Rule 4 of the original 1978 "Federal Rules of Disciplinary Enforcement," set out in Appendix V, attached. The other is a proposed draft submitted to this Committee on February 14, 1995 by the Illinois State Bar Association, and attached as Appendix VI to this Report. The Federal Rules of Disciplinary Enforcement model, or rules influenced by that model, are already in effect as local rules in 15 Districts, sometimes with modifications. (E.D. Arkansas, W.D. Arkansas, N.D. Illinois, S.D. Illinois, Maine, Massachusetts, Minnesota, E.D. Michigan, E.D. Missouri, Nebraska, W.D. Oklahoma, E.D. Pennsylvania, Wyoming, Vermont, W.D. Virginia.)

Of course, the fundamental arguments for this approach are the principles articulated in Resolution XII of the Conference of Chief Justices. See Section VI, A. and Section VII, A., above. The approach would ensure that court houses on the same street used the same professional standards and would facilitate the kind of reliance on state disciplinary procedures advocated by the Illinois State Bar Association.[34] Equally obvious is that this approach leaves many of the problems described above in Sections III, IV, and V unresolved. Multiforum litigation would still present some of the nightmares described by Professor Mullenix, see Section V., D., and Appendix IV, attached. The battles between the Department of Justice and the Conference of Chiefs Justices would continue. See Section V, E., above. There

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(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) for any other conduct,

(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Model Rules of Professional Conduct (1994 ed.), 106, as amended on August 11, 1993, by the ABA House of Delegates.

[34]The Illinois State Bar Communication of February 14, 1995, observes:

"Beginning in 1993, the Illinois State Bar Association Standing Committee on the Attorney Registration and Disciplinary Commission began considering the issue of attorney discipline within the context of federal court system and the relationship to the state disciplinary system. As a result of this study, which included conversations with those involved in both the state and federal systems, the Committee concluded that a mechanism should be established to improve attorney discipline in the federal courts by utilizing existing state disciplinary agencies.

In the significant time that elapsed between the Committee's recommendation and the action by the ISBA Board of Governors, additional events have demonstrated the advisability of this proposal. In re Rufus Cook, No. D-217, (7th Cir. 1995), attached, illustrates the confusion and misunderstanding that may result today between the federal courts and a state disciplinary agency. Yet, it also illustrates the need for a clear mechanism to replace the current ad hoc mechansim."

would still be cases like In re Rufus Cook, supra, __F.3d__, (January 30, 1995) and Due Process problems. See Section V, C., above.

There would, however, be one major improvement. A single uniform "state standards" federal rule would eliminate the current "balkanization" of approaches now found among federal local rules, saving the practitioner hours of frustration in finding the right rule. See Section III, above. It would also cure the particular frustrations of a practitioner in a District without any local rule. See Section IV, supra. A practitioner could simply assume that the state standards applied. The maximum potential variation, in short, would be limited to 51 states, not 94 additional Districts.

C. A "MODEL LOCAL RULE" [OPTION 3]

This option has, in effect, already been tried. The 1978 initiatives of the Committee on Court Administration and Case Management resulted in model local rules, the "Federal Rules of Disciplinary Enforcement," now adopted, in whole or in part, in 15 Districts. See Section VII, B., above. Again, this model is set out as Appendix V, attached, in the form adopted by the Western District of Virginia on November 4, 1992.

There is one clear advantage to a "model local rule" approach. It is much faster than obtaining a uniform federal rule through the Rules Enabling Act process, 28 U.S.C. §§ 2071-2077. The Rules Enabling Act process must take nearly two and one half years. Model local rules also can be suggested on a "voluntary basis." In fact, there is no theoretical reason why Option 1 ("national standard") and Option 2 ("state standard") could not be promulgated in a "model local rule" form.

As a practical matter, however, merely improving on the "Federal Rules of Disciplinary Enforcement" is unlikely to increase "voluntary" adoptions. The model has been available, and has been advocated, for nearly twenty years. The inherent advantages of either "Option 1" or "Option 2" would be a uniform national solution, not a continuation of "voluntary" patch work models. In addition, local rules adopted under Fed. R. Civ. P. 83 or Fed. R. App. P. 47 and 28 U.S.C. § 2071 do not have the advantage of the supercession clause, 28 U.S.C. § 2072. This could leave unsolved the problem of competing agency rules. See Section VI, E., above.

D. "DO NOTHING" [OPTION 4]

This approach is certainly the easiest. This entire Report, however, describes a situation which is not getting better by itself. See, particularly, Section III, B., above. While this Report is not intended to be an advocacy document for any of the fundamental options available, this Committee's failure to act will certainly invite Congressional action, and it should. See Section VI, A. above. The Rules Enabling Process, as established by Congress, provides exactly the tools needed to address this

kind of problem, and the Judicial Conference itself is under an explicit Congressional mandate to keep the rules system in good order. See 28 U.S.C. § 331. Even if the Committee is unwilling to take fundamental steps at this time, the interim measures advocated by Professor Mullenix, and described in Section V, D., and Appendix IV, pp. 53-61, should be discussed. At the least, a uniform rule governing conflicts in professional standards is highly desirable. Id. 55-56.

E. CONCLUDING RECOMMENDATION

The Reporter proposes that this Report be circulated by the Secretary to all interested professional and public groups, and that their comments be solicited. Secondly, the Reporter recommends that a small invitational conference be held to discuss this Report immediately preceding the Committee's next meeting, commencing on January 9, 1996. Invitees should include representatives of the Conference of Chief Justices, the Department of Justice, the American Bar Association, and other important interest groups, as well as academic experts and experienced practicing lawyers. Members of this Committee should be encouraged to attend and observe the proceedings. A similar Conference, held in Boston in November of 1988, was of great assistance to the Committee in resolving local rule problems of similar difficulty. Total attendance would be less than thirty. Following this Conference, the Committee may then direct the Reporter to prepare drafts incorporating one, or more, of the basic approaches above, in consultation with the Advisory Committees and the Committee on Court Administration and Case Management.

Daniel R. Coquillette
Reporter

APPENDIX I

Chart One: Rules of
Professional Conduct in the
Federal District Courts:
Summary
[3 pages]

May 24, 1995

CHART ONE

RULES OF PROFESSIONAL CONDUCT IN THE FEDERAL DISTRICT COURTS

Summary Page

[1] REFERS TO STATE RULE. State Rule Based on:		[2]		[3]	
Cir.	ABA Model Rules (1983)	Cir.	ABA Code (1969)	Cir.	Other (California 1992)
DC	D.D.C. *pg.1*	01	D.Mass. *pg.1*	09	C.D.CA[2] *pg.13*
01	D.NH *pg.1*	01	D. ME *pg.1*	09	N.D.CA[2] *pg.15*
01	D.RI *pg.2*	02	W.D.NY *pg.2*		
02	D.CT *pg.2*	02	D. VT *pg.2*		
03	D.NJ *pg.3*	04	E.D.VA *pg.4*		
03	E.D.PA *pg.3*	06	N.D.OH *pg.8*		
03	M.D.PA *pg.3*	06	S.D.OH *pg.8*		
03	W.D.PA *pg.3*	06	E.D.TN *pg.9*		
03	D.MD *pg.4*	06	W.D.TN *pg.9*		
04	E.D.NC[1] *pg.4*	08	D.NE *pg.12*		
04	M.D.NC[1] *pg.4*	09	D.OR *pg.16*		
04	D.SC *pg.4*	11	N.D.GA *pg.21*		
04	N.D.WV *pg.5*		Total: 12		Total: 2
05	E.D.LA *pg.5*				
05	M.D.LA *pg.5*				
05	W.D.LA *pg.6*				
05	E.D.TX *pg.6*				
05	N.D.TX *pg.7*				
05	S.D.TX *pg.7*				
06	E.D.KY *pg.8*				
06	W.D.KY *pg.8*				
06	E.D.MI *pg.8*				
06	W.D.MI *pg.8*				
07	C.D.IL *pg.9*				
07	S.D.IL *pg.10*				

Cir.	[4] Refers to an ABA Model	Cir.	[5] Refers to State Rules & an ABA Model	Cir.	[6] No Local Rule[4]	Cir.	[7] Standing Order or Local Rule that Follows Neither State Rules Nor an ABA Model
01	D.PR *(ar) pg.2*	02	E.D.NY*(c) & (ac) pg.2*	04	W.D.NC *pg.4*	07	N.D. IL[5] *pg.9*
02	N.D.NY *(ac) pg.2*	02	S.D.NY *(c) & (ac) pg.2*	04	W.D.VA *pg.5*		
03	D.DE *(ar)pg.3*	04	S.D.WV *(r) & (ac) pg.5*	05	N.D.MS *pg.6*		
03	D.VI *(ar) pg.3*	05	W.D.TX *(r) & (ac) pg.7*	05	S.D.MS *pg.6*		
06	M.D.TN *(ac) pg.9*	09	E.D.CA *(o)* [2]*& (ac)pg.14*	07	W.D.WI *pg.10*		
09	D.Guam*(ar) & (ac) pg.15*	09	S.D.CA *(o)* [2] *& (ac))pg.15*	08	N.D.IA *pg.11*		
09	D. N.M.I. *(ar) pg.16*	11	M.D.AL *(r) & (ar) pg.19*	08	S.D. IA *pg.11*		
09	D.MT *(Old Canons[3]) pg.16*	11	N.D.AL *(r) & (ar) pg.19*	08	W.D.MO *pg.12*		
10	E.D.OK *(ac) pg.18*	11	S.D.AL *(r) & (ar) pg.20*	08	D.ND *pg.12*		
10	N.D.OK *(ac) pg.18*	11	M.D.GA*(c) & (ar) pg.20*	08	D.SD *pg.12*		
11	S.D.GA *(Old Canons[3]) pg.21*			09	D.AK *pg.12*		
	Total: 10		Total: 10		Total: 11		Total: 1
	Totals: (ac): 4						
	(ar): 3						
	(ac) & (ar): 1						
	(Old Canons[3]): 2						

[1] REFERS TO STATE RULE. State Rule Based on:		[2]		[3]		[4]		[5]		[6]		[7]
Cir.	ABA Model Rules (1983)	Cir.	ABA Code (1969)	Cir.	Other (California 1992)	Cir.	Refers to an ABA Model	Cir.	Refers to State Rules & an ABA Model	Cir.	No Local Rule[4]	Cir.	Standing Order or Local Rule that Follows Neither State Rules Nor an ABA Model
07	N.D.IN *pg.10*												
07	S.D.IN *pg. 10*												
07	E.D.WI *pg.10*												
08	E.D.AR *pg.11*												
08	W.D.AR *pg.11*												
08	D.MN *pg.11*												
08	E.D.MO *pg.12*												
09	D. AZ *pg.13*												
09	D.HA *pg.16*												
09	D.ID *pg.16*												
09	D.NV *pg.16*												
09	E.D.WA *pg.17*												
09	W.D.WA *pg.17*												
10	D.CO *pg.17*												
10	D.KA *pg.17*												
10	D.NM *pg.17*												
10	N.D. OK *pg.18*												
10	W.D.OK *pg.18*												
10	D.UT *pg.18*												
10	D.WY *pg.19*												
11	M.D.FL *pg.19*												
11	N.D.FL *pg.20*												
11	S.D.FL *pg.20*												
	Total: 48												

Abbreviations: *(ac)* denotes a District which has adopted the ABA Model Code. *(ar)* denotes a District which has adopted the ABA Model Rules. *(c)* denotes a State which has adopted a version of the ABA Model Code. *(r)* denotes a State which has adopted a version of the ABA Model Rules. *(o)* denotes a State which has adopted neither a version of the ABA Model Code nor a version of the ABA Model Rules.

[1] Rules and Comments based on ABA Model Rules, but structure organized under the Canons of the ABA Model Code.

[2] All four California Districts (see Columns 3 and 5) refer to the California Rules of Professional Conduct (approved 8/13/92, effective 9/14/92).

[3] Districts marked "Old Canons" still refer to the old ABA Canons of Professional Ethics (1908), which were replaced by the ABA Model Code in 1969.

[4] Some of these Districts use Standing Orders, or have attached the Model Federal Rules of Disciplinary Enforcement (1978) as appendices to their Local Rules.

[5] The Northern District of Illinois uses a "General Order" adopting a "Model Rule" format (with substantial changes).

APPENDIX II

Chart Two: Rules of Professional Conduct

in the Federal District Courts:

Local Rules and Standing Orders

for Each of the Ninety-Four Districts

[20 pages]

May 24, 1995

CHART TWO

RULES OF PROFESSIONAL CONDUCT IN THE FEDERAL DISTRICT COURTS: Local Rules and Standing Orders for Each of the Ninety-four Districts

May 24, 1995

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
DC	D. D.C. Rule 706 (a)	Rules of Prof. Conduct as adopted by the D.C. Ct. of Appeals except as otherwise provided by specific rule of this Ct. *District adopted a version of the Rules of Prof. Conduct*							
01	D. Mass. Rule 83.6(4)(b)		*State adopted a version of the Code of Prof. Responsibility*	Canons and rules adopted by the Supreme Judicial Ct of MA embodied in rules 3:05, 3:07; 3:08 as they may be amended except as otherwise provided by specific rule of this Ct after consideration of comments by rep of bar associations in MA					
01	D. Me. Rule 7(d)(2)		Code as adopted by the Supreme Judicial Ct of ME as amended for time to time by that ct. *State adopted a version of the Code of Prof. Responsibility*						
01	D. N.H. Rule 4(d)	*State adopted a version of the Rules of Prof. Conduct*		Stds which govern the members of the NH Bar Association as of time any atty appears before any Judge or Magistrate of this Ct.					

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
01	D. P.R. Rule 211.4(b)				ABA Model Rules				
01	D.R.I. Rule 4(d)	Rules as adopted by RI Supreme Ct. *State adopted a version of the Rules of Prof. Conduct*							
02	D.Conn. Rule 3(a)	Rules as approved by Judges of CT Superior Ct on Oct. 1, 1986. Any changes made after that date shall not be binding on the District Ct unless expressly adopted by order of District Judges. *State adopted a version of the Rules of Prof. Conduct*		Rules 3.6 & 3.7(b) of the Rules are not adopted. Other ethical stds set forth in Local Civil Rule 33 & Local Criminal Rule 13.					
02	E.D. N.Y. Rule 4(f)		*State adopted "Discp. Rules of the Code of Prof. Resp." in Sec. 1200 McKinney's NY Rules of Court*	Code of ABA or NY Bar Association		Code of ABA or NY Bar Association			
02	N.D. NY Rule 83.4(j)					ABA Code			
02	S.D N.Y. Rule 4(f)		*State adopted "Discp. Rules of the Code of Prof. Resp." in Sec. 1200 McKinney's NY Rules of Court*	Code of ABA or NY Bar Association		Code of ABA or NY Bar Association			
02	W.D. N.Y. Rule 5(c)		Code of the ABA as adopted by the NY State Bar Association *State adopted "Discp. Rules of the Code of Prof. Resp." in Sec. 1200 McKinney's NY Rules of Court*						
02	D. Vt. Rule 1(d)(4)(b)		*State adopted a version of the Code of Prof. Responsibility*	Code or Rules as adopted by the highest ct of the state in which this Ct sits.					

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		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
03	D. Del. Rule 83.6(d)(2)				ABA Model Rules				
03	D. N.J. Rule 6(a)	Rules as revised by the NJ Supreme Ct subject to modification by federal statute, regulation or ct rule or decision of law *State adopted a version of the Rules of Prof. Conduct*							
03	E.D. Pa. Rule 14 (IV)(b)	Rules as adopted by the Supreme Ct of PA except as otherwise provided by specific rule of this Ct after consideration of comments by bar association within state *State adopted a version of the Rules of Prof. Conduct*		Except prior court approval as a condition to the issuance of a subpoena addressed to an atty in any criminal proceeding including a grand jury, shall not be required					
03	M.D. Pa. Rules 304.2	Rules as adopted by the Supreme Ct of PA except Rule 3.10 as amended from time to time unless specifically excepted in the Rules of this Ct. *State adopted a version of the Rules of Prof. Conduct*							
03	W.D. Pa. Rule 83.6(1)(b)	Rules as adopted by the Supreme Ct of PA except Rule 3.10 as otherwise provided by specific order of this Ct. *State adopted a version of the Rules of Prof. Conduct*							
03	D. V.I. Rule 24				ABA Model Rules as amended from time to time. In the event that the ABA adopts a replacement to the Model Rules, that replacement will be effective in the territory				

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
04	D. Md. Rule 704	Rules as adopted by the MD Ct of Appeals *State adopted a version of the Rules of Prof. Conduct*							
04	E.D. N.C. Rule 2.10	*State adopted the structure of the Rules and Comment but organized under the Canons of the Model Code*	Code of the NC State Bar Association incorporated and modified by the Supreme Ct of NC except as otherwise provided by specific rule of this Ct						
04	M.D. N.C. Rule 103(b)	*State adopted the structure of the Rules and Comment but organized under the Canons of the Model Code*	NC State Code	"Prior to being admitted to practice, an atty must certify that he has read and is familiar with the ... Local Rules of this Court and the NC Code of Prof. Resp."					
04	W.D. N.C.							No Local Rule: Presently has Standing Order which adopts Canons of Prof. Ethics of NC Supreme Ct and the ABA (Committee Meeting to revise standing order in 1/95)	
04	D. S.C. Rule 2.08	*State adopted a version of the Rules of Prof. Conduct*	SC Code of Prof. Resp. (Rule 32, Rules of the Supreme Ct of SC) now in force and as hereinafter modified by Supreme Ct of SC except as otherwise provided by specific rule of this Ct						

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
04	E.D. Va. Rule 7(i)		VA code of Prof Resp.now in force and as hereinafter modified or supplemented *State adopted a version of the Code of Prof. Responsibility*	However, contrary to VA practice prior ct approval as a condition to the issuance of a subpoena addressed to an atty in any criminal proceeding, including a grand jury, shall not be required.					
04	W.D. Va.							No Local Rule: Standing Order adopting Model Federal Rules of Disciplinary Enforcement. Rule 4b states that stds shall be Code or Rules as adopted by state's highest ct.	
04	N.D. W.Va. Rule 1.05(c)	*State adopted a version of the Rules of Prof. Conduct*	Code as promulgated and amended by the WV Supreme Ct of Appeals.						
04	S.D. W.Va. Rule LR Gen 301	*State adopted a version of the Rules of Prof. Conduct*	Code of the ABA, Model Federal Rule of Discp. Enforcement, and the Code as adopted and promulgated by the Supreme Ct of Appeals of WV. These codes, rules, & orders provide minimal stds.			Code of the ABA, Model Federal Rule of Discp. Enforcement, and the Code as adopted and promulgated by the Supreme Ct of Appeals of WV. These codes, rules, & orders provide minimal stds.			
05	E.D. La. Rule 20.04(c)	Rules of LA State Bar Association as hereinafter amended by the LA Supreme Ct except as otherwise amended by specific rule of this Ct *State adopted a version of the Rules of Prof. Conduct*							

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
05	M.D. La. Rule 20.04(m)	Rules of LA State Bar promulgated by LA Supreme Ct as in effect on May 15, 1989 subsequently promulgated or other rules may by adopted by this Ct by general order. *State adopted a version of the Rules of Prof. Conduct*							
05	W.D. La. Rule 20.04(w)	Rules of LA State Bar Association as hereinafter amended by the LA Supreme Ct except as otherwise amended by specific rule of this Ct. *State adopted a version of the Rules of Prof. Conduct*							
05	N.D. Miss.							No Local Rule: Dt follows Code of Ethics prescribed by State Bar (clerk)	
05	S.D. Miss.							No Local Rule: matter settled by judge or referred to substantive std of conduct of the MS State Bar (clerk)	
05	E.D. Tex Rule 3(a)	*State adopted a version of the Rules of Prof. Conduct*	Code of ABA as adopted as part of rules governing state bar of TX	Atty should familiarize duties and obligations imposed upon members of this bar by the Code including Canons, Disc. Rules, and ethical considerations, ct decisions, statutes, and the usages, customs, & practices of this Bar.					

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
05	N.D. Tex Rule 13.2 (b) & (d)	*State adopted a version of the Rules of Prof. Conduct*		(b)(i): Conduct unbecoming member of the bar; (ii) failure to comply with local rules or other rules of ct;(iii) unethical behavior; (iv) inability to conduct litigation properly (d): unethical behavior includes conduct that violates any code, rule, or standard of Prof. Cond. or Resp. governing the conduct of attys who are authorized to practice before Cts of the State of TX.					
05	S.D. Tex Rule 1(l) & App.A	*State adopted a version of the Rules of Prof. Conduct*		Attys required to act as mature and responsible professionals & the minimum standard of practice shall be the TX Disc. Rules of Prof. Conduct.					
05	W.D. Tex. Sec. 3, Rule AT-4	*State adopted a version of the Rules of Prof. Conduct*		Stds of Prof. Cond. as required by members of the State Bar of TX and contained in the TX Discp. Rules of Prof Cond (VTCA Gov't Code Title 2, Subtitle G, Appendix) & the Decisions of any Ct applicable thereto, which are adopted as stds of conduct of this Ct. In connection, the ABA Code shall be noted. No atty shall engage in any conduct which degrades or impugns the integrity of the ct or interferes in the administration of justice.		ABA Code will be noted (See other under State Rules)			

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		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
06	E.D. Ky. Rule 3(b)(2)(E)	*State adopted a version of the Rules of Prof. Conduct*		Stds of Prof Resp. as adopted by the Supreme Ct of KY					
06	W.D. Ky. Rule 3(b)(2)(E)	*State adopted a version of the Rules of Prof. Conduct*		Stds of Prof Resp. as adopted by the Supreme Ct of KY					
06	E.D. Mich. Rule 111.1(d)	Rules as adopted by MI Supreme Ct as amended form time to time *State adopted a version of the Rules of Prof. Conduct*							
06	W.D. Mich. Rule 17	MI Rules of Prof. Conduct except those rules a majority of judges of this ct exclude by administrative order. *State adopted a version of the Rules of Prof. Conduct*							
06	N.D. Ohio Chp 5, Rule 1:5.1(b)		Code as adopted by the Supreme Ct of OH, so far as not inconsistent with federal law. *State adopted a version of the Code of Prof. Responsibility*						
06	S.D. Ohio Rule 83.4(f); Appendix 4B		Rule 83.4(f) states supervision of conduct is governed by the Model Federal Rules of Discip. Enforcement located in the Appendix. Rule 4b of these rules states that the stds are the Rules or Code of state's highest ct. *State adopted a version of the Code of Prof. Responsibility*						

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
06	E.D. Tenn. Rule 83.7(a)		*State adopted a version of the Code of Prof. Responsibility*	Code of Prof. conduct as adopted by the Supreme Ct of TN, or has engaged in unethical conduct tending to bring the ct or the bar into disrepute					
06	M.D. Tenn. Rule 1(e)(4)					Current ABA Code. A violation of Discp. rules shall subject an atty to discp. action	Does not apply to Discp. Rule 7-107, which is superseded as a rule of this District by Rule 3 of this District.		
06	W.D. Tenn. Rule 1(e)		Code as then currently promulgated and amended by the Supreme Ct of TN. *State adopted a version of the Code of Prof. Responsibility*	except that prior ct approval as a condition to the issuance of a subpoena, addressed to an atty, shall not be req'd. (Tenn. S. Ct. R. 8, DR 7-103), (c) and with the guidelines for prof. courtesy and conduct as adopted by this ct.					
07	C.D. Ill. Rule 1.3(d)	*State adopted version of the Rules of Prof. Conduct*	Code as adopted by the Supreme Ct of IL as amended from time to time by that ct. Except as otherwise provided by specific rule of this Ct after consideration of comments by state bar association.						
07	N.D. Ill. Rule 3.52 (b)								Ct adopted as a guidline its own version of the Rules of Prof. Conduct, rejecting the Rules as modified by the Supreme Ct of IL and modifying the ABA Model Rules. (General Order Adopted 3/91)

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
07	S.D. Ill. Rule 29 (d)	Rules of Prof. Cond. adopted by the S.Ct of IL as amended from time to time, except as otherwise provided by specific rule of this Ct. *State adopted version of the Rules of Prof. Conduct*							
07	N.D. Ind. Rule 83.5(f) and appendix B.	Rules as adopted by the IN Supreme Ct *State adopted version of the Rules of Prof. Conduct*		Additionally, stds for prof. conduct as adopted by the 7th Cir.					
07	S.D. Ind Rule: 83.5 (f)	Rules as adopted by the IN Supreme Ct. (Note: When asked to send its Local Rule, the District sent a copy of the Stds of Prof. Conduct for Litigation in the Seventh Circuit)*State adopted version of the Rules of Prof. Conduct*							
07	E.D. Wis. Rule 2.05(a)	Rules (SCR: 20:1.1-8.5) as adopted from time to time by the Supreme Ct of WI, and except as such may be modified by this Ct. *State adopted version of the Rules of Prof. Conduct*							
07	W.D. Wis.							No Local Rule: Case by case basis, judges have complete discretion; however will consider ABA & State Bar. (clerk)	

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
08	E.D. Ark. Rule IV (b)	*State adopted version of the Rules of Prof. Conduct*		Code or Rules adopted by the highest ct of the state in which this Ct sits, as amended from time to time by that state ctc except as otherwise provided by specific Rule of this Ct after consideration of comments by representatives of state bar associations					
08	W.D. Ark. Rule IV (b)	*State adopted version of the Rules of Prof. Conduct*		Code or Rules adopted by the highest ct of the state in which this Ct sits, as amended from time to time by that state ctc except as otherwise provided by specific Rule of this Ct after consideration of comments by representatives of state bar associations					
08	N.D. Iowa							No Local Rule: 8th Cir. encouraged D. Cts to "strictly enforce the ABA Code" and IA Code must be considered (clerk)	
08	S.D. Iowa							No Local Rule: Judge handles on case by case basis (clerk)	
08	D. Minn. Rule 83.6(d)	Rules adopted by the Supreme Ct of MN, as amended from time to time by that ct, except as otherwise provided by specific rules of this Ct. *State adopted version of the Rules of Prof. Conduct*							

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
08	E.D. Mo. Rule 2(g)	*State adopted version of the Rules of Prof. Conduct*	Code as adopted by Supreme Ct of MO, as amended from time to time by that ct, except as otherwise provided by specific rule of this Ct after consideration of comments by state bar association.						
08	W.D. Mo.							No Local Rule: corresponding with clerk	
08	D. N.D.							No Local Rule: Primarily address to the court or send to State Bar Council (clerk)	
08	D. Neb. Rule 83.5 (d)(2)		Code adopted by the Supreme Ct of NE, as amended from time to time except as otherwise provided by specific rule of this Ct after consideration by state bar association. *State adopted a version of the Code of Prof. Responsibility*						
08	D. S.D.							No Local Rule: Follow State Bar of SD (clerk)	
09	D.Alaska							No Local Rule (Possible adoption in 6/95 of Rule 83.5(h): AK Rules of Prof Conduct (clerk)*State adopted version of the Rules of Prof. Conduct*	

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
09	D. Ariz. Rule 1.6(d)	Rules as set forth in rule 42 of the Rules of the Supreme Ct of the state of AZ. *State adopted a version of the Rules of Prof. Conduct*							
09	C.D. Cal. Rule 2.5			Stds of Prof. Conduct required of members of the state bar of CA, and contained in the State Bar Act, the rules of Prof. Conduct of the state bar of CA, and the decisions of any ct applicable thereto. No atty shall engage in any conduct which degrades or impugns the integrity of the ct or in any manner interferes with the administration of justice therein. *State adopted California Rules of Professional Conduct (eff. 9/14/92)*					

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
09	E.D. Cal. Rule 180(e)			Stds of Prof. Conduct required of members of the state bar of CA, and contained in the State Bar Act, the rules of Prof. Conduct of the state bar of CA, and the decisions of any ct applicable thereto. In the absence of an applicable standard, the ABA Code may be considered for guidance. No atty shall engage in any conduct which degrades or impugns the integrity of the ct or in any manner interferes with the administration of justice therein. *State adopted California Rules of Professional Conduct (eff. 9/14/92)*		ABA Code should be noted (See other under State Rules)			

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
09	N.D. Cal Rule 110(3)			Stds of Professional Conduct required of members of the state bar of CA, and contained in the State Bar Act, the rules of Prof. Conduct of the state bar of CA, and the decisions of any ct applicable thereto. Maintain the respect due cts of justice and judicial officers; perform with the honesty, care, and decorum req'd for the fair and efficient administration of justice; discharge the obligations owed to his clients and to the judges of the ct; and assist those in need of counsel when requested by a judge. *State adopted California Rules of Professional Conduct (eff. 9/14/92)*					
09	S.D. Cal. Rule 83.5 (e)			Stds of professional conduct req'd of the members of the state bar of CA, and decisions of any ct applicable thereto. ABA Code should be noted. Atty shall not engage in any conduct which degrades or impugns the integrity of the ct, or in any manner interferes with the administration of justice therein.*State adopted California Rules of Professional Conduct (eff. 9/14/92)*		ABA code should be noted (See other under State Rules)			
09	D. Guam Rule 115 (5)(b)				ABA Code and ABA Rules as adopted on 8-12-69 and thereafter amended or judicially construed.	ABA Code and ABA Rules as adopted on 8-12-69 and thereafter amended or judicially construed.			

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
09	D. Haw. Rule 110 (3)	*State adopted a version of the Rules of Prof. Conduct.*		Stds of prof. and ethical conduct as required by the members of the HA state bar.					
09	D. Idaho Rule 83.6(a)	*State adopted a version of the Rules of Prof. Conduct.*		Stds of prof. cond. required of members of the ID state bar and any decisions of any ct applicable thereto. Idaho rules of prof. cond. for the ID state bar should be noted.					
09	D. N. Mar. I. Rule 110-3				ABA rules as adopted in 1983 and thereafter amended or judicially construed		and this ct's "standards of prof. conduct" see pg. 1 local Rules.		
09	D. Mont. Rule 110(3)						Standards shall include the ABA Canons of Professional Ethics		
09	D. Nev. Rule 120(9)(a)	*State adopted a version of the Rules of Prof. Conduct.*		Code and rules as such may be adopted from time to time by the Supreme Ct of NV, except as such may be modified by this Ct.					
09	D. Or. Rule 110-3		*State adopted a version of the Code of Prof. Resp.*	Stds of prof. conduct required of members of the OR state bar; maintain the respect due courts of justice and judicial officers; perform with the honesty, care, and decorum required for the fair and efficient administration of justice; discharge the obligations owed to their clients and to the ct; and assist those in need of counsel, when requested by the Ct.					

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
09	E.D. Wash. Rule 1.2(f)(2)	Rules of the WA state bar in effect at the time these rules are adopted, together with any amendments or additions to such rules *State adopted a version of the Rules of Prof. Conduct.*							
09	W.D. Wash. Rule 2(e)(1)	*State adopted a version of the Rules of Prof. Conduct.*		Canons of Prof. Ethics as promulgated by the WA state Supreme Ct, and in effect at the time these rules are adopted, together with any amendments or additions, unless such amendments or additions are specifically disapproved by this Ct.					
10	D. Colo. Rule 83.6	Rules as adopted by the CO Supreme Ct *State adopted a version of the Rules of Prof. Conduct.*							
10	D. Kan. Rule 407(a)	*State adopted a version of the Rules of Prof. Conduct.*		Code and rules as adopted by the Supreme Ct of KS, and as amended by that ct from time to time, except as otherwise provided by specific rule of this Ct.					
10	D. N.M. Rule 83.9	Rules as adopted by the Supreme Ct of the state of NM, with all amendments which may hereafter be adopted by the state ct, except as otherwise provided by specific rule or order of the ct. *State adopted a version of the Rules of Prof. Conduct.*							
10	E.D. Okla. Rule 4(j)					ABA Code or any conduct unbecoming a member of the bar of this Ct.			

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
10	N.D. Okla. Rule 83.2(a)	OK Rules of Prof. Conduct as adopted by the OK Supreme Ct. *State adopted a version of the Rules of Prof. Conduct.*							
10	W.D. Okla. Rule 4(j)(4)(b)	*State adopted a version of the Rules of Prof. Conduct.*	Code adopted by the highest ct of the state in which this ct sits, as amended from time to time by that state ct, except as otherwise provided by specific rule of this Ct after consideration of comments by that state bar association.						
10	D. Utah Rule 103-1 (h)	Rules of practice adopted by this Ct, and unless otherwise provided by these rules, with the UT Rules of Prof. Conduct as revised and amended, and as interpreted by this ct. *State adopted a version of the Rules of Prof. Conduct.*							
10	D. Wyo. Rule 206(b)	Rules as adopted by the highest ct of the state in which this Ct sits, and as amended from time to time by that state ct, except as otherwise provided by specific rule of this Ct after consideration of comments by that state bar association. *State adopted a version of the Rules of Prof. Conduct.*							

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
11	M.D. Ala. Rule 1(a)(4)	*State adopted a version of the Rules of Prof. Conduct.*		Local Rules, the ethical limitations and requirements governing the behavior of the members of the AL state bar, and to the extent not inconsistent with the preceding, the ABA Model Rules.	Local Rules, the ethical limitations and requirements governing the behavior of the members of the AL state bar, and to the extent not inconsistent with the preceding, the ABA Model Rules.				
11	N.D. Ala. Rule 83.1(f)	Local Rules of this Ct and, to the extent not inconsistent with the preceding, the AL Rules of Prof. Conduct adopted by the AL Supreme Ct. and, to the extent not inconsistent with the preceding, the ABA Model Rules, except rule 3.8(f). *State adopted a version of the Rules of Prof. Conduct.*			Local Rules of this Ct and, to the extent not inconsistent with the preceding, the AL Rules of Prof. Conduct adopted by the AL Supreme Ct. and, to the extent not inconsistent with the preceding, the ABA Model Rules, except rule 3.8(f).				
11	S.D. Ala. Rule 1(a)(4)	*State adopted a version of the Rules of Prof. Conduct.*		Local Rules, the ethical limitations and requirements governing the behavior of the members of the AL state bar, and to the extent not inconsistent with the preceding, the ABA Model Rules.	Local Rules, the ethical limitations and requirements governing the behavior of the members of the AL state bar, and to the extent not inconsistent with the preceding, the ABA Model Rules.				
11	M.D. Fla. Rule 2.02(c)	ABA Model Rules as modified and adopted by the Supreme Ct of FL. *State adopted a version of the Rules of Prof. Conduct.*							

		REFERS TO STATE RULES			REFERS TO A MODEL SET OF RULES			NO LOCAL RULE	LOCAL RULE: Follows neither State Rules Nor an ABA Model
Cir.	District	Rules of Prof. Cond.	Code of Prof. Resp.	Other	ABA Model Rules	ABA Model Code	Other		
11	N.D. Fla. Rule 4(g)(1)	*State adopted a version of the Rules of Prof. Conduct.*	ABA Code as modified and adopted by the Supreme Ct of FL, except where an act of congress, federal rule or procedure, judicial conference resolution, or rule of ct provided otherwise.						
11	S.D. Fla. Rule 11.1(c)	*State adopted a version of the Rules of Prof. Conduct.*		Stds include current Rules Regulating the FL Bar.					
11	M.D. Ga. Rule 13.1	The Ct's Local Rules, by the Rules of Prof. Cond. adopted by the highest ct of state in which this Ct sits, as amended from time to time by that state ct, and, to the extent not inconsistent with the preceding, the ABA Model Rules, except as otherwise provided by specific rule of this Ct.	*State adopted a version of the Code of Prof. Responsibility*		The Ct's Local Rules, by the Rules of Prof. Cond. adopted by the highest ct of state in which this Ct sits, as amended from time to time by that state ct, and, to the extent not inconsistent with the preceding, the ABA Model Rules, except as otherwise provided by specific rule of this Ct.				
11	N.D. Ga. Rule 110(3)		Specific rules of practice adopted by this Ct, and unless otherwise provided, with the Code of Prof. Resp., and the stds of conduct contained in the Rules and Regulations of the State Bar of GA, and with the decisions of this ct interpreting these rules and standards. *State adopted a version of the Code of Prof. Responsibility*						
11	S.D. Ga. Section 4 Rule 5 (d)						Stds shall include the current ABA Canons of Professional Ethics.		

APPENDIX III

Chart Three: Rules of
Professional Conduct in the
Federal Circuit Courts
[3 pages]

May 24, 1995

CHART THREE

RULES OF PROFESSIONAL CONDUCT IN THE FEDERAL CIRCUIT COURTS

May 24, 1995

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
DC App. V, Rule 1	The Code of Prof. Responsibility adopted by the District of Columbia Court of Appeals, as amended fom time to time by that Ct, except as otherwise provided by specific rule of this Ct.					
1st Rule 4(b)	Code of Prof. Responsibility; that code adopted by the highest ct of the state, or commonwealth, as amended from time to time by that ct, except as otherwise provided by specific Rule of this Ct after consideration of comments by rep's of bar associations within the state or commonwealth.					
2nd Rule 46(h)(2)			The ct may refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules under the Code of Professional Responsibility			
3rd App. D						Adopted the Rules of Disciplinary Enforcement; Rule 2 states that the ct must look to FRAP, the rules and internal operating procedures of the Ct, or other instruction of the ct... or any other conduct unbecoming a member of the court

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
4th					Internal Operating Procedure Rule 46.6 (a)(3): Rules of Prof. Conduct or Resp. in effect in the state or other jurisdiction in which the atty maintains his or her principal office, the FRAP, the local rules and internal operating procedures of this Ct, or orders or other instructions of this Ct.	
5th					No Local Rule: "It is longstanding court practice to look to and follow the ethical rules adopted by the highest court in the state of the atty's domicile, while always being mindful of the ABA Model Rules" (clerk's office)	
6th Rule 32(b)		The ct may impose discipline on any member who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct		The ct may impose discipline on any member who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct		
7th App. III						Standards of Prof. Conduct within the 7th Judicial Circuit

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
8th					Internal Operating Procedure Rule II D: attys may be disciplined for failure to comply with FRAP or 8th Cir. Rules. Clerk's office stated that issues are sent to a panel of 8th Cir. judges; determinations made on an case-by-case basis.	
9th					No Local Rule: Ct cites to cases that exist (clerk's office)	
10th Add. III Sect. 2.3	Conduct unbecoming a member of the bar which violates the federal laws, federal statutes, FRAP, rules of this ct, orders or other instructions of this ct, or the Code of Prof. Resp. adopted by the highest ct of any state in which the atty is admitted to practice					
11th Add. VIII Rule 1A	FRAP, the ct's local rules, the ABA Model Rules of Prof. Cond., and the rules of prof. cond. adopted by the highest ct of the state(s) in which the atty is admitted to practice to the extent that those state rules are not inconsistent with the ABA Model Rules of Prof. Cond., in which case the model rules shall govern.	FRAP, the ct's local rules, the ABA Model Rules of Prof. Cond., and the rules of prof. cond. adopted by the highest ct of the state(s) in which the atty is admitted to practice to the extent that those state rules are not inconsistent with the ABA Model Rules of Prof. Cond., in which case the model rules shall govern.				

APPENDIX IV

9 Geo. J. Legal Ethics 89, Georgetown Journal of Legal Ethics,

Fall, 1995, Symposium, *Multiforum Federal Practice: Ethics and Erie,*

Linda S. Mullenix [not reprinted here]

APPENDIX V

Federal Rules of Disciplinary Enforcement

Model Rule (4) as proposed by the Committee on Court Administration and Case Management, Judicial Conference of the United States. From "Rules of Disciplinary Enforcement" (1978)

Also: "The Federal Rules of Disciplinary Enforcement" as adopted by the United States District Court for the Western District of Virginia, November 4, 1992.

APPENDIX V

Proposed Model Local Rule, Committee on Court Administration and Case Management, Judicial Conference in the United States. From "Rules of Attorney Disciplinary Enforcement" (1978).

MODEL RULE (4)

Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate 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. The Code of Professional Responsibility [or Rules of Professional Conduct]** adopted by this court is the Code of Professional Responsibility [or Rules of Professional Conduct]** adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

** Bracketed language is commonly found in Districts using this model rule after the adoption of the ABA Model Rules of Professional Conduct in 1983.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

The United States District Court for the Western District of Virginia, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (pro hac vice), promulgates the following Rules of Disciplinary Enforcement superseding all of its other rules pertaining to disciplinary enforcement heretofore promulgated.

Rule I

Attorneys Convicted of Crimes

A. Upon 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 Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition or 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 Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime is 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 any attempt or a conspiracy of solicitation of another to commit a "serious crime."

C. 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.

D. Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of 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 appeals from the conviction are concluded.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime", the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court provided however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

G. No attorney, regardless of his ability to practice in the state courts, will be permitted to practice in this Court while that attorney is on federal probation or parole.

Rule II

Discipline Imposed by Other Courts

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of Court of such action.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disciplined by another court, this Court shall forthwith issue a notice directed to the attorney containing:

1. a copy of the judgment or order from the court; and

2. an order to show cause directing the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated on the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event that discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed by this Court shall be deferred until the stay expires.

D. Upon the expiration of 30 days from the service of the notice issued pursuant to the provision of (B) above, this Court shall impose the identical discipline unless the respondent/attorney demonstrates, or this Court finds, that upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice of opportunity to be heard as to constitute a deprivation of due process; or

2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty accept as final the conclusion on that subject; or

3. that the imposition of the same discipline by this Court would result in grave injustice; or

4. that the misconduct established is deemed by this Court to warrant substantially different discipline.

When this Court determines that any of the said elements exist, it shall enter such other order as it deems appropriate.

E. In all other respects a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively that misconduct for purposes of a disciplinary proceeding in the Court of the United States.

RULE III

Disbarment on Consent or Resignation in Other Courts

A. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into the allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into the allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

[omitted line] This court is the Code of Professional Responsibility or Rules of Professional Conduct adopted by

Rule IV

Standards for Professional Conduct

A. For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary actions as the circumstances may warrant.

B. Act or omissions by an attorney admitted to practice before this Court, individually or in concert with another person or persons, which violate 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. The Code of Professional Responsibility or Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after specific consideration of comments by representatives of bar associations within the state.

RULE V

Disciplinary Proceedings

A. When misconduct or allegations of misconduct which if substantiated, would warrant discipline on the part of an attorney admitted to practice before this court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure, is not otherwise mandated by these rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of other such recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent/attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent/attorney, the disposition of which in the judgment of counsel should be awaited before further action by this Court be considered for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent/attorney to show cause within 30 days after service of that order upon the attorney, whether personally or by mail, why the attorney should not be disciplined. The order to show cause shall include the form certification of all courts before which the respondent/attorney is admitted to practice as specified in form appended to these Rules.

D. Upon the respondent/attorney's answer to the order to show cause, if any issue of fact is raised or the respondent/attorney wishes to be heard in mitigation this court shall set the matter for prompt hearing before one or more of the judges of this Court, provided however, that if the disciplinary proceeding is predicated on the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three judges of this Court appointed by the chief judge, or if there are less than three judges eligible to serve or the chief judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The respondent/attorney shall execute the certification of all courts before which the respondent/attorney is admitted to practice, in the form specified, and file the certification with his or her answer.

Rule VI

Disbarment on Consent while under Disciplinary Investigation or Prosecution

A. Any attorney admitted to practice before this Court who is the subject of an investigation into or a pending proceeding involving allegations or misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion, or duress; the attorney is fully aware of the implications of so consenting;

2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exists grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an Order barring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Rule VII

Reinstatement

A. AFTER DISBARMENT OR SUSPENSION. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court, except as provided in Rule XI(H),

B. TIME OF APPLICATION FOLLOWING DISBARMENT. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

C. HEARING ON APPLICATION. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of this petition, the Chief Judge shall promptly refer the petition to counsel and assign the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding was predicated on the complaint of a judge of this Court, or if there are less than three judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge for the Court of Appeals for this Circuit. The Judge or Judges assigned to this matter shall within thirty days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

D. DUTY OF COUNSEL. In all proceedings upon a petition for reinstatement, cross examination of witnesses of the respondent/attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

E. DEPOSIT FOR COSTS OF PROCEEDING. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceedings.

F. CONDITIONS OF REINSTATEMENT. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of a partial or complete restitution to the

parties harmed by petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge of Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. SUCCESSIVE PETITIONS. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

Rule IX

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 registered or certified mail addressed to the respondent/attorney at the address shown in the most recent registration filed pursuant to Rule XI(F) hereof. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the respondent/attorney at the address shown on the most recent registration statement filed pursuant to Rule XI(F) hereof; or to counsel or respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

Rule X

Appointment of Counsel

Whenever counsel is to be appointed pursuant to these rules to investigate allegation of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel the disciplinary agency of the highest court of the Commonwealth of Virginia wherein the Court sits or the attorney maintains his principal office in the case of the courts of appeal, or other disciplinary agency having jurisdiction. If no such disciplinary agency exists, or such

disciplinary agency declines appointment or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided however that the respondent attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent/attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by the Court.

Rule XI

Periodic Assessment of Attorneys; Registration Statements

Note--Each court shall make such provisions as it deems advisable for the assessment and registration of attorneys. Any fees collected should be maintained in a separate fund held by the Clerk of Court, as trustee, for the payment, pursuant to Rule XII, of expenditures incurred, and not on behalf of the United States.

Rule XII

Payment of Fees and Costs

Note--Each court may make such provision as it deems advisable for the payment of fees and costs incurred in the course of disciplinary investigation or prosecution.

Rule XIII

Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall within ten days of that conviction, disbarment, suspension, censure or disbarment on consent, transmit to the

disciplinary authority in such other jurisdiction or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

D. The Clerk of Court shall likewise promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

Rule XIV

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

Rule XV

Effective Date

These rules as revised, shall become effective on November 4, 1992, provided that any formal disciplinary proceeding pending before this Court shall be concluded under the procedure existing prior to the effective date of these rules.

ENTERED FOR THE COURT:

/s/ James C. Turk
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX VI

Draft Rule Proposed by the
Illinois State Bar Association
February 14, 1995

DRAFT RULE FOR ADOPTION BY
FEDERAL COURTS
REGARDING DISCIPLINARY PROCEEDINGS FOR VIOLATION OF RULES
OF PROFESSIONAL CONDUCT OR CODE OF PROFESSIONAL RESPONSIBILITY

1. a) When conduct is brought to the attention of a federal judge that an attorney, in the course of his or her practice in the federal court in which that judge is sitting, who is licensed to practice law by the state in which the court is sitting has or may have violated the Rules of Professional Conduct or Code of Professional Responsibility adopted by the Court, or if no such Rules or Code have been adopted by the Court, the Rules of Professional Conduct or the Code of Professional Responsibility adopted by the state in which the Court is sitting, the judge may, with the consent of the disciplinary authority, refer the matter to the disciplinary authority of the state in which the Court is sitting for investigation, hearing, findings and recommendations and further disposition.

b) Upon receipt of such findings and/or recommendations, the Court may issue a rule to show cause why the attorney should not be disciplined by the Court and an appropriate disciplinary order entered. Such order shall be in addition to and not in lieu of any other remedies available to the Court, such as, but not limited to, contempt proceedings and appropriate sanctions in pending litigation.

2. When conduct is brought to the attention of a federal judge that an attorney, in the course of his or her practice in the federal court, who is not licensed to practice by the state in which the court is sitting, has or may have violated the Rules of Professional Conduct or the Code of Professional Responsibility adopted by the Court, or if no such Rules or Code have been adopted by the Court, the Rules of Professional Conduct or Code of Professional Responsibility adopted by the state in which the Court is sitting, the Court may proceed in accordance with Section 1 of this Rule, but may in addition:

a) Appoint as a commissioner or commissioners of the Court the disciplinary authority of the state in which the Court is sitting or any other person or persons as a commissioner or commissioners to investigate, hear, make findings, and/or recommendations, and report back to the Court.

b) Forward to the disciplinary authority of the state or states which have licensed the attorney the findings and/or recommendations of the commissioner or commissioners and the disciplinary order of the Court for such action as such disciplinary authority may deem proper.

Special Study Conference of Federal Rules Governing Attorney Conduct

Los Angeles, California
January 9 - 10, 1996

I. INTRODUCTION

First, a brief historical note. The Report on Local Rules Regulating Attorney Conduct in the Federal Courts (hereafter the Report) was presented to the meeting of the Committee on Rules of Practice and Procedure on July 5, 1995. That Report described four basic options in its Section VII "Conclusion: Practical Choices." One was to adopt a "national standard" for attorney conduct in all federal courts, possibly in the form of the ABA Model Rules adapted to federal practice — although an entirely new "federal code of conduct," as proposed by Professor Green in Appendix IV, attached, would also fit this "model." A second approach would be to adopt a national rule which always looked to the state standards in which a federal district court was located. A third option was to propose a "uniform model local rule," similar to that first proposed by the Committee on Court Administration and Case Management in 1978, and set out in Appendix V of the Report. The fourth option was to do nothing, and hope that matters would improve on their own. The Reporter attempted to be neutral between the first three options, but did strongly oppose the fourth option, "do nothing," on the basis of strong evidence that a deteriorating "balkanized" system was wasting the time of federal courts and causing genuine hardship to practitioners and their clients.

Following the Report's discussion, there was a vote to hold a special "Study Conference," to precede the next Standing Committee meeting in January, 1996. The Chairman of the Standing Committee, the Honorable Alicemarie H. Stotler, also directed the Reporter to investigate certain important questions, namely:

1. How frequently have issues involving problems of attorney conduct actually arisen in recent reported federal cases?

2. Which rules governing attorney conduct, if any, were involved in these cases?

3. Were there some categories of rules that were more frequently involved than others? Were there other categories of rules that were rarely, if ever, involved in federal cases?

In addition, the Chairman also request the Federal Judicial Center to do a long range study as to how many federal district courts require lawyers to be members of the bar of the relevant state, how many lawyers who appear in federal courts are in fact members of the relevant state bar, and whether such lawyers appear principally in federal courts or in the courts of the state in which the district court sits. The first part of this study is now completed. See Eligibility Requirements for, and Restrictions on, Practice before the Federal District Courts (November 7, 1995).

II. METHODOLOGY

A major computer search was designed using the Descriptive-Word Index of the Federal Practice Digest and the Westlaw data base. Thirty five key numbers were

identified that closely tracked attorney conduct rules, and key words, phrases, and numbers were also employed. Initially, a restriction date of 1985 was used, but this produced an unmanageably large number of cases. Even the selected restriction date of January 1, 1990 produced a very large number of cases, 851.

A team of two devoted research assistants, James J. G. Dimas and Thomas J. Murphy, working with the assistance of the prior work of Thomas Burton and Rebecca Lampert, began to read every case. It soon became clear that our research method was very accurate — and in the end 443 of the 851 cases located proved to involve rules governing attorney of the kind discussed in the July 5, 1996 Report. (The other 408 involved issues of attorney conduct in federal courts governed by Rule 11 and other standards. See Appendix III— Break Down of Recent Federal Cases (1990-1995) Involving Rule 11 and Other "Attorney Issues" Not Counted in the Survey). In addition, checks were done to see if any relevant cases escaped the net. For example, every case cited by Professor Mullenix's article in the Report, Appendix IV was checked, and every case cited in the Report, as well as other surveys. All such cases had been picked up by the system.

Next a painstaking description of each case was prepared, with a summary of the facts, the attorney conduct in question, the relevant rules cited, the relevant key numbers, the eventual decision, and other data. These 851 standardized descriptions form the basic data base of the project. See Illustration 1, attached. At this point, a decision was made as to which "category" of rule was chiefly involved in each dispute. Again, 408 were "discarded" into Appendix III because they did not directly involve local rules governing attorney conduct. In addition, where the local model was not based on the ABA Model Rules, the rules were "translated" into the Model Rule categories of Chart I, Appendix I, using a system similar to the comparative table on page 128 of West's Selected Statutes, Rules and Standards of the Legal Profession (1995 ed.). Of course, this was a "rough" fit, but it permits comparing "apples with apples" — and a review of individual cases showed that the "rough fit" was more than adequate for the purposes of this study. In addition, a separate table was prepared of just those cases involving local rules based on the ABA Code of 1969. This involved 144 cases, and is set out as Chart II in Appendix II. In addition, civil and criminal cases were broken out on Chart I, Appendix I.

III. FINDINGS

Although this study took many hundreds of hours of complex work, the results are unmistakable and simple.

First, by far the largest category of rules involved in federal disputes involving attorney conduct were conflict of interest rules. Rules analogous to ABA Model Rules 1.7, 1.8, 1.9, 1.10, and 1.11 accounted for 46.0% of reported federal disputes, or 204 cases of 443. The next largest category, rules involving communication with represented parties, (equivalent to Model Rule 4.2) accounted for only 10.6%, or 47 cases. The bulk of conflict of interest cases were civil, 163 out of

204 or 79.9%, but the number of criminal cases with conflict of interest issues were also substantial, 41. See Charts I, II, and III in Appendices I, II and III.

In contrast, important categories within the ABA Model Rules, such as "Confidentiality of Information" were practically absent, despite the prominence of Model Rule 1.6 in ethical controversies. There were only 9 civil cases involving confidentiality issues, and 5 criminal cases, for a total of 14, or 3.1% of the total. There were only two cases involving the controversial Rule 1.13 (Organization as Client) and corporate confidentiality. This is not to say that issues of professional confidence do not arise frequently in federal cases, but rather that such problems are not resolved in the federal courtroom.

There were only two other categories, beside conflict of interest, that even barely exceeded 10%: 1) "Lawyer as Witness" 10.1% or 45 cases (Model Rule 3.7 equivalent) and 2) "Communication with Represented Parties" 10.6% or 47 cases (Model Rule 4.2 equivalent). Given the recent controversies relating to Model Rule 4.2 and Department of Justice's new internal regulations promulgated in 28 C.F.R. 77 (1994), the large "Communication with Represented Parties" category should be expected. Perhaps more surprising, however, is that the "Represented Parties" issue occurred frequently outside criminal prosecutions. Indeed, 65.9% of the cases (31) were civil cases, and only 34.1% (16) were criminal. We are currently reviewing the data base to see how many cases involved the Department of Justice, but it appears to be only 14 of these cases, all criminal. See Chart J, Appendix I. It is also interesting to note that problems of dealing with unrepresented parties (Model Rule 4.3 issues) were, in contrast, very rare. Only 1.3% of the data base (6 cases), reflected these issues, with two thirds being civil cases (4).

"Lawyer as Witness" cases were also predominately civil, with 80.0% (36) civil cases as opposed to 20% (9) criminal. More work is being done on the cases in this data base to see why this issue, with 10.1% or 45 cases, arose more frequently than other general litigations issues in federal court. For example, issues involving "Declining or Terminating Representation" (Model Rule 1.16) constituted only 1.3% of the data base (6 cases); "Candor toward the Tribunal" (Model Rule 3.3), only 2.0% (9 cases); and "Fairness to Opposing Party" (Model Rule 3.4) only 2.9% (13 cases). In fact, all other categories constituted, individually, fewer than 3% of the cases, except for one, "Fees."

"Fees," Model Rule 1.5 type issues, were found in 21 cases, or 4.8% of the data base, with all but one case on the civil side. While this is a very small category compared to "Conflict of Interest" — only one tenth the cases — it is the fourth most common area of activity, and has been the focus of certain leading cases, such as In re Rufus Cook, ___ F.3d ___ (1995) 1995 WL 73098 (7th Cir.). See discussion at Report, supra, pp 3, 40-41. Many of these fee cases involved the familiarity of a federal trial judge with the proceedings of a specific case — making them more difficult issues to refer to state authorities than other tangential problems.

The most remarkable fact about all the other categories is how infrequently they occurred in a federal context, if they occurred at all. Sixteen Model Rule categories never occurred in 5 years, despite the substantial number of federal cases involving attorney conduct. Many other categories were represented by no more than 4 cases, (or less than 1%). See Chart I, Appendix I. Indeed, apart from the four most common categories (Conflict of Interest, Represented Parties, Lawyer as Witness and Fees), the total of all remaining categories was only 126 cases, or 28%.

A number of commentators have suggested that certain rule categories should have "custom made" federal rules for policy reasons. See, for example, the article by Professor Bruce Green "Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules be Created?" attached as Appendix IV to this study, and that by Professor Linda S. Mullenix "Multiforum Federal Practice: Ethics and Erie" attached as Appendix IV to the original Report. Among the categories mentioned other than those already discussed are "Choice of Law" (Model Rule 8.5 issues), "Confidentiality" (Model Rule 1.6 issues), "Declining on Terminating Representation" (Model Rule 1.16 issues), "Moratorium Claims" (Model Rule 3.1 issues), "Candor Toward Tribunal and Fairness to Opposing Party" (Model Rule 3.3 and 3.4 issues), and "Prosecutorial Responsibility" (Model Rule 3.8 issues). If these common litigation issues are added to the four predominate issues discussed above, the remaining categories would have constituted only 61 cases, or 13.7% of the data base.

A very large number of these remaining 61 cases also fall into traditional "state" areas, such as "Unauthorized Practice of Law" (Model Rule 5.5 issues) or hard-core attorney dishonesty, often appearing as "Misconduct" (Model Rules 8.4 issues). These are, in practice, frequently referred to state agencies.

IV. CONCLUSIONS: A POTENTIAL "FIFTH OPTION?"

In the original Report, I described four options:

1. A "National Standard" for Federal Courts, i.e. A Complete Code of Conduct Adopted by National Federal Rule;
2. A "State Standard" for Federal Courts, i.e. A National Uniform Federal Rule Adopting the State Standards of the Relevant State;
3. A "Model Local Rule," i.e. A Voluntary Local Model Rule similar to the "Federal Rules of Disciplinary Enforcement, Model Rule 4," (as promulgated by the Committee on Court Administration and Case Management in 1978 and adopted, in whole or part, by 15 of the 94 districts);
4. Status Quo, i.e. "Do Nothing"

This Study presents the basis for another possibility: adopting uniform national federal rules for attorney conduct only in certain key areas, and then stipulating that all other cases be governed by state standards. Obvious candidates for "national" treatment would be the four most commonly occurring categories described above:

1) "Conflict of Interest," 2) "Represented Parties," 3) "Lawyer as Witness," and 4) "Fees." This alone would cover 72% of all reported federal cases since 1990. See Section III, supra. If "Choice of Law" and the other common litigation categories are added, 86.3% of all reported federal cases since 1990 would be covered. Stipulating that the remaining 13.7% be covered by state standards seems like a small concession, particularly since many of these cases are "Unauthorized Practice" and hard-core "Misconduct" cases, traditionally delegated to state enforcement agencies. See discussion in Section III, supra.

Such a "Fifth Option" of selected "focused" national rules would please some expert commentators. For example, Professor Mullenix's article attached as Appendix IV to the Report urges "a uniform code of professional responsibility for federal practitioners," but also suggests "as a short-term alternative:" 1) a "uniform conflicts provision," 2) the development of means to distinguish between "core and collateral" professional responsibility issues, and 3) means for the "federal judiciary...to separate its attorney discipline functions from its adjudicatory role." See Report, Appendix IV, pp. 55-60. These aims could be largely achieved in a "focused" set of national rules, delegating some areas to state regulations, and retaining others. Professor Green's article, attached as Appendix IV to this Study, urges that the Judicial Conference should, through the Rules Enabling Act process, draft and adopt an entirely new and "independent set of detailed rules of conduct for lawyers practicing in federal court." In Green's view, these should not incorporate existing "bar association rules of professional conduct," such as the ABA Model Rules. See Appendix IV to this Study, pps. 98-100. The "Fifth Option" could be consistent with Green's goal, or not, as the Committee chooses. The "focused" federal rules could be "federalized" versions of the ABA Model Rules, or completely different. One thing is certain, however. Given the existing "balkanization" of professional standards in both state and federal courts described in detail in the existing Report, creating yet more, and different standards, would be better done in limited, narrow areas — rather than "across the board." This Study suggests such limited areas.*

In all events, this Study establishes two important facts. First, problems relating to attorney conduct have consumed a very substantial amount of attention in federal courts in the last five years. Even the "Rule 11" and other cases listed in Chart III, Appendix III are excluded, and there are 408 of these, there remain 443 reported cases from January 1, 1990 to July 31, 1995. Of course, many attorney conduct problems are unreported. See, for example the D.C. Circuit's important recent opinion in Avianca Inc. v. Harrison, described in Bruce D. Brown's "Lamenting A Lost Precedent," Legal Times, November 6, 1995, page 6, which is

* Of course, if this Committee recommends the entirely new federal "rules of conduct for lawyers" proposed by Professor Green, this Reporter would eagerly seize his place in history by creating an entirely new draft code. Whether this would be seen as a benefit to the hundreds of thousands of American lawyers and law students who have had to learn at least two other model systems, is open to debate.

available only on computer services, such as Lexis Counsel Connect. No matter how measured, attorney conduct issues are demanding a very substantial amount of federal court time.

Second, this study suggests that most attorney conduct issues in federal courts fall into relatively narrow categories. Nearly half of the relevant federal cases concern conflict of interest issues. If the next three most important categories are added (represented parties, lawyer as witness, and fees) nearly three quarters of the cases are accounted for. If "Choice of Law" and other "core" litigation categories are added, 86.3% of all reported federal cases would be covered. Large sections of both the ABA Code and the ABA Model Rules are never invoked in federal court, and vast sections are invoked only rarely. See Charts I and II, Appendices I and II. Again, this naturally suggests that focusing on the federal "trouble areas," and deferring the rest to state standards, is another viable option for this Committee.

ILLUSTRATION 1
(Standard Form Report for Located Cases 1990-1995)

Case Name: _____

_____

_____

_____

_____

_____

Citation: _____

Area of Law: _____

Attorney and Client (45) key #'s: _____

_____

Other relevant key #'s: _____

Attorney conduct in question: _____

_____

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_____

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_____

Decision: _____

_____

Notes: _____

_____

_____

APPENDIX I

Chart I — Break Down of Recent Federal Cases (1990-1995) by ABA Model Rule

Total Cases: 443

CHART I

Rule	Subject matter	Civil	Criminal	Total
1.1	Competence	2	0	2
1.2	Scope of Representation	3	1	4
1.3	Diligence	1	3	4
1.4	Communication	1	0	1
1.5	Fees	20	1	21
1.6	Confidentiality of Information	9	5	14
1.7	Conflict of Interest: General	67	25	92
1.8	Conflict of Int. Prohib. Trans.	7	1	8
1.9	Conflict of Interest: Fmr. Client	71	5	76
1.1	Imputed disqualification (Firm)	15	2	17
1.11	Govt. to private employment	3	8	11
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		163	41	204
1.12	Former Judge or Arbitrator	0	0	0
1.13	Organization as Client	2	0	2
1.14	Client Under a Disability	0	0	0
1.15	Safekeeping Property	2	1	3
1.16	Declining / Terminating Repr.	5	1	6
1.17	Sale of Law Practice	0	0	0
2.1	Advisor	0	0	0
2.2	Intermediary	0	0	0
2.3	Eval. for use by 3rd Persons	0	0	0
3.1	Meritorious Claims/Contentions	9	2	11
3.2	Expediting Litigation	0	0	0

Model rule	Subject Matter	Civil	Criminal	Total
3.3	Candor Toward the Tribunal	6	3	9
3.4	Fairness to opposing party	13	0	13
3.5	Impart. & Decorum of Tribunal	2	4	6
3.6	Trial Publicity	0	3	3
3.7	Lawyer as Witness	36	9	45
3.8	Special respons. of Prosecutor	1	4	5
3.9	Advocate / Non adjudicative	0	0	0
4.1	Truth in Statements to Others	0	2	2
4.2	Comm. w. Pers. Rep. Couns.	31	16	47
4.2 Cases Involving DOJ		0	14	14
4.3	Dealing w/ Unrep. Person	4	2	6
4.4	Respect for Rts. of 3rd Persons	1	0	1
5.1	Resp. of Partner or Supervisor	0	0	0
5.2	Resp. of Subordinate Lawyer	0	0	0
5.3	Resp. Nonlawyer Assist.	0	0	0
5.4	Professional Independence	4	0	4
5.5	Unauthorized Practice of Law	5	1	6
5.6	Restr. on Rt. to Practice	1	0	8 1
5.7	Resp. Reg. Law Rel. Practice	0	0	0
6.1	Voluntary Pro Bono Publico	0	0	0
6.2	Accepting Appointments	0	0	0
6.3	Member in Legal Svces. Org.	0	0	0
6.4	Law reform / Client Interests	0	0	0
7.1	Comm. Conc. Lawyer's Svces.	1	0	1
7.2	Advertising	1	0	1

7.3	Dir. Contact w/ Prospective Cl.	2	0	2
Model rule	**Subject matter**	**Civil**	**Criminal**	**Total**
7.4	Comm. of Fields of Practice	1	0	1
7.5	Firm Names & Letterheads	0	0	0
8.1	Bar Admission & Disc. Matters	0	0	0
8.2	Judicial & Legal Officials	2	1	3
8.3	Reporting Prof. Misconduct	1	0	1
8.4	Misconduct	4	3	7
8.5	Disc. Auth.: Choice of Law	6	1	7
Totals		339	104	443

APPENDIX II

Chart II — Break Down of Recent Federal Cases (1990-1995) by ABA Code "DR Number"

Total Cases: 144

CHART II

DR Number	Subject Matter Covered by DR	Number of Cases
1-101	Maintaining Integrity & Competence	0
1-102	Misconduct	4
1-103	Disclosure of Information to Authorities	0
2-101	Publicity	1
2-102	Prof. Notices, Letterheads & Offices	0
2-103	Recommendation of Prof. Employment	0
2-104	Suggestion of Need of Legal Services	1
2-105	Limitation of Practice	0
2-106	Fee for Legal Services	11
2-107	Division of Fees Among Lawyers	7
2-108	Agreements Restricting Prac. of Lawyer	1
2-109	Acceptance of Employment	0
2-110	Withdrawal from Employment	3
3-101	Aiding Unauthorized Practice of Law	0
3-102	Dividing Fees With Non-lawyer	3
3-103	Forming Partnership with Non-lawyer	0
4-101	Preserv. of Confidences & Secrets of Client	7
5-101	Refusing Employment	11
5-102	Withdrawal: Lawyer as Witness	25
5-103	Avoid. Acquisition of Interest in Litigation	2
5-104	Limiting Bus. Rel. w/ Client	1
5-105	Refusal of Employment (conflict of interest)	30
5-106	Settling Similar Claims of Clients	1
5-107	Avoid. Influences by Others than the Client	0

DR Number	Subject Matter Covered by DR	Number of Cases
6-101	Failing to Act Competently	0
6-102	Limiting Liability to Client	0
7-101	Representing Client Zealously	0
7-102	Representing Client Within Law	1
7-103	Perf. Duty of Prosecutor or Govt Lawyer	2
7-104	Comm. w/ One of Adverse Interest (including represented party)	25
7-105	Threatening Criminal Prosecution	1
7-106	Trial Conduct	2
7-107	Trial Publicity	0
7-108	Comm. w/ or Investigation of Jurors	0
7-109	Contact w/ Witnesses	2
7-110	Contact w/ Officials	0
8-101	Action as Public Official	0
8-102	Statements: Judges & Other Adj. Officials	0
8-103	Lawyer Candidate of Judicial Office	0
9-101	Avoiding Even Appearance of Impropriety	2
9-102	Preserv. Identity & Funds of Client	1
TOTAL		**144**

APPENDIX III

Chart III — Break Down of Recent Federal Cases (1990-1995) Involving Rule 11 and Other "Attorney Issues" Not Counted in Survey

Total Cases: 408

CHART III
BREAKDOWN OF RECENT FEDERAL CASES (1990-1995) INVOLVING RULE 11 AND OTHER "ATTORNEY ISSUES" NOT COUNTED IN SURVEY

The courts in the cases (not including cases in the Bankruptcy Courts) discarded from our survey cited the following as the basis for decisions:

Federal Rule of Civil Procedure 11: 91 cases

Other Federal Rules of Civil Procedure: 24 cases

•Includes:
Rule 4 (Summons)
Rule 12 (Defenses & Objections)
Rule 16 (Pretrial Conferences)
Rule 26 (General Provisions Governing Discovery; Duty of Disclosure)
Rule 28 (Before Whom Depositions May Be Taken)
Rule 30 (Depositions upon Oral Examination)
Rule 36 (Requests for Admission)
Rule 37 (Failure to Make or Cooperate in Discovery: Sanctions)
Rule 38 (Jury Trial of Right)
Rule 41 (Dismissal of Actions)
Rule 52 (Findings by the Court ; Judgment on Partial Findings)
Rule 56 (Summary Judgment)
Rule 59 (New Trials; Amendment of Judgments)
Rule 70 (Judgment for Specific Acts; Vesting Title)
Rule 71 (Process in Behalf of and Against Persons Not Parties)

Constitutional Amendments (Almost entirely Sixth Amendment (effective assistance of counsel); also the First Amendment (freedom of speech) cited only once; the Fifth Amendment (due process) cited only twice; and the Fourteenth Amendment (due process) cited only once).:150 cases

28 U.S.C.A. § 1927 (makes attorneys who practice before federal courts responsible for the costs of vexatious litigation they engage in): 11 cases

Other Federal and State Statutes: 132 cases

•Includes:
Employee Retirement Income Security Act (ERISA); Racketeer and Corrupt Organizations Act (RICO); Civil Rights Act of 1964; Sherman Antitrust Act; Americans with Disabilities Act; 42 U.S.C. §1983 (civil rights action against state agents); 42 U.S.C. §1988 (attorneys fees for victorious plaintiffs in civil right actions); West Virginia Governmental Ethics Act; Texas Rules of Civil Evidence; and an Illinois statute regarding the dismissal of a state attorney. This category also included eight decisions based on the Federal Rules of Appellate Procedure (Rules 28, 38 and 46) and three decisions based on Federal Rule of Criminal Procedure 44.

408 TOTAL CASES

APPENDIX IV

64 Geo. Wash. L. Rev. 460, George Washington Law Review,
Govern Lawyers in Federal Court and How Should the Rules Be Created?,
Bruce A. Green [not reprinted here]

Eligibility Requirements for, and Restrictions on, Practice before the Federal District Courts

Marie Leary, Federal Judicial Center,
November 7, 1995

Analysis of Table Depicting Eligibility Requirements For, and Restrictions on, Practice Before the Federal District Courts

Introduction

"How many federal district courts require lawyers practicing before them to be members of the bar of the state in which the federal court sits?" Although appearing as a simple and straightforward inquiry at first glance, a comprehensive response entails consideration of a number of factors that quickly complicate the issue. Does the attorney want permission to make unlimited appearances before a federal district court representing any matter? Or does the attorney only want permission to appear for one particular case? Is the attorney a member in good standing of the bar of the state in which the district court is located or any other state or federal court? Does the attorney reside in, or is he or she regularly employed in, or regularly engaged in professional activities within the state or within the district in which permission to appear is sought? Is the attorney employed or retained by a state or federal government or its agencies to represent them in a matter brought before the district court in question? Depending upon which federal district court permission to practice before is sought, some or all of the above considerations may come into play in determining whether bar membership in the state in which the federal court sits is necessary.

All ninety-four federal district courts specify in their local court rules who is eligible to practice before the court and any restrictions on this practice. While these rules vary considerably among the districts, a common framework permits analysis and meaningful comparisons. First, all federal district courts limit general permission to practice in all actions to members of the Bar of its court. Each district court specifies requirements for eligibility to apply for general admission to its Bar, which may or may not include bar membership in the state in which the district court is located. Second, most districts have provisions allowing an attorney who is not a member of that district's bar to make special appearances before the court. The two most commonly provided are for *pro hac vice* appearances (permission to appear and participate in a particular case), and for appearances by an attorney employed or retained by the United States or one of its agencies to represent the United States or any agency thereof in a matter before the court. Not all districts make these provisions, and some districts have others. Further, almost all districts making these provisions also specify who is eligible to take advantage of them and what types of restrictions on practice before the court must be adhered to.

The attached table displays the current rule in each federal district court.[1] It is patterned after the framework outlined above, with separate columns for bar membership, *pro hac vice* appearances, appearances on behalf of the United States, and a final column for other special appearances that do not require bar membership. In considering these categories in more detail, please note that the information in the table regarding eligibility for, and restrictions on, practice before the federal district courts has been obtained solely from the districts' published local rules. Thus, it does not account for the possibility that a district may have actual practices or procedures that differ from, or supplement, the relevant local rule.

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[1]Marie Cordisco, Eligibility Requirement For, and Restrictions On, Practice Before the Federal District Courts (Federal Judicial Center November 1995) (unpublished table, on file with the author) [hereinafter Practice Table].

Requirements For and Restrictions On Bar Member ship in the District Courts

Every federal district court has a provision in its local rules listing criteria that an attorney must possess to be eligible to apply for admission to that court's Bar. Fifty-five (59%) federal district courts limit membership in its Bar to attorneys who are members of the bar of the state or territorial possession in which the district court is located.[2] A few of these districts require additional qualifications. For example, the Middle, Northern and Southern districts of Alabama require an attorney to be admitted to practice before the Supreme Court of Alabama *and* reside in Alabama or regularly engage in the practice of law in Alabama. The Northern and Southern Districts of Florida require an attorney to be admitted to and in good standing with the Florida Bar *and* to receive a satisfactory score on an examination approved by a committee established for that purpose.

Eligibility requirements in the remaining thirty-nine districts vary considerably, but some of them do fall into a number of patterns, all of which qualify a broader pool of applicants for admission. Twenty-seven federal district courts have variations of rules that provide the attorney two alternative paths to eligibility. One pattern requires an attorney to be *eligible* to practice before any U.S. Court, *or eligible* to practice before the highest court of any state, territory, or insular possession of the U.S.[3] Another pattern requires an attorney to be *admitted* to practice before some specific or all U.S. courts, *or admitted* to practice before the highest court of any state, the District of Columbia, territory or insular possession of U.S.[4] A third pattern requires an attorney to be a member of the bar of the state wherein the district is located, *or* a member of the bar in either (1) a U.S. Court;[5] or (2) any other state;[6] or (3) some other combination.[7] The remaining twelve districts have provisions that are more restrictive because they do not allow for alternatives, but they are less restrictive than the 55 districts that only allow an attorney one way to qualify for bar admission(member of bar of state wherein district court sits). For example, an attorney must be eligible to practice law in any state or the District of Columbia to be eligible for Bar membership in the Central, Northern & Southern Districts of Illinois, the Eastern District of Tennessee, and the District of Nebraska. The Eastern and Western Districts of Arkansas require

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[2]M., N. & S.D. Ala., D. Alaska, C., E. & S.D. Cal., D. Colo., D. Del., D. D.C., M., N. & S.D. Fla., M., N. & S.D. Ga., D. Guam, D. Idaho, N. & S.D. Iowa, D. Kan., E. & W.D. Ky., E., M. & W.D. La., D. Me., D. Mass., D. Minn., E.D. Mo., W.D. Mo., D. Mont., D. Nev., D. N.H., D. N.J., D. N.M., E., M. & W.D. N.C., D.N. Mar.I., S.D. Ohio, D. Or., E. & M.D. Pa., D. R.I., D. S.C., D. S.D., W.D. Tenn., D. Utah, D. V.I. E. & W.D. Va., N. & S.D. W.Va., D. Wyo.

[3]N.D. Cal., D. Haw., E. & W.D. Wis.

[4]N & S.D. Ind., E. & W.D. Mich., D. N.D., N.D. Ohio, E., N. & W. D. Okla., E.D. Tex.

[5] D. Ariz.(admitted to practice in Ariz. *or* any federal court); D. Conn.(member of bar of state of Conn. *or* any District Court); W.D. Pa. (admitted or eligible for admittance to Supreme Court of Pa. *or* U.S. Supreme Court or any District Court); S.D. Tex.(member state bar of Tex. *or* any District Court); D. Vt. (member state bar of Vt. *or* U.S. District Court within First and Second Circuits)

[6]N.D. Tex.

[7]D. Md. (Md. Court of Appeals *or* any state in which attorney maintains principal office); E. & S.D. N.Y. (bar of state of N.Y. *or* U.S. district Court in N.J., Conn., or Vt. and state bar of each); N.D. N.Y. (bar of state of N.Y. *or* any U.S. District Court and state where office for regular practice of law is located (if District Court is outside of N.Y.).

an attorney to be licensed in his or her state of residence and, if a non-resident of Arkansas, authorized to practice in any District Court. Consult the Practice Table for additional variations of rules that list a district's eligibility requirements for admission to its bar.

In addition to eligibility requirements (which *qualify* an attorney to apply for admission to a district court's Bar), districts also have administrative prerequisites that an attorney must satisfy as a condition precedent to admission. As footnote number two in the Practice Table states, it does not list these additional requirements for each district. They can be found by consulting the local rule referenced in the "local rule" column of the table. Most districts require the attorney to pay a prescribed admission fee; submit a petition or application for admission supported by (1) a certificate of good standing from the appropriate state or district court(s), (2) an affidavit stating that the applicant is familiar with the district's local rules, rules of professional conduct or ethics, the Federal Rules of Civil and Criminal Procedure, and the Federal Rules of Evidence, (3) an affidavit attesting to freedom from any criminal conviction or any pending or past disciplinary action taken against the applicant by any court or bar association in any jurisdiction, and/or (4) certificates from sponsoring member(s) of the district's bar attesting to applicant's legal and moral qualifications; and swearing a prescribed oath (either before the court or by signing an oath card).

In general, once an attorney has been admitted to the Bar of a federal district court, he or she has permission to make unlimited solo appearances before that court as attorney of record for any type of action. However, depending upon whether the bar member resides and/or has an office within the district or the state in which the district court sits, the district court may place restrictions upon bar members. For example, the Northern District of California requires a bar member, who does not maintain an office within California, to designate local counsel who must be a member of the bar of the Northern District of California and the state bar of California , and who must maintain an office within California.[8] In the Eastern and Western Districts of Kentucky, an attorney who is not a resident of and does not have an office *within* Kentucky must designate local counsel who must be a member of the bar of the respective district court and reside in or maintain an office in Kentucky, except for cases involving governmental entities.[9] Seventeen districts[10] (18%) *require* an attorney who does not maintain a residence and/or an office within the district, or state wherein the district sits, to designate or associate with local counsel or co-counsel. Consult the Practice Table and relevant local rules for more detail concerning a designated co-counsel or local counsel's scope of responsibility, and the requirements that an attorney must meet to be eligible for designation as local counsel or co-counsel. A number of other districts have restrictions alerting attorneys who reside and/or maintain an office outside the district or state wherein the district is located that the court *may require* association with local counsel or co-counsel.[11]

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[8]For similar restrictions when a bar member does not maintain an office within the district or state wherein the district sits, see the following districts in the Practice Table: D. Conn., N.D. Ill., W.D. Mo., S.D. N.Y., W.D. N.Y., D. Vt.

[9]For similar restrictions when a bar member doesn't maintain an office and residence within the district or state wherein the district is located, see the following districts in the Practice Table: D. Guam, D. Me., D.N. Mar. I., E. & W.D. Okla., M.D. Tenn., N.D. Tex., D. Utah.

[10]*See* districts referenced *supra* notes 8 & 9 and examples provided in the accompanying text.

[11]*See* following districts in Practice Table: D. Alaska, D. Ariz., S.D. Cal., S.D. Ill., N. & S. D. Ind.,

an attorney to be licensed in his or her state of residence and, if a non-resident of Arkansas, authorized to practice in any District Court. Consult the Practice Table for additional variations of rules that list a district's eligibility requirements for admission to its bar.

In addition to eligibility requirements (which qualify an attorney to apply for admission to a district court's Bar), districts also have administrative prerequisites that an attorney must satisfy as a condition precedent to admission. As footnote number two in the Practice Table states, it does not list these additional requirements for each district. They can be found by consulting the local rule referenced in the "local rule" column of the table. Most districts require the attorney to pay a prescribed admission fee; submit a petition or application for admission supported by (1) a certificate of good standing from the appropriate state or district court(s), (2) an affidavit stating that the applicant is familiar with the district's local rules, rules of professional conduct or ethics, the Federal Rules of Civil and Criminal Procedure, and the Federal Rules of Evidence, (3) an affidavit attesting to freedom from any criminal conviction or any pending or past disciplinary action taken against the applicant by any court or bar association in any jurisdiction, and/or (4) certificates from sponsoring member(s) of the district's bar attesting to applicant's legal and moral qualifications; and swearing a prescribed oath (either before the court or by signing an oath card).

In general, once an attorney has been admitted to the Bar of a federal district court, he or she has permission to make unlimited solo appearances before that court as attorney of record for any type of action. However, depending upon whether the bar member resides and/or has an office within the district or the state in which the district court sits, the district court may place restrictions upon bar members. For example, the Northern District of California requires a bar member, who does not maintain an office within California, to designate local counsel who must be a member of the bar of the Northern District of California and the state bar of California , and who must maintain an office within California.[8] In the Eastern and Western Districts of Kentucky, an attorney who is not a resident of and does not have an office within Kentucky must designate local counsel who must be a member of the bar of the respective district court and reside in or maintain an office in Kentucky, except for cases involving governmental entities.[9] Seventeen districts[10] (18%) *require* an attorney who does not maintain a residence and/or an office within the district, or state wherein the district sits, to designate or associate with local counsel or co-counsel. Consult the Practice Table and relevant local rules for more detail concerning a designated co-counsel or local counsel's scope of responsibility, and the requirements that an attorney must meet to be eligible for designation as local counsel or co-counsel. A number of other districts have restrictions alerting attorneys who reside and/or maintain an office outside the district or state wherein the district is located that the court *may require* association with local counsel or co-counsel.[11]

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[8]For similar restrictions when a bar member does not maintain an office within the district or state wherein the district sits, see the following districts in the Practice Table: D. Conn., N.D. Ill., W.D. Mo., S.D. N.Y., W.D. N.Y., D. Vt.

[9]For similar restrictions when a bar member doesn't maintain an office and residence within the district or state wherein the district is located, see the following districts in the Practice Table: D. Guam, D. Me., D.N. Mar. I., E. & W.D. Okla., M.D. Tenn., N.D. Tex., D. Utah.

[10]*See* districts referenced *supra* notes 8 & 9 and examples provided in the accompanying text.

[11]*See* following districts in Practice Table: D. Alaska, D. Ariz., S.D. Cal., S.D. Ill., N. & S. D. Ind.,

another federal district court,[14] or to attorneys admitted to practice before the bar of the highest court in any state.[15]

To limit *pro hac vice* appearances to attorneys who do not reside or practice within the district, or state wherein the district court sits (truly visiting attorneys), some districts (19 or 21% of districts with *pro hac vice* provisions) have negative eligibility criteria that an attorney must *not* satisfy or else the attorney will be ineligible to apply for permission to make a *pro hac vice* appearance. For example, in the Central, Eastern and Southern Districts of California, an attorney who resides in California, is regularly employed in California, or regularly engages in business, professional or other activities in California is ineligible to apply for permission to appear before the court *pro hac vice*. The District of Colorado exempts attorneys who are residents of the district.[16] These negative criteria are also used by some districts (45 or 50% of districts with *pro hac vice* provisions) to prevent attorneys who are either members of the bar of that district court already or who are eligible to become members from appearing *pro hac vice*. For example, the Southern District of Florida excludes applicants for *pro hac vice* appearances who have been admitted to the Bar of the Southern District of Florida; the Middle District of Georgia excludes members of the state bar of Georgia with residence or office within Georgia; the District of Idaho excludes attorneys who are eligible for Bar Membership in the District of Idaho.[17]

If an attorney is granted permission to appear before a district court *pro hac vice*, the permission extends only to the particular case for which the applicant petitioned the court. In addition, the majority of districts (62 or 69% of the districts with provisions for *pro hac vice* appearances) require an attorney admitted *pro hac vice* to associate with a member of that district's bar.[18] Further, if the attorney resides or maintains an office outside of the district or state wherein the district is located, some districts require the attorney to associate with or designate as co-counsel a member of the district's bar who maintains a residence or office within the district.[19] A few courts restrict *pro hac vice* appearances by limiting the number of such appearances permitted, and warning applicants that *pro hac vice* appearances are the exception and not the norm. For example, the Central District of Illinois only permits a *pro hac vice* appearance on one occasion; thereafter, the attorney must secure admission to the Bar of the District. The District of the Virgin Islands limits *pro hac vice* appearances to no more than three in a calendar year. And if the District of Rhode Island permits an attorney who is an associate or member of a firm to appear *pro hac vice*, then no other attorney of that firm is allowed to appear *pro hac vice* within the same year.

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[14]*See* M.D. Fla., M. & S.D. Ga., D. Minn., M.D. Tenn.
[15]*See* C. & S.D. Ill., D. Neb., D. Nev., D. N.M., M.D. N.C., N.D. Tex., D. Wyo.
[16]For additional examples, see D. Del., M.D. Fla., M., N. & S.D. Ga., D. Guam, D. Haw., D. Minn., D. N.M., N.D. Mar.I., E., N. & W. D. Okla., M.D. Tenn., E.D. Wash.
[17]For additional examples, see D. Alaska, E. & W.D. Ark., D. Colo., D. Conn., D. Del., D. D.C., M. & N.D. Fla., N. & S.D. Ga., D. Guam, N & S.D. Iowa, D. Kan., E. & W.D. Ky., E., M. & W.D. La., D. Me., D. Md., D. Minn., N. & S.D. Miss., W.D. Mo., D. Mont., D. Nev., D. N.J., D. N.M., N. N.D., S.D. Ohio, D. S.D., W.D. Tenn., E., N. & S.D. Tex., D. Utah, W.D. Va., N. & S.D. W.Va., D. Wyo. *But see* S.D. Ill. (explicitly permits an attorney eligible to become a member of the Bar of S.D. Ill. to appear pro hac vice) & W.D. Wis.(permission to appear pro hac vice is restricted to attorneys eligible for membership in Bar of W.D. Wis.).
[18]*See, e.g.*, D. Colo., N. & S. D. Iowa, D. Me., D. Md.
[19]*See, e.g.*, N. & S.D Cal., N. & S.D. Ind., M.D. Tenn., N.D. Tex.

Requirements and Restrictions for Appearances on Behalf of the United States

The other major exception to bar membership found in districts' local rules is for appearances on behalf of the United States or its agencies. Fifty-nine (63%) federal district courts permit this exception. In general, an attorney who has been employed or retained by the United States government, or its agencies, to represent the government in any action in which the United States is a party is eligible to practice before a district court under this exception.[20] Some districts have additional requirements for eligibility that make this exception more restrictive. For example, the Central District of California requires an attorney to be employed or retained by the United States government, to be noteligible for bar membership or *pro hac vice* admission, to be employed within California, and to be admitted to practice before any United States Court or any state court, and to have applied to take the next State Bar of California.[21]

In contrast with requirements for *pro hac vice* appearances, in the majority of districts (47 or 80%) that provide an exception for attorneys that appear on behalf of the United States, an attorney who meets the eligibility requirements for this exception need not make a formal motion/petition for permission to appear. Permission is conceded by the district when the attorney appears representing the United States or one of its agencies. However, eight districts require an attorney representing the government to apply for and receive permission to practice on behalf of the United States or be formally introduced to the court by a United States Attorney.[22]

Once admitted under this exception, attorneys can represent the United States in any action before the district, usually without the necessity of associating with local counsel. However, thirteen district courts require a non-local government attorney admitted under this provision to either associate with the United States Attorney for that particular district[23], or designate as local counsel a member of that district's bar (and the bar of the state within which the district court is located) who has an office within the district.[24]

Other Special Appearances

Several district courts have provisions for other exceptions to the general rule requiring bar membership for practice before the court. For example, the District Court for the District of Columbia permits a state Attorney General or that official's designee, who is a member in good standing of the bar of the highest court in any state or any United States Court, to appear and represent the state or any agency thereof. The Southern District of Florida, the District of Guam, the Northern and Southern Districts of Illinois, the District of Maine, and the Eastern District of

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[20]*See, e.g.*, M., N. & S.D. Ala., E. & W.D. Ark., N.D. Cal..
[21]For other restrictive rules see E. & S.D. Cal., N.D. Ga., N.D. Ill., N. & S.D. Iowa, N. & W. D. N.Y., D. Vt.
[22]C. & S.D. Cal., D. Haw., N.D. Ill., N. & S.D. Miss., D. Nev., N.D. N.Y., D.N. Mar. I., D. Or., D. Vt., D. Wyo.
[23]D. Alaska, E. & W.D. Mich., W.D. Mo., D. N.J., D. N.D., D. V.I., D. Wyo.
[24]N.D. Cal., N.D. Ill., E., N. & W. D. Okla., M.D. Tenn.

Missouri also provide exceptions to bar membership for appearances on behalf of their respective state governments. In addition, the District Court for the District of Columbia permits attorneys who are members of the D.C. Bar or bar of any United States Court or highest court of any state, to practice before the court in any case handled without a fee on behalf of indigents.[25] Several districts have reciprocity provisions whereby they will admit (without formal application) attorneys who have been admitted to another federal district court, provided that the other district extend the same courtesy to bar members of the original district. For example, the Southern District of New York will admit members of the Bar of the Eastern District as long as members of the Southern District are admitted to the Eastern District without application. Both the Northern and Western Districts of New York will admit without formal application members of the other three district courts within the state of New York.[26] The Eastern District of Tennessee has an extremely liberal reciprocity provision in which any attorney admitted to practice in any other district court can practice in the Eastern District of Tennessee provided they are members in good standing of bar of the district court in which they reside. The District of New Jersey and the District of the Virgin Islands have restrictive exceptions to bar membership for patent attorneys.

Conclusion

The majority of federal district courts (59%) do require an attorney to be a member of the bar of the state or territorial possession in which the district court sits, but only in order to be eligible for admittance to the district's bar. Each of the fifty-five districts with this restrictive eligibility requirement for bar membership have provisions for *pro hac vice* appearances. Thus, if an attorney who does not belong to the bar of the state wherein the districts court sits wants to practice in one of these 55 districts, the scope of practice desired and, for government attorneys, the party being officially represented, are the two factors that will determine whether the attorney will be able to practice in these districts. If the attorney wants unlimited practice for any type of action, then he or she will usually need to qualify for admission in that district court's bar, which means membership in the bar of the state wherein the district court sits. An attorney who wants admission for one case or possibly several cases a year, may be able to secure permission to appear before the district *pro hac vice*. A problem may arise if an attorney who resides in, is employed in, or regularly practices law in a district, or the state in which the district court is located, is not a member of the bar of that district or state, and wants to appear before the federal district court *pro hac vice*. Some district courts (14) that require membership in the bar of the state wherein the district is located for bar membership have restrictions in their local rules preventing this.[27] The majority of district courts (37 or 67%) that require an attorney to be a member of the bar of the state or territorial possession in which the district is located have provisions that permit appearances by attorneys on behalf of the United States without formal admission or application to the district's bar. And all of the districts that do not explicitly provide an exception for attorneys representing the United States or any agency thereof,[28] have *pro hac vice* provisions.

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[25]*See also* D. Nev, E. & M.D. Pa. for exceptions to bar membership for legal services attorneys.
[26]*See also* W.D. N.C., E. N. & W. D. Okla. for additional examples of reciprocity provisions.
[27]C., E., & S.D. Cal., D. Colo., D. Del., M.D. Fla., N.D. Fla., M.D. Ga., N.D. Ga., S.D. Ga., D. Guam, D. Minn., D. N.M., D.N. Mar.I.
[28]D. Colo., D. Del., D. Kan., E. & W.D. Ky., E., M. & W.D. La., D. N.M., E., M. & W.D. N.C., S.D. Ohio, D. S.C., W.D. Ten., E.D. Va., W.D. Va., S.D. W.Va.

APPENDIX I

Practice Table
for the Eligibility Requirements for, and Restrictions on, Practice before the Federal District Courts

Research Division, Federal Judicial Center,
November, 1995

ELIGIBILITY REQUIREMENTS FOR, AND RESTRICTIONS ON, PRACTICE BEFORE THE FEDERAL DISTRICT COURTS (PRACTICE TABLE)*

RESEARCH DIVISION
THE FEDERAL JUDICIAL CENTER

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court[2]	Requirements and Restrictions for *Pro hac vice* Appearances[3] (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies[4]	Other Special Appearances (not requiring membership of the district court's bar)
11	M.D. Ala.	Rule 1 Adopted Effective Mar. 20, 1986	**Eligibility Requirements:** 1) admitted to practice before Supreme Court of Ala.; and 2) reside in Ala. or regularly engage in practice of law in Ala.	**Eligibility Requirements:** 1) admitted to practice before U.S. District Court for district in which attorney resides or regularly practices law; or 2) admitted to practice before highest court in the state in which attorney resides or regularly practices law.	**Eligibility Requirements:** 1) represent U.S. or any agency thereof with authority to appear as counsel; and 2) government or agency thereof must be a party in the case.	

*For a detailed explanation and analysis of the information depicted in this table refer to the accompanying report.

[1]The information in this table derives solely from the published local rules of federal district courts. It does not account for the possibility that a district may have policies or practices in addition to, or different from, those contained in the applicable local rule. Note that the description of the local rule in the following four columns may be a paraphrasing of the actual language contained in the rule, and should not be quoted or cited as legal authority.

[2]This column lists the core requirements that an attorney must possess to be eligible to apply for admission to the district court's bar. Most districts have additional administrative prerequisites that an attorney must satisfy before being admitted. These include but are not limited to: payment of a prescribed admission fee; submission of a certificate of good standing from the appropriate state or district court; submission of an application/petition for admission on which attorney must state full name, residence and business address, names of courts before which applicant is admitted to practice with dates of admission, and information regarding conviction of any crime and any disciplinary action taken against the applicant by any court or bar association in any of the jurisdictions or courts before which the applicant has practiced; an order of admission from a district judge within the district (by impetus of an oral or written motion by a member of the district's bar or on the court's own motion); obtaining affidavit(s) by sponsoring member(s) of Bar of the district court attesting to the applicants good moral character; certifying familiarity with the District's local rules(civil and criminal), rules of professional conduct or ethics, Fed. R. Civ. P., Fed. R. Crim. P. and/or the F.R. Evid.; and administering of a prescribed oath either before the court or by signing an oath card These additional prerequisites are not provided in this table but can be found by consulting the local rule(s) listed in the "Local Rule" column of the table for each district.

[3]Note that in all district courts an attorney must apply for permission to appear pro hac vice. It is within the district judge's discretion whether to issue an order permitting or denying such a request. In addition, most district's require submission of a pro hac vice application stating under penalty of perjury the attorney's residence and office addresses, what court(s) the attorney has been admitted to practice in and the date(s) of admission, that the attorney is in good standing and eligible to practice before said court(s), that the attorney is not currently suspended or disbarred in any other court, and whether the attorney made any pro hac vice application in the court within preceding year. Payment of a determined admission fee is also generally required to be submitted with a pro hac vice application/petition.

[4]If a district 's local rules have a provision for special appearances on behalf of the United States or its agencies, an attorney (in most districts) who meets the eligibility requirements for this exception provided in the rule need not make a formal request for special admission to appear before the district court (contrary to pro hac vice appearances). This column will note any exceptions to this general rule with the indicator N.B.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
11	N.D. Ala.	Rule 83.1 Adopted Effective Sept. 1, 1991	**Eligibility Requirements:** 1) admitted to practice before Supreme Court of Ala.; and 2) reside in Ala. or regularly engage in practice of law in Ala.	**Eligibility Requirements:** 1) admitted to practice before U.S. District Court for district in which attorney resides or regularly practices law; or 2) admitted to practice before highest court in the state in which attorney resides or regularly practices law.	**Eligibility Requirements:** 1) represent U.S. or any agency thereof with authority to appear as counsel; and 2) government or agency thereof must be a party in the case.	
11	S.D. Ala.	Rule 1 Amended Effective Mar. 1, 1986	**Eligibility Requirements:** 1) admitted to practice before Supreme Court of Ala.; and 2) reside in Ala. or regularly engage in practice of law in Ala.	**Eligibility Requirements:** 1) admitted to practice before U.S. District Court for district in which attorney resides or regularly practices law; or 2) admitted to practice before highest court in the state in which attorney resides or regularly practices law.	**Eligibility Requirements:** 1) represent U.S. or any agency thereof with authority to appear as counsel; and 2) government or agency thereof must be a party in the case.	
09	D. Alaska	Rule 3 Amended Effective Nov. 16, 1990	**Eligibility Requirements:** 1) qualified to practice as an attorney and counselor at law before courts of Alaska; and 2) not employed in any capacity in District Court for D. Alaska (such as a law clerk or secretary to member of the court). **Restrictions on practice:** 1) After leaving such position of employment under the Alaska District Court, may not practice as an attorney in connection with any case pending in the district during prior term of employment; nor permit name to appear on brief filed in connection with any such case, or engage in any activity as attorney or advisor in connection with such case. 2)Court may find good cause to require an active member of the Bar of D. Alaska to associate with another active member residing in place in district where case is pending.	**Eligibility Requirements:** 1) member in good standing of the bar of another jurisdiction; and 2) not an active member of the Bar of the D. Alaska. **Restrictions on practice:** 1) Must associate with an active member of Bar of D. of Alaska (court may permit an exception on a sufficient showing of good cause). 2) If nonlocal attorney appears for a party(from outside district or outside location within district where proceeding is located), court may at any time during proceeding (sua sponte or on motion), for good cause, require association of local counsel.	**Eligibility Requirements:** Represent U.S. or any agency thereof in an official capacity. **Restrictions on practice:** 1) If attorney representing U.S. or any agency thereof is not a resident of the D. Alaska, the U.S. Attorney in the District will be associated initially, but the court may dispense with the association upon application demonstrating good cause. 2) If nonlocal attorney is representing the U.S. or agency thereof (from outside D. Alaska or outside location within D. Alaska where proceeding is located), court may at any time during proceeding, sua sponte or on motion, for good cause, require association with the U.S. Attorney in the D. Alaska.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	D. Ariz.	Rule 1.5 Adopted Effective Jan. 13, 1994	**Eligibility Requirements:** 1) admitted to practice and in good standing as an active practitioner in Ariz.(if residing in or having principal office or practice in Ariz.); or 2) admitted to practice and in good standing as an active practitioner in any federal court (if neither residing nor maintaining an office for practice of law in the D. Ariz.). **Restrictions on practice:** Court may order association with local counsel in any case.	No provision for *pro hac vice* appearances.	**Eligibility Requirements:** 1) currently represent U.S. in a full time official capacity; or 2) currently employed by the office of the Federal Public Defender and admitted to practice in another U.S. District Court. **Restrictions on practice:** Court may order association with local counsel in any case.	
08	E. & W. D. Ark.	Rule B-1 Amended Effective Jan. 2, 1990	**Eligibility Requirements:** 1) licensed to practice in state of residence; and 2) if nonresident of Ark., previously authorized to practice in any U.S. District Court.	**Eligibility Requirements:** 1) member in good standing of Bar of any U.S. District Court; or 2) member in good standing of highest court of any state, territory or insular possession of U.S.; and 3) not admitted to practice in either the E. or W.D. Ark. **Restrictions on practice:** Must designate member of the Bar of D. Ark. who maintains an office in Ark. for the practice of law with whom the court and opposing counsel may readily communicate about conduct of case. Court may waive or modify requirements of this designation on written motion and for good cause shown.	**Eligibility Requirements:** Attorney for the U.S. appearing in an official capacity.	This rule does not apply to an attorney in the W.D. Ark. who resides in Texarkana, Texas.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	C.D. Cal.	Rule 2 Amended Effective March 27, 1992	**Eligibility Requirements:** Active member, of good moral character, and in good standing of, the state bar of Cal.	**Eligibility Requirements:** 1) member, of good moral character and in good standing of, and eligible to practice before, the bar of any U.S. court; or 2) member, of good moral character and in good standing of, and eligible to practice before, the highest court of any state, territory or insular possession of the U.S.; and 3) applicant must not reside in Cal.; be regularly employed in Cal.; or regularly engaged in business, professional, or other similar activities in Cal. **Restrictions on practice:** 1) Unless court orders otherwise, must designate as local counsel an attorney who is a member of Bar of C.D. Cal. with whom Court and opposing counsel may readily communicate re: case and upon whom papers may be served. 2) Judge assigned a case may require designation of co-counsel (who must be a member of Bar of and maintain an office within the C.D. Cal.) with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) not be eligible for admission to the Bar of C.D. Cal or for permission to appear *pro hac vice*; and 2) employed within the state of Cal.; and 3) member, of good moral character and in good standing of, and eligible to practice before, the bar of any U.S. Court, or of the highest court of any state, territory or insular possession of U.S.; and 4) employed or retained by the U.S. or its agencies; and 5) provide certification showing applicant has applied to take next succeeding Bar Exam for admission to the state Bar of Cal for which applicant is eligible. N.B. An attorney must apply for leave of court to practice in any matter for which employed or retained by U.S. or its agencies	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	E.D. Cal.	Rule 180 Adopted Effective Dec. 12, 1994	**Eligibility Requirements:** Active member in good standing of the state bar of Cal.	**Eligibility Requirements:** 1) member in good standing of, and eligible to practice before, bar of any U.S. court or of highest court of any state, territory or insular possession of U.S.; and 2) retained to appear in E.D. Cal.; and 3) must not reside in Cal., be regularly employed in Cal., or regularly engage in professional activities in Cal. **Restrictions on practice:** Must designate member of Bar of E.D. Cal. with whom Court and opposing counsel may readily communicate re: attorney's conduct of the action and upon whom papers will be served .	**Eligibility Requirements:** 1) not eligible for admission to the Bar of E.D. Cal.; and 2) member in good standing of and eligible to practice before, bar of any U.S. court or of highest court of any state, territory or insular possession of U.S. ; and 3) matter must be one for which attorney is employed or retained by U.S. or its agencies.	
09	N.D. Cal.	Rule 110 Adopted Effective Nov. 1, 1988	**Eligibility Requirements:** 1) active member, of good moral character and in good standing, of the bar of and eligible to practice before, any U.S. Court; or 2) active member, of good moral character and in good standing, of the bar of and eligible to practice before, the highest court of any state, territory or insular possession of U.S. **Restrictions on practice:** If attorney does not maintain an office within state of Cal., must designate in pleadings an active member in good standing of State Bar of Cal. who maintains an office within Cal. and is a member of bar of N.D. Cal., upon whom copies of pleadings may be served and with whom judge and opposing counsel may communicate concerning conduct of the action.	**Eligibility Requirements:** 1) active member in good standing of bar of, and eligible to practice before, any U.S. Court ; or 2) active member in good standing of bar of, and eligible to practice before, highest court of any state, territory or insular possession of U.S. **Restrictions on practice:** Must designate in pleadings an active member in good standing of State Bar of Cal. who maintains an office within Cal. and is a member of bar of N.D. Cal., upon whom copies of pleadings may be served and with whom judge and opposing counsel may communicate concerning conduct of the action.	**Eligibility Requirements:** 1) employed or retained by U.S. or any of its agencies; and 2) must represent the U.S. or any of its agencies in the action or proceeding **Restrictions on practice:** Must designate in pleadings an active member in good standing of State Bar of Cal. who maintains an office within Cal. and is a member of bar of N.D. Cal., upon whom copies of pleadings may be served and with whom judge and opposing counsel may communicate concerning conduct of the action.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	S.D. Cal.	Rule 83.5	**Eligibility Requirements:** Active member, of good moral character and in good standing, of state bar of Cal. **Restrictions on practice:** If attorney maintains office outside S.D. Cal., judge may require designation of a member of bar of S.D. Cal. who maintains an office within S.D. Cal. as co-counsel with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. Court or of highest court of any state, territory or insular possession of U.S. ; and 2) retained to appear in S.D. Cal.; and 3) attorney must not reside in Cal., be regularly employed in Cal., or regularly engage in business, professional, or other activities in Cal. **Restrictions on practice:** 1) Must designate member of bar of S.D. Cal. with whom court and opposing counsel may readily communicate re: conduct of case and upon whom papers will be served. 2) If attorney maintains office outside S.D. Cal., judge may require designation of a member of bar of S.D. Cal. who maintains an office within S.D. Cal. as co-counsel with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) not eligible for admission to the Bar of S.D. Cal.; and 2) member, of good moral character and in good standing of, and eligible to practice before, bar of any U.S. court or of highest court of any state, territory or insular possession of U.S.; and 3)matter one in which attorney is employed or retained by U.S. or its agencies; and 4) representing U.S. or any of its officers or agencies; and 5) Except for attorneys whose practice before S.D. Cal. is restricted to prosecution of misdemeanors and petty offenses before U.S. magistrate judges, must apply for and pass next succeeding Cal. bar exam for which attorney is eligible after receiving permission to practice before S.D. Cal.; thereafter must obtain admission to state bar of Cal. **Restrictions on practice:** If attorney maintains office outside S.D. Cal., judge may require designation of a member of bar of S.D. Cal. who maintains an office within the district as co-counsel with authority to act as attorney of record for all purposes.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
10	D. Colo.	Rule 83.5 Adopted Effective Apr. 15, 1994	**Eligibility Requirements:** 1) person of good moral character licensed by Colo. Supreme Court to practice law; and 2) member of bar in good standing in all courts and jurisdictions where admitted.	**Eligibility Requirements:** 1) member in good standing of bar of another state(not Colo.) or federal court; and 2) member in good standing in all bars wherever admitted(no disciplinary or grievance proceedings filed or pending); and 3) must not reside in D. Colo. **Restrictions on practice:** All pleadings, motions and other papers signed by visiting attorney must also be signed by a member of Bar of D. Colo., who must also participate meaningfully, substantially, and continuously in preparation of case, and attend and participate in all court hearings (unless judge waives requirement on finding good cause).	No provision for appearances on behalf of U.S.	
02	D. Conn.	Rule 2 Amended Effective Mar. 1, 1991	**Eligibility Requirements:** 1) member of bar of state of Conn. whose professional character is good; or 2) member of bar of any U.S. District Court whose professional character is good. **Restrictions on practice:** If attorney does not have an office for transaction of business in person within D. Conn., can't appear as attorney of record unless attorney specifies on the record a member of bar of D. Conn. having an office within the District, upon whom service of all papers is made.	**Eligibility Requirements:** 1) member in good standing of bar of another court of record; and 2) written motion by a member of Bar of D. Conn. must state that visiting attorney (and any member of a firm to which he or she belongs) had not been denied admission or disciplined by any court. **Restrictions on practice:** If visiting attorney does not have an office for transaction of business in person within District of Conn., can't appear as attorney of record unless attorney specifies on the record member of bar of D. Conn. having an office within the District, upon whom service of all papers is made.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
03	D. Del.	Rule 83.5 Adopted Effective Jan. 1, 1995	**Eligibility Requirements:** Admitted to practice by Supreme Court of Del.	**Eligibility Requirements:** 1) admitted, practicing, and in good standing in another jurisdiction; and 2) must not be admitted to practice by the Supreme Court of Del.; reside in Del.; be regularly employed in Del.; or regularly engage in business, professional, or other similar activities in Del. **Restrictions on practice:** 1) Must associate with member of Bar of D. Del. who maintains an office in D. Del. for regular transaction of business, upon whom all notices, orders, pleadings and other papers filed in the case will be served and who is required to sign all papers filed with the D. Del., where signature of an attorney is required, and attend proceedings before all officers of the Court. 2) Any judge of D. Del. may revoke upon hearing after notice and for good cause a *pro hac vice* admission.	No provision for appearances on behalf of U.S.	
00DC	D. D.C.	Rule 701 & Rule 104 Amended Effective Mar. 22, 1991 & Amended Effective Oct. 30, 1989.	**Eligibility Requirements:** Active member in good standing of the D. C. Bar.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. Court or of highest court of any state; and 2) not member of D.C. Bar. **Restrictions on practice:** 1) Can only file papers if non-member attorney joins of record in signing with a member in good standing of the D.C. Bar. 2) Non-member can only be heard in open court by permission of judge to whom case is assigned.	**Eligibility Requirements:** 1) employed or retained by U.S. or one of its agencies; and 2) case must be one in which U.S. or one of its agencies is a party.	**Attorneys Employed by the State:** A State Attorney General or that official's designee, who is a member in good standing of bar of highest court in any state or of any U.S. Court, may appear and represent the State or any agency thereof. **Attorneys Representing Indigents:** Attorney who is member in good standing of D.C. Bar or bar of any U.S. Court or of highest court of any state may appear, file papers and practice any case handled without a fee on behalf of indigents, upon filing a certificate that attorney is providing representation without compensation.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
11	M.D. Fla.	Rule 2.01 & Rule 2.02 Adopted Effective July 1, 1984	**Eligibility Requirements:** Member in good standing of the Fla. Bar.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. District Court (outside state of Fla.); and 2) not a resident of Fla. **Restrictions on practice:** 1) Privilege to appear specially and be heard in any case in which non-member is counsel of record may not be abused by frequent or regular appearances in separate cases to such a degree as to constitute the maintenance of a regular practice of law in state of Fla. 2) Non-resident attorney must designate member of bar of M.D. Fla., upon whom all notices and papers may be served and who is responsible for progress of case, including trial in default of non-resident attorney. Court may waive such designation for good cause.	**Eligibility Requirements:** 1) represent U.S. or any agency thereof with authority of Government to appear as its counsel; and 2) case must be one in which Government or any agency thereof is a party.	
11	N.D. Fla.	Rule 11.1 Adopted Effective Apr. 1, 1995	**Eligibility Requirements:** 1) currently in good standing as an attorney admitted to the Fla. Bar; and 2) received a satisfactory score as determined by the District Examination Committee on an examination approved by the committee.	**Eligibility Requirements:** 1) nonresident of and not practicing within the N.D. Fla.; and 2) member in good standing in the bar (or trial bar where existing) of another U.S. District Court.	**Eligibility Requirements:** 1) represent U.S, or any officer or agency thereof; or 2) represent the State of Fla., or any officer or agency thereof and not yet a member of Bar of N.D. Fla. (note: permission to appear is granted temporarily upon motion until the next scheduled admission examination, if the attorney immediately applies for admission and takes that examination); and 3) case must be one in which U.S. or attorney's agency is involved.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
11	S.D. Fla.	Attorney Rule 1 & 4 Adopted Effective Jan. 1, 1982 Amended Effective Dec. 1, 1994	**Eligibility Requirements(admission to bar):** 1) attorney in good standing admitted to practice in state courts of Fla.; and 2) received a passing score on an examination, approved and adopted by District Examination Committee and by S.D. Fla. **Eligibility Requirements(admission to trial bar):** 1) attorney in good standing as a member of bar of S.D. Fla.; and 2) satisfied experience requirement of 4 trial experiences in accordance with local rules. **Restrictions on practice(member of bar but not trial bar):** 1)During testimonial proceedings(not including depositions), may appear as lead counsel only if accompanied by a member of the trial bar who is serving as an advisor. 2)In a criminal proceeding before a judge or magistrate judge, may only appear as lead counsel for a defendant if accompanied by member of trial bar serving as an advisor and can only sign pleadings, motions or other documents filed on defendant's behalf if cosigned by a member of trial bar. 3)In an exceptional case, judge may permit member of bar (not member of trial bar) to appear alone in any aspect of the pending matter, civil or criminal.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. Court, or of highest Court of any state, territory , or insular possession of U.S.; and 2) not admitted to practice in S.D. Fla. **Restrictions on practice:** 1) Must designate a member of trial bar of S.D. Fla. who maintains an office in the District for practice of law with whom Court and opposing counsel may readily communicate regarding conduct of case and upon whom papers are served., 2)Upon written application and for good cause shown, Court may waive or modify requirements of this designation.	**Eligibility Requirements:** 1) full-time U.S. Attorney, Assistant U.S. Attorney, Federal Public Defender, Assistant Federal Public Defender; or 2) attorney employed full-time by and representing U.S. Government or any agency thereof; and 3) must appear and participate in action or proceeding on behalf of attorney's employer in the attorney's official capacity.	**Appearance on Behalf of State:** Attorney General and Assistant Attorney General of state of Fla. may appear and participate in particular actions or proceedings on behalf of attorney's employer in the attorney's official capacity.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
11	M.D. Ga.	Rule 2 Adopted Effective June 2, 1993	**Eligibility Requirements:** 1) admitted to practice in trial courts of state of Ga.; and 2) member of State Bar of Ga.	**Eligibility Requirements:** 1) member in good standing of bar of any other district court of U.S.; and 2) not member of state Bar of Ga.; and 3) does not reside in or maintain an office in Ga. for practice of law. **Restrictions on practice:** If non-member is lead counsel in a civil case, must designate local counsel who is a member of local bar of M.D. Ga. upon whom motions and papers are served.	**Eligibility Requirements:** 1) member of bar of a U.S. district court.; and 2) appear and participate in official capacity; and 3) represent U.S. government or any agency thereof.	
11	N.D. Ga.	Rule 110-1 Amended Effective Sept. 30, 1985 Rule 110-2 Amended Effective Sept. 30, 1987	**Eligibility Requirements:** Active member in good standing of state Bar of Ga.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. Court or of highest court of any state; and 2) not a resident of Ga.; and 3) not an active member in good standing of State Bar of Ga. **Restrictions on practice:** Must designate member of bar of N.D. Ga. with whom opposing counsel and Court may readily communicate regarding conduct of case and upon whom papers are served; local attorney is responsible and has full authority to act for and on behalf of client in all proceedings in connection with the case(hearings, pretrial conferences, and trial), if out-of-town attorney fails to respond to any Court order.	1) Government attorney expressly exempted by statute from a local bar membership requirement; or 2) judge advocates of the Army, Navy, Marines, or Air Force representing U.S. in Magistrate Court; or 3) If the attorney is a member of bar of some U.S. District Court and either an Assistant U.S. Attorney or attorney representing a government agency, then the attorney is provisionally admitted to Bar of N.D. Ga. for 12 months from date of commission during which time the attorney must take and pass Ga. Bar Exam; and 4) not representing U.S. or agency thereof and residing within N.D. Ga.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
11	S.D. Ga.	Rule 502 & 504 Adopted Effective Sept. 1, 1994	**Eligibility Requirements:** Member in good standing of state Bar of Ga.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. District Court (except S.D. Ga.); and 2) must not reside in nor maintain an office in S.D. Ga. for practice of law. **Restrictions on practice:** If non-member is lead counsel, must designate, member of local bar of S.D. Ga. upon whom motions and papers may be served.	**Eligibility Requirements:** 1) member of bar of a U.S. District Court; and 2) represent U.S. Government of any agency thereof; and 3) appear and participate in particular actions or proceedings in official capacity.	
09	D. Guam	Rule 110 Adopted Effective Sept. 12, 1994	**Eligibility Requirements:** Attorney of good moral character and active member in good standing of Territorial Bar of Guam. **Restrictions on practice:** If not residing nor having an office within D. Guam, must designate an active member in good standing of Bar of D. Guam, who resides in and has an office in D. Guam, as co-counsel.	**Eligibility Requirements:** 1)not eligible for admission to Bar of D. Guam; and 2) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. Court or of highest court of any state, territory or insular possession of U.S.; and 3) retained to appear before D. Guam; and 4) must not reside in Guam, be regularly employed in Guam, or regularly engage in business, professional or other activities in Guam. **Restrictions on practice:** Must designate an active member in good standing of Bar of D. Guam, who resides in and has an office in D. Guam, as co-counsel; associated local attorney must meaningfully participate in preparation and trial of the case with authority and responsibility to act as attorney of record for all purposes(accept service and attend all proceedings related to case).	**Eligibility Requirements:** 1) not eligible for admission to Bar of D. Guam; and 2) member with good moral character and in good standing of, and eligible to practice before, bar of any U.S. Court or highest court of any state, territory or insular possession of U.S.; and 3) must be employed or retained by and representing U.S. or its officers or agencies.	**Government of Guam Attorneys:** Attorney employed by Office of Attorney General, Public Defender Service Corporation of Guam, or Guam Legal Services Corporation, who is not eligible for admission to Bar of D. Guam, may be temporarily admitted to practice in D. Guam.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	D. Haw.	Rule 110-1 Adopted Effective Feb. 15, 1995	**Eligibility Requirements:** 1) member, of good moral character and in good standing of the bar of, and eligible to practice before, any U.S. court; or 2)member of good moral character and in good standing of the bar of, and eligible to practice before, the highest court of any state, territory or insular possession of U.S,	**Eligibility Requirements:** 1) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. Court or of highest court of any state, territory, or insular possession of U.S.; and 2) retained to appear in D. Haw.; and 3) attorney must not reside in Haw.; be regularly employed in Haw.; or regularly engage in business, professional, or law-related activities in Haw. **Restrictions on practice:** Must designate member in good standing of bar of D. Haw. who maintains an office within the district to serve as associate counsel who must meaningfully participate in preparation and trial of case with authority and responsibility to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) member in good standing of bar of highest court of any state ; and 2) employed by U.S. or one of its agencies in a professional capacity; and 3) appearing on behalf of U.S. N.B. An attorney must apply to D. Haw. for leave to practice before the Court during period of such employment.	
09	D. Idaho	Rule 83.5 Adopted Amended July 1, 1994	**Eligibility Requirements:** Active member of good moral character and in good standing of the Idaho State Bar.	**Eligibility Requirements:** 1) not eligible for admission to Bar of D. Idaho; and 2) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. court or of highest court of any state, territory, or insular possession of U.S.; and 3) retained to appear in D. Idaho. **Restrictions on practice:** Must designate a member of bar of D. Idaho who maintains office within the district as co-counsel with authority to act as attorney of record for all purposes; designee must personally appear with attorney on all matter heard and tried before D. Idaho unless excused by the Court.	**Eligibility Requirements:** 1) not eligible for admission to bar of D. Idaho; and 2) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. court, or of highest court of any state, territory or insular possession of U.S.; and 3) employed or retained by U.S. or its agencies and is representing U.S. or any of its officers or agencies in the matter.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
07	C.D. Ill.	Rule 1.2 Adopted Effective Jan. 31, 1995	**Eligibility Requirements:** Licensed to practice law in any state or D.C.	**Eligibility Requirements:** Licensed to practice in any state or D.C. **Restrictions on practice:** Permission to appear of record and participate in a case *pro hac vice* is limited to one occasion; thereafter, attorney must secure admission to the Bar of C.D. Ill.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
07	N.D. Ill.	Rule 3.00 & Rule 3.10 Adopted Effective Sept. 1, 1992	**Eligibility Requirements(admission to bar):** Member in good standing of bar of highest court of any state of U.S. or D.C. **Eligibility Requirements(admission to trial bar):** 1) member in good standing of bar of N.D. Ill.; and 2) provide evidence of required trial experience(as defined by Rule). **Restrictions on practice(for attorneys admitted to bar, but not trial bar):** Note: Following officers appearing in their official capacity can appear in all matters before the N.D. Ill. **without admission to the trial bar:** Attorney General of U.S., U.S. Attorney for N.D. Ill., attorney general or other highest legal officer of any state, and state's attorney of any county in state of Ill. 1) May appear during testimonial proceedings only if accompanied by member of trial bar who is serving as an advisor. 2) May appear as lead counsel for a defendant in a criminal proceeding only if accompanied by member of trial bar serving as advisor, and may sign pleadings, motions or other documents filed on defendant's behalf only if co-signed by member of trial bar. 3) Upon written request by client and showing that interests of justice are served, judge may permit in a pending civil or criminal proceeding a non-trial bar attorney to appear alone in any aspect of the matter. **Restrictions on practice(for non-resident attorney):** If attorney does not have an office within N.D. Ill., must designate member of bar of N.D. Ill. having an office within the District upon whom service of papers may be made; designated attorney not required to	**Eligibility Requirements:** 1) member in good standing of bar of highest court of any state; or 2) of any U.S. District Court. **Restrictions on practice(for non-resident attorney):** If attorney does not have an office within N.D. Ill., must designate member of bar of N.D. Ill. having an office within the District upon whom service of papers may be made; designated attorney not required to handle any substantive aspects of the litigation or sign any pleading, motion or other paper.	**Eligibility Requirements(for special admission to trial bar):** 1) must not qualify for admission to bar of N.D. Ill.; and 2) represent U.S., or any agency thereof in official capacity; and 3) must be member in good standing of bar of highest court in any state; and 4) must provide evidence to the court of having required trial experience as defined by the Rule. **Restrictions on practice(for non-resident attorney):** If attorney does not have an office within N.D. Ill., must designate member of bar of N.D. Ill. having an office within the District upon whom service of papers may be made; designated attorney not required to handle any substantive aspects of the litigation or sign any pleading, motion or other paper.	**State and Local Attorneys:** An attorney not eligible for admission to the Bar of N.D. Ill., representing a state or local government or any agency thereof, a member in good standing of bar of highest court in any state, and has required trial experience, may be admitted to trial bar to represent such government or agency in attorney's official capacity.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
07	S.D. Ill.	Rule 1 Adopted Effective Mar. 24, 1994	**Eligibility Requirements:** Licensed to practice law in any state of U.S. or D.C. **Restrictions on practice:** At any time for good cause, upon its own motion, Court may require non-resident attorney to obtain local counsel to assist in conduct of case.	**Eligibility Requirements:** Licensed to practice law in any state of U.S. or D.C. (may chose option of *pro hac vice* admission even if eligible for admission to bar of S.D. Ill.). **Restrictions on practice:** At any time for good cause, upon its own motion, Court may require non-resident attorney to obtain local counsel to assist in conduct of case.	**Eligibility Requirements:** 1) represent federal governmental entity and 2) appear and participate in official capacity. **Restrictions on practice:** At any time for good cause, upon its own motion, Court may require non-resident attorney to obtain local counsel to assist in conduct of case.	**Appearances on Behalf of State or Municipal Governmental Entity:** D. Ill. permits any attorney representing any governmental entity (state or municipal) to appear and participate in their official capacity without making a motion for admission.
07	N.D. Ind.	Rule 83.5 Adopted Effective Jan. 1, 1994	**Eligibility Requirements:** 1) admitted to practice by Supreme Court of U.S.; or 2) admitted to practice by highest court of any state. **Restrictions on practice:** Court may require non-resident of N.D. Ind. to retain as local counsel a member of bar of N.D. Ind. who resides in the district.	**Eligibility Requirements:** 1) admitted to practice in any U.S. Court; or 2) admitted to practice in highest court of any state. **Restrictions on practice:** Court may require non-resident of N.D. Ind. to retain as local counsel a member of bar of N.D. Ind. who resides in the district.	**Eligibility Requirements:** Appear as attorney for U.S. **Restrictions on practice:** Court may require non-resident of N.D. Ind. to retain as local counsel a member of bar of N.D. Ind. who resides in the district.	
09	S.D. Ind.	Rule 83.5 Adopted Effective Feb. 1, 1992	**Eligibility Requirements:** 1) admitted to practice by Supreme Court of U.S.; or 2) admitted to practice by highest court of any state. **Restrictions on practice:** Court may require non-resident of S.D. Ind. to retain as local counsel a member of bar of S.D. Ind. who resides in the district.	**Eligibility Requirements:** 1) admitted to practice in any U.S. Court; or 2) admitted to practice in highest court of any state. **Restrictions on practice:** Court may require non-resident of S.D. Ind. to retain as local counsel a member of bar of S.D. Ind. who resides in the district.	**Eligibility Requirements:** Appear as attorney for U.S. **Restrictions on practice:** Court may require non-resident of S.D. Ind. to retain as local counsel a member of bar of S.D. Ind. who resides in the district.	

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08	N. & S.D Iowa	Rule 5 Adopted Effective July 1, 1994	**Eligibility Requirements:** 1) currently in good standing as attorney admitted to practice in state courts of Iowa; and 2) completed minimum of 6 hours of legal education in federal practice are within preceding 2 years.	**Eligibility Requirements:** 1) not member of bar of either N. or S.D. Iowa; and 2) member in good standing of any U.S. district court, or highest court of any state, territory or insular possession of U.S. **Restrictions on practice:** Must designate associate counsel in each proceeding in which non-member counsel appears, including filing of any papers or pleadings.	**Eligibility Requirements:** Only applies to Department of Justice attorney appearing for the U.S. **Restrictions on practice:** Must designate associate counsel in each proceeding in which non-member counsel appears, including filing of any papers or pleadings.	
10	D. Kan.	Rule 402 Adopted Effective Mar. 1, 1991 Rule 404 Amended Effective June 1, 1993	**Eligibility Requirements:** 1) admitted to practice in courts of state of Kansas; and 2) in good standing in any and all bars to which ever admitted.	**Eligibility Requirements:** 1) member in good standing of bar of a state other than Kan.; or 2) member in good standing of bar of another federal court. **Restrictions on practice:** All pleadings or other papers must also be signed by member of bar of D. Kan. in good standing who participates meaningfully in preparation and trial of case or proceedings to extent required by court.	No provision for appearances on behalf of U.S.	

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06	E. & W.D. Ky.	Rule 3 Amended Effective Oct. 31, 1992	**Eligibility Requirements:** Of good moral and professional character and in good standing with and admitted to practice before Supreme Court of Ky. **Restrictions on practice:** 1) If attorney does not reside in or have an office in Ky., must designate a member of Bar who resides in or has an office in Ky. to be local counsel; local counsel must be sufficiently informed to answer status queries of Court and appear and adequately represent client at any hearings. 2) In cases involving governmental agencies, local counsel is not needed to represent the agency. 3) No partner or associate of a part-time U.S. Magistrate may appear as counsel in any criminal case; no attorney holding state, county, or municipal office(which require sitting in judgment upon or prosecuting criminal offenders), can represent any defendant in a criminal case.	**Eligibility Requirements:** 1) not admitted to practice as a member of Bar of E. or W.D. Ky.; and 2) in good standing in bar of any state, territory, or D.C.; and 3) must be counsel of record in case for which *pro hac vice* application is made. **Restrictions on practice:** 1) If attorney does not reside in or have an office in Ky., must designate a member of Bar who resides in or has an office in Ky. to be local counsel; local counsel must be sufficiently informed to answer status queries of Court and appear and adequately represent client at any hearings. 2) In cases involving governmental agencies, local counsel is not needed to represent the agency. 3) No partner or associate of a part-time U.S. Magistrate may appear as counsel in any criminal case; no attorney holding state, county, or municipal office(which require sitting in judgment upon or prosecuting criminal offenders), can represent any defendant in a criminal case.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
05	E., M. & W.D. La.	Rule 20 Amended Effective Nov. 30, 1993	**Eligibility Requirements:** 1) member in good standing of bar of Supreme Court of La.	**Eligibility Requirements:** 1) must be ineligible to become member of bars of either E., M. or W. D. La.; and 2) member in good standing of bar of any court of U.S. or of highest court of any state. **Restrictions on practice:** 1) Note that if attorney meets the eligibility requirements listed above, upon written motion of counsel of record who is member of bar of either E., M. or W.D. La., by ex parte order, attorney may be permitted to appear and participate as co-counsel in a particular case. 2) All documents requiring signature of counsel for a party must also be signed by local counsel with whom visiting attorney is associated.	No provision for appearances on behalf of U.S.	
01	D. Me.	Rule 5 Adopted Effective Aug. 1, 1993	**Eligibility Requirements:** 1) active member, of good personal and professional character, in good standing of bar of state of Maine; and 2) not disbarred from or under period of suspension in any court of record in U.S.; and 3) domiciled or maintains a bona fide law office within 125 miles of either Bangor or Portland. **Restrictions on practice:** Attorneys who are not domiciled and don't maintain a bona fide law office within 125 miles of either Bangor or Portland, must associate themselves in every case with a local member of bar of D. Me. who shall be available for unscheduled meetings and hearings.	**Eligibility Requirements:** 1) not a member of bar of D. Me.; and 2) certify admittance to practice in any U.S. federal court or highest court of any state ; and 3)not currently under any order of disbarment, suspension or any other discipline. **Restrictions on practice:** 1) Must associate at all times with member of bar of D. Me., upon whom all process, notices and other papers may be served and who signs all papers filed with Court and whose attendance at any proceeding may be required by Court. 2) Court may at any time for good cause and without hearing revoke right of visiting lawyer to practice.	**Eligibility Requirements:** 1) member in good standing of bar of any court of U.S. or of highest court of any state; and 2) employed by U.S., or any department or agency thereof; and 3) duties involve representation of U.S. or state of Maine, or any department or agency thereof; and 4) action must be brought in courts of U.S. **Restrictions on practice:** Court may at any time for good cause revoke such permission without hearing.	**Appearance on Behalf of State of Maine:** Any member in good standing of bar of any U.S. Court or highest court of any state, who is employed by state of Me. or department or agency thereof, whose duties involve representation of state of Me. or department or agency thereof, in actions in the U.S. courts, is permitted to practice in D. Me.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	D. Md.	Rules 101, 701 & 112 Adopted Effective July 1, 1992	**Eligibility Requirements:** 1) member of good private and professional character and in good standing of highest court of any state (or D.C.) in which attorney maintains principal law office; or 2) member of good private and professional character and in good standing of the Court of Appeals of Md.; and 3) must be willing and available to accept appointments by Court to represent indigent parties in criminal or civil cases in D. Md. unless inconsistent with attorney's professional employment. **Restrictions on practice:** No attorney, other than member of Md. bar, may be member of bar of D. Md. if U.S. District Court for district in which attorney maintains principal law office has a local rule that denies membership in its bar to any attorney who 1) is a member of Md. bar maintaining principal law office in Md., and 2) meets other non-discriminatory qualifications set by that district.	**Eligibility Requirements:** 1) not a member of Md. bar; and 2) member in good standing of bar of any U.S. court or of highest court of any state. **Restrictions on practice:** Any party represented by attorney admitted *pro hac vice* must also be represented by an attorney formally admitted to Bar of D. Md.	No provision for appearances on behalf of U.S.	Counsel representing a party in an action transferred to D. Md. under 28 USC § 1407 need not be a member of bar of D. Md., and need not have resident counsel. An attorney need not be admitted to bar of D. Md. to obtain a subpoena for depositions to be taken in D. Md. for cases pending in other districts.
01	D. Mass.	Rules 83.5.1 & 83.5.3 Adopted Effective Sept. 1, 1990	**Eligibility Requirements:** 1) attorney in good standing and admitted to practice before Supreme Judicial Court of Mass.; and 2) satisfied examination requirements as defined by District Committee on Admissions.	**Eligibility Requirements:** 1) member of bar of any U.S. District Court; or 2) member of bar of highest court of any state.	**Eligibility Requirements:** 1) appear and practice as attorney for U.S. or any agency of U.S. or an officer of U.S. in his official capacity; and 2) attorney in good standing as member of bar in every jurisdiction where admitted and not subject to pending disciplinary proceedings as member of bar of any U.S. District Court.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
06	E.D. Mich.	Rule 110.1 Adopted Effective Jan. 1, 1992	**Eligibility Requirements:** Admitted to practice and remaining in good standing in a court of record: 1) in any state or D.C.; or 2) any U.S. District Court. **Restrictions on practice:** If not an active member of state bar of Mich., can't appear as attorney of record without specifying on record, as local counsel, a member of Bar of E.D. Mich. having office within the District upon whom service of all papers is to be made.	No provision for *pro hac vice* appearances.	**Eligibility Requirements:** 1) represent U.S. or any agency thereof; and 2) appear and participate in particular cases in official capacity. **Restrictions on practice:** If government representative does not have an office in E.D. Mich., must designate the U.S. Attorney for E.D. Mich., or one of his assistants, to receive service of all notices or papers.	
06	W.D. Mich.	Rule 16 & Rule 19 Adopted Effective Aug. 1, 1991	**Eligibility Requirements:** 1) admitted to practice before, and in good standing and active status in, a court of record in any state, D.C.,; or 2) any U.S. District Court. **Restrictions on practice:** Court may require attorney with an office a great distance from a W.D. Mich. courthouse to retain local counsel with authority and responsibility for conduct of the case (should lead counsel be unavailable for any appearance, hearing or trial.)	**Eligibility Requirements:** Any licensed attorney. **Restrictions on practice:** Court may require attorney with an office a great distance from a W.D. Mich. courthouse to retain local counsel with authority and responsibility for conduct of the case (should lead counsel be unavailable for any appearance, hearing or trial.)	**Eligibility Requirements:** 1) represent U.S. or any agency thereof; and 2) appear in official capacity. **Restrictions on practice:** If government attorney doesn't have an office in W.D. Mich., must designate U.S. Attorney for W.D. Mich., or an assistant, for service.	
08	D. Minn.	Rule 83.5 Adopted Effective Feb. 1, 1991.	**Eligibility Requirements:** Admitted to practice before Supreme Court of Minn.	**Eligibility Requirements:** 1) residing outside of Minn.; and 2) not admitted to practice in Supreme Court of Minn.; and 3) admitted to practice before and in good standing in any U.S. District Court (except D. Minn.). **Restrictions on practice:** Must associate with an active Minn. resident member in good standing of bar of D. Minn., who must participate in preparation and trial of the case or presentation of matter involved and on whom service of all papers may be made.	**Eligibility Requirements:** 1) not qualified to practice in D. Minn.; and 2) admitted to practice in a U.S. District Court; and 3) representing U.S. or any officer or agency thereof; and 4) practicing in any action or proceeding in which U.S. or any officer or agency thereof is a party.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
05	N. & S.D. Miss.	Rule 1 Amended Effective Apr. 14, 1993	**Eligibility Requirements:** 1) member of Miss. State Bar., and authorized to practice before Supreme Court of Miss.; or 2) If attorney does not reside in Miss. and is not a member of Miss. State Bar, authorized to practice before and in good standing of U.S. District Court of the jurisdiction of attorney's residence.	**Eligibility Requirements:** 1) in good standing as member of bar of another state(not Miss.); **Restrictions on practice:** 1) Must associate with an attorney who is admitted to practice before D. Miss. 2) Court may require non-resident attorney to associate local counsel residing within Miss. who will be authorized to sign and accept service on behalf of non-resident attorney and appear at emergency hearings at Court's direction.	**Eligibility Requirements:** 1) represent U.S. or any of its departments, agencies or employees. N.B. Permission to handle cases must be sought by proper introduction to the Court by U.S. Attorney of the District of one of his assistants. **Restrictions on practice:** Court may require non-resident attorney to associate local counsel residing within Miss. who will be authorized to sign and accept service on behalf of non-resident attorney and appear at emergency hearings at Court's direction.	
08	E.D. Mo.	Rule 2 Adopted Effective March 1, 1990	**Eligibility Requirements:** Admitted to practice in the Supreme Court of Mo. **Restrictions on practice:** If attorney does not reside or have an office within E.D. Mo., Court may require attorney to retain local counsel admitted to practice before E.D. Mo. and residing or having an office within E.D. MO. when necessary for just and timely determination of any matter.	**Eligibility Requirements:** Member in good standing of bar of highest court of any state or D.C. **Restrictions on practice:** If attorney does not reside or have an office within E.D. Mo., Court may require attorney to retain local counsel admitted to practice before E.D. Mo. and residing or having an office within E.D. MO. when necessary for just and timely determination of any matter.	**Eligibility Requirements:** Authorized by federal law, or by employment, to represent U.S. or any of its departments or agencies. **Restrictions on practice:** If attorney does not reside or have an office within E.D. Mo., Court may require attorney to retain local counsel admitted to practice before E.D. Mo. and residing or having an office within E.D. MO. when necessary for just and timely determination of any matter.	**Attorneys for State of Mo.:** Any attorney authorized by Mo. state law, or by employment, to represent State of Mo. or any of its departments or agencies, may appear and represent said governmental entity or department or agency in any action in E.D. Mo.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
08	W.D. Mo.	Rule 1 Adopted Effective Jan. 1, 1983	**Eligibility Requirements:** 1) member in good standing of Mo. Bar; and 2) regularly engaged in the practice of law; or 3) passed Mo. Bar Exam and admitted to practice by Supreme Court of Mo. in current calendar year and who intends to engage regularly in practice of law or serve as a law clerk to a federal judge or a judge of a state court of record. **Restrictions on practice:** 1) An attorney who qualifies for admission under (3) above can not, without special leave, appear as counsel in W.D. Mo. unless said attorney maintains a law office and is regularly engaged in practice of law or is associated with or employed by an attorney(s) admitted to Bar of W.D. Mo. 2) If member of bar of W.D. Mo.'s office is located a great distance from place of holding court in division in which action is pending, and attorney represents one or more of the parties, judge may require retention of local attorney who is member of Bar of W.D. Mo. and who can be available for unscheduled meeting and hearings.	**Eligibility Requirements:** 1) not member of bar of W.D. Mo.; and 2) member in good standing of bar of any court of record. **Restrictions on practice:** If attorney resides outside W.D. Mo. and is admitted to practice before and in good standing in the U.S. District Court in the district of attorney's residence or the courts of the state of attorney's residence, then attorney must associate with an active Mo. resident member in good standing of bar of W.D. Mo., who must participate in preparation and trial of the case or presentation of matter and on whom service of all papers may be made.	**Eligibility Requirements:** 1) represent U.S. Government or agency thereof, or employed by office of Federal Public Defender; and 2) appear and participate in attorney's official capacity. **Restrictions on practice:** If non-resident of W.D. Mo., must designate U.S. Attorney or Assistant U.S. Attorney for W.D. Mo. to receive service of all notices in said action.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	D. Mont.	Rule 110-1 Amended Effective Sept. 1, 19995	**Eligibility Requirements:** Member of good moral character and in good standing of the State Bar of Mont. **Restrictions on practice:** If attorney maintains an office outside of D. Mont., judge to whom case is assigned may require attorney to designate member of Bar of D. Mont. who maintains an office within the District as co-counsel with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) not eligible for admission to bar of D. Mont.; and 2) member of good moral character and in good standing of, and eligible to practice before, bar of any U.S. court or of highest court of any state, territory or insular possession of U.S.; and 3) retained to appear in D. Mont.; and 4) attorney must not reside in Mont., be regularly employed in Mont., or regularly engage in business, professional, or other activities in Mont. **Restrictions on practice:** 1) Must designate a member of bar of D. Mont. with whom Court and opposing counsel may readily communicate re: conduct of case and upon whom papers can be served. 2) If attorney maintains an office outside of D. Mont., judge to whom case is assigned may require attorney to designate member of Bar of D. Mont., who maintains an office within the District, as co-counsel with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** 1) not eligible for admission to Bar of D. Mont.; and 2) member of good moral character and in good standing of, and eligible to practice before, Bar of any U.S. Court or of highest court of any state, territory, or insular possession of U.S.; and 3) employed or retained by U.S. or its agencies and representing U.S. or any of its officers in the matter before the D. Mont. **Restrictions on practice:** If attorney maintains an office outside of D. Mont., judge to whom case is assigned may require attorney to designate member of Bar of D. Mont., who maintains an office within the District, as co-counsel with authority to act as attorney of record for all purposes.	**Special Assistant U.S. Attorneys** (practice before D. Mont. restricted to prosecution of misdemeanors and petty offenses before U.S. Magistrates) are exempt from having to meet eligibility requirements for bar membership in D. Mont. as well as the eligibility requirements needed for practice on behalf of the U.S.
08	D. Neb.	Rule 83.4 Adopted Effective Jan. 4, 1993	**Eligibility Requirements:** 1) attorney of good moral character admitted and licensed to practice before highest court of any state.; and 2) available for appointment to represent indigent litigants.	**Eligibility Requirements:** 1) attorney of good moral character admitted and licensed to practice before highest court of any state.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	D. Nev.	Rule 1A 10-1 to 10-4 Adopted Effective June 1, 1995	**Eligibility Requirements:** Attorney of good moral and professional character admitted to practice before Supreme Court of Nev. **Restrictions on practice:** If attorney lives outside Nev., court may, in particular case at any time, order association with a resident Nev. attorney as co-counsel and specify responsibilities of each attorney to the case.	**Eligibility Requirements:** 1) not admitted to bar of D. Nev.; and 2) member in good standing and in active status of highest court of a state, commonwealth, territory, or D.C. **Restrictions on practice:** Must associate a resident member of Bar of D. Nev. as co-counsel, who must have authority to sign binding stipulations, but need not personally attend all proceedings.	**Eligibility Requirements:** 1) nonresident attorney; and 2) member in good standing of highest court of any state, commonwealth, territory or D.C; and 3) employed by U.S. as an attorney; and 4)appearing on behalf of U.S. while so employed. **N.B.** Permission to appear must be sought upon motion of U.S. Attorney or Federal Public Defender for D. Nev. or one of the assistants.	**Legal Services Attorneys:** An attorney in good standing with highest court of any state, commonwealth, territory, or D.C., who becomes employed by or associated with an organized legal services program funded from state, federal or recognized charitable sources and providing legal assistance to indigent in civil matters, may be admitted to practice before D. Nev. during period of such employment or association(admission to Bar of D. Nev. and admission fee not required).
01	D. N.H.	Rule 4 Amended Effective Jan. 23, 1995	**Eligibility Requirements:** Member in good standing of bar of Supreme Court of N.H.	**Eligibility Requirements:** Member in good standing of bar of any U.S. court or of highest court of any state. **Restrictions on practice:** Must actively associate with member of Bar of D. N.H. upon whom all process, notices and other papers may be served and who must sign all papers filed and attend all proceedings unless excused by Court. 2) Court may at any time and for good cause revoke permission to appear *pro hac vice* without a hearing.	**Eligibility Requirements:** 1) member of bar of any U.S. District Court; and 2) appear and practice in official capacity as attorney for U.S., an agency or officer thereof.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
03	D. N.J.	Rule 4 Amended Effective July 1990	**Eligibility Requirements:** Licensed to practice by Supreme Court of N.J.	**Eligibility Requirements:** 1) member in good standing of bar of any court of U.S. or of highest court of any state; and 2) not licensed to practice by Supreme Court of N.J.; and 3) not under suspension or disbarment by any court. **Restrictions on practice:** 1) Must file an appearance as counsel of record by a member of bar of D. N.J. upon whom all notices, orders and pleadings may be served, and who must file papers, enter appearances for parties, sign stipulations, or sign and receive payments on judgments, decrees or order. 2) Attorney admitted *pro hac vice* can't receive a fee in any tort case in excess of the N.J. State Court Contingency Fee Rule.	**Eligibility Requirements:** 1) admitted to practice in any U.S. District Court; and 2) representing U.S. or any of its officers or agencies. **Restrictions on practice:** If no office in D. N.J., must designate U.S. Attorney to receive service of all notices or papers in that action.	**Patent Attorneys:** any member in good standing of bar of any U.S. court or highest court of any state for at least 5 years, who is not eligible for admission to bar of D. N.J., has been admitted to practice before U.S. Patent Office and is listed on its Register of attorneys, continuously engaged in practice of patent law as principal occupation in established place of business and office located in N.J. for at least 2 years prior, may be admitted to practice before D. N.J. limited to cases arising under patent laws of U.S or elsewhere. Note: An attorney admitteed under this provision must associate of record with a member of bar of D. N.J.
10	D. N.M.	Rule 83 Adopted Effective Oct. 26, 1993	**Eligibility Requirements:** Member in good standing of Supreme Court of N.M. **Restrictions on practice:** If attorney resides outside D. N.M., Court may deem it necessary for appearance, ready availability or otherwise in interest of expediting disposition of case, to require association with resident member of bar of D. N.M.	**Eligibility Requirements:** 1) reside outside D. N.M.; and 2) member in good standing of bar of any state (other than N.M.). **Restrictions on practice:** Must associate with resident member of bar of D. N.M. on whom notice may be served and who must sign first motion or pleading and continue in the case unless other resident counsel is substituted. Note: A non-resident attorney, associated with a resident member of bar of D. N.M., need not file a motion to be admitted *pro hac vice.*	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
02	E. & S.D. N.Y.	Rule 2 Adopted Effective Oct. 26, 1983	**Eligibility Requirements:** 1) member in good standing of bar of state of N.Y.; or 2) member in good standing of bar of U.S. District Court in N.J., Conn., or Vt. and of bar of state in which such district court is located, provided such district court by its rule extends a corresponding privilege to members of bars of E. & S.D. N.Y. **Restrictions on practice(S.D. N.Y. only):** If a judge so requires, an attorney not having an office within S. or E.D. N.Y. can't appear as attorney of record without designating member of bar of either district with an office within either district upon whom service of papers may be made.	**Eligibility Requirements:** Member in good standing of bar of any state or any U.S. District Court. **Restrictions on practice:** May not enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders unless associated with an attorney who is a member of bar of the district for which admission is sought.	No provision for appearances on behalf of U.S.	**In S.D. N.Y. only:** A member in good standing of bar of either S. or E.D. N.Y. may be admitted to bar of other district without formal application. **In E.D. N.Y. only:** A member in good standing of bar of any district court in Second Circuit may be admitted to bar of E.D. N.Y. without formal application.
02	N.D. N.Y.	Rule 83.1 Adopted Effective July 1, 1994	**Eligibility Requirements:** Member whose professional character is good and in good standing of: 1) bar of state of N.Y.; or 2) bar of any U.S. District Court (if District Court is located outside state of N.Y., attorney must be currently admitted to practice in highest court of state in which applicant maintains an office for regular practice of law).	**Eligibility Requirements:** Member in good standing of bar of 1) any state; or 2) any U.S. District Court. **Restrictions on practice:** Must associate with an attorney who is member of bar of N.D. N.Y. to enter appearances for parties, sign stipulations or receive payments on judgments, decrees or orders.	**Eligibility Requirements:** 1) appointed by U.S. Attorney General as a U.S. Attorney, an assistant U.S. Attorney, or as a special attorney under 28 U.S. C. §§ 541-543; and 2) admitted to practice before any U.S. District Court; and 3) appear on any matter on behalf of U.S. **N.B.** An attorney must be admitted to practice on motion of member of bar of N.D. N.Y.	Member in good standing of bar of U.S. District Court for S., E. or W.D. N.Y. shall be admitted to practice in N.D. N.Y. without formal application.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
02	W.D. N.Y.	Rule 83.1 Adopted Effective Dec. 1, 1994	**Eligibility Requirements:** 1) admitted to practice before courts of N.Y. State; or 2) member in good standing of any U.S. District Court and of bar of state in which such District Court is located and in which applicant maintains office for practice of law (provided such District Court by rule extends a corresponding privilege to members of bar of W.D. N.Y.). **Restriction on practice:** If an attorney does not maintain an office in W.D. N.Y., must apply for permission to proceed with local counsel (unless court grants permission to dispense with requirement).	**Eligibility Requirements:** Admitted to practice in any state, territory, district or foreign country. **Restrictions on practice:** Except for bankruptcy matters, must have as associate counsel of record a member of bar of W.D. N.Y. who maintains an office within W.D. N.Y. with whom court and opposing counsel may communicate regarding conduct of case and upon whom papers may be served.	**Eligibility Requirements:** 1) appointed by U.S. Attorney General as a U.S. Attorney, an Assistant U.S. Attorney, a special attorney under 28 U.S.C. §§541-543, an attorney of DOJ under 28 U.S.C. § 515, or an attorney employed by a federal agency; and 2) matter must be within scope of employment.	Member in good standing of bar of U.S. District Court for S., E. or N.D. N.Y. shall be admitted to practice in W.D. N.Y. without formal application.
04	E.D. N.C.	Rule 2.00 Adopted Effective Feb. 22, 1994	**Eligibility Requirements:** Member in good standing of bar of Supreme Court of N.C.	**Eligibility Requirements:** Member in good standing of bar of 1) any U.S. District Court; and 2) highest court of any state or D.C. **Restrictions on practice:** Except for an attorney representing a governmental agency, must associate with a member of bar of E.D. N.C. who is an authorized representative for communication with court about the litigation; pleadings and other documents filed in case must contain name and address of both attorney and local counsel; service is sufficient if only served upon associated local counsel.	No provision for appearances on behalf of the U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	M.D. N.C.	Rule 103 Adopted Effective July 1, 1995	**Eligibility Requirements:** Admitted to practice and in good standing with Supreme Court of N.C.	**Eligibility Requirements:** Member in good standing of bar of highest court of any state or D.C. **Restrictions on practice:** Except for attorneys representing governmental agencies, must associate with a member of bar of M.D. N.C. who is familiar with case and has authority to control litigation and must be present at all conferences, hearings, trials, and proceedings; and must sign all pleadings and papers, except certificates of service.	No provision for appearances on behalf of U.S.	
04	W.D. N.C.	Rule 1 Amended Effective March 20, 1991	**Eligibility Requirements:** Member in good standing of N.C. State Bar.	**Eligibility Requirements:** 1) member in good standing of Bar of U.S. Supreme Court; or 2) bar of Supreme Court of any state in U.S. **Restrictions on practice:** 1) If out-of-state attorney does not associate with a member of bar of W.D. N.C. (not required in cases where amount in controversy or importance of case doesn't appear to justify double employment), attorney admitted *pro hac vice* consents that service of all pleadings and notices may be made on deputy clerk in appropriate division of W.D. N.C. as process agent. 2) Special admissions is the exception not the rule, and no out-of-state lawyer will be permitted to practice frequently or regularly in W.D. N.C. without association of local counsel.	No provision for appearances on behalf of U.S.	Upon appearance in W.D. N.C., any lawyer a member in good standing in U.S. District Courts for M. & E.D.N.C. may practice in W.D. N.C.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
08	D. N.D.	Rule 79.1 Adopted Effective Jan. 23, 1995	**Eligibility Requirements:** Any member in good standing of the bar of: 1) Supreme Court of U.S., any U.S. Circuit Court of Appeals, or any U.S. District Court; or 2) highest court of any state of U.S.	**Eligibility Requirements:** Any attorney not admitted to practice before D. N.D.	**Eligibility Requirements:** 1) representing U.S. government, or any agency thereof; and 2) admitted to practice in any court of U.S. or highest court of any state; and 3) not qualified to practice in D. N.D.; and 4) appearing and participating in an official capacity. **Restrictions on practice:** If not a resident of D. N.D., government representative must designate U.S. Attorney for D. N.D. to receive service of notices.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	D.N. Mar.I.	Rule 110 Adopted Effective July 1, 1993	**Eligibility Requirements:** Attorneys of good moral character who are active members in good standing of Commonwealth Supreme Court bar. **Restrictions on practice:** If attorney does not reside in and have an office in N. Mar.I, must associate as co-counsel an attorney who is an active member in good standing of bar of D.N. Mar.I who must meaningfully participate in preparation and trial of case with full authority and responsibility to act as attorney of record for all purposes; local counsel must attend all proceedings related to case and accept service of all documents required to be served on counsel.	**Eligibility Requirements:** Attorneys of good moral character retained to appear in D.N. Mar.I. who are active members in good standing of 1) any U.S. Court; or 2) highest court of any state, territory, or commonwealth of U.S; and 3) must not reside in N. Mar.I.; not regularly employed in N.Mar. I. (except by CNMI government); or not regularly engage in business, professional, or other activities in the N.Mar. I. **Restrictions on practice:** 1) Must designate member of bar of D.N. Mar.I. with whom Court and opposing counsel may readily communicate regarding conduct of case and upon whom papers may be served. 2) Must also associate as co-counsel an attorney who is an active member in good standing of bar of D.N. Mar.I who must meaningfully participate in preparation and trial of case with full authority and responsibility to act as attorney of record for all purposes; local counsel must attend all proceedings related to case and accept service of all documents required to be served on counsel.	**Eligibility Requirements:** 1) member in good standing of bar of highest court of any state; and 2)currently employed by U.S. N.B. An attorney must petition for temporary permission to practice(during term of employment), but fee is waived.	**Attorney for the Commonwealth:** any attorney a member in good standing of bar of highest court of any state and who is employed by the Commonwealth government, the Public Defender, or Micronesian Legal Services Corporation, is eligible to petition for temporary admission while so employed.
06	N.D. Ohio	Rule 1:5.1 Adopted Effective Jan. 1, 1992	**Eligibility Requirements:** Attorney of good private and professional character admitted to practice 1) in highest court of any state, territory, D.C, or insular possession; or 2) in any district court of the U.S.	**Eligibility Requirements:** Member in good standing of bar of 1) any court of U.S.; or 2) highest court of any state.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
06	S.D. Ohio	Rule 83.4 Adopted Effective Feb. 1995	**Eligibility Requirements(for bar membership):** Member in good standing of Bar of Supreme Court of Ohio. **Restrictions on practice:** In all actions filed in, transferred to, or removed from S.D. Ohio, all parties not appearing pro se must be represented of record by a trial attorney who is: (1) member in good standing of bar of Supreme Court of Ohio; and (2) admitted to practice before a U.S. District Court; and (3) maintains an office for practice of law either within Ohio or within 100 miles of location of D. Ohio court at Cincinnati, Columbus, or Dayton. All notices and communications from S.D. Ohio and all documents to be served on parties are served on trial attorney who must notify co-counsel or associate counsel.	**Eligibility Requirements:** 1)member in good standing of highest court of any state; and 2) not eligible to be member of bar of S.D. Ohio. **Restrictions on practice:** Meeting above requirements allows attorney to appear and participate as counsel or co-counsel upon motion of a trial attorney.	No provision for appearances on behalf of U.S.	
10	E.D. Okla.	Rule 4 Adopted Effective March 12, 1984	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., any U.S. Court of Appeals, or any U.S. District Court; or 2) member in good standing of bar of highest court of any state of U.S. **Restrictions on practice:** If not a resident of, or does not maintain an office in Okla., must designate an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in E.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., any U.S. Court of Appeals or District Court; and 2) nonresident of Okla.; and 3) appearing and practicing in a case or proceeding then on file in E.D. Okla. **Restrictions on practice:** If not a resident of, or does not maintain an office in Okla., must designate an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in E.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Eligibility Requirements:** 1) employed or retained by U.S. or its agencies; and 2)represent U.S. or such agencies. **Restrictions on practice:** If not a resident of, or does not maintain an office in Okla., must designate an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in E.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Reciprocity:** Any attorney admitted to practice in N.D. or W.D. Okla. is admitted to practice in E.D. Okla. upon motion in open court by member of bar of E.D. Okla. (without filing of formal application).

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
10	N.D. Okla.	Rule 83.3 Adopted Effective Jan. 1, 1995	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., any U.S. Court of Appeals or District Court; or 2) member in good standing of bar of highest court of any state of U.S. **Restrictions on practice:** If attorney is not a resident of Okla., must designate attorney who is resident of Okla. and admitted to practice in N.D. Okla., to enter an appearance and continue in the case unless other resident counsel is substituted; must also accept service.	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., any U.S. Court of Appeals or District Court; and 2) nonresident of Okla.; and 3) appearing and practicing in a case or proceeding then on file in N.D. Okla. **Restrictions on practice:** If attorney is not a resident of Okla., must designate attorney who is resident of Okla. and admitted to practice in N.D. Okla. to enter an appearance and continue in the case unless other resident counsel is substituted; must also accept service.	**Eligibility Requirements:** 1) employed or retained by U.S. or its agencies; and 2)represent U.S. or such agencies. **Restrictions on practice:** If attorney is not a resident of Okla., must designate attorney who is resident of Okla. and admitted to practice in N.D. Okla. to enter an appearance and continue in the case unless other resident counsel is substituted; must also accept service.	**Reciprocity:** Any attorney admitted to practice in E.D. or W.D. Okla. is admitted to practice in N.D. Okla. upon motion in open court by member of bar of N.D. Okla. (without filing of formal application).

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
10	W.D. Okla.	Rule 4 Amended Effective Nov. 23, 1992	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., or any U.S. Court of Appeals or District Court; or 2) member in good standing of bar of highest court of any state of U.S. **Restrictions on practice:** Unless out-of-state attorney is from a jurisdiction that does not require association of local counsel in its courts, if an attorney is not a resident of, or does not maintain an office in Okla., must associate with an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in W.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Eligibility Requirements:** 1) member of Bar of Supreme Court of U.S., any U.S. Court of Appeals or District Court; and 2) nonresident of Okla.; and 3) appearing and practicing in a case or proceeding then on file in E.D. Okla.; or 4) attorney resides in Okla. and is eligible for admission to Bar of W.D. Okla. (may be granted temporary admission to practice in a pending case). **Restrictions on practice:** Unless out-of-state attorney is from a jurisdiction that does not require association of local counsel in its courts, if an attorney is not a resident of, or does not maintain an office in Okla., must associate with an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in W.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Eligibility Requirements:** 1) employed or retained by U.S. or its agencies; and 2) representing U.S. or its agencies in case or proceeding. **Restrictions on practice:** Unless out-of-state attorney is from a jurisdiction that does not require association of local counsel in its courts, if an attorney is not a resident of, or does not maintain an office in Okla., must associate with an attorney who resides in and maintains a law office within Okla. and who is admitted to practice in W.D. Okla.; resident attorney will sign first pleading filed and continue in case, accepting service.	**Reciprocity:** Any attorney admitted in E.D. Okla. or N.D. Okla. may be admitted to practice in W.D. Okla. upon motion in open court of member of bar of W.D. Okla.(without filing of formal application).
09	D. Or.	Rule 110 Amended Effective Jan. 1, 1995	**Eligibility Requirements:** Attorney of good moral character and an active member in good standing of Oregon State Bar.	**Eligibility Requirements:** 1) active member in good standing of bar of any U.S. court; or 2) highest court of any state, territory or insular possession of U.S. **Restrictions on practice:** Must associate with an active member in good standing of bar of D. Or. who maintains a practice in D. Or.; local counsel will meaningfully participate in preparation and trial of the particular action or proceeding.	**Eligibility Requirements:** 1) employed or retained by U.S. government or any of its agencies; and 2) represent U.S. government of any of its agencies in all actions or proceedings. N.B. It is within judge's discretion whether to permit government attorney to practice before D. Or.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
03	E.D. Pa.	Rules 11 & 13 Amended Effective Jan. 1, 1995	**Eligibility Requirements:** Member in good standing of bar of Supreme Court of Pa.	Although no specific eligibility requirements for *pro hac vice* appearances are listed, rules do state that an attorney who is not a member of bar of E.D. Pa. can't actively participate in conduct of any trial or any pretrial or post-trial proceeding, unless, upon application, leave to do so is granted. **Restrictions on practice:** If not member of bar of E.D. Pa., attorney must have, as associate counsel of record, a member of bar of E.D. Pa. in each proceeding in which he desires to appear, upon whom all pleadings, motions, notices and other papers can be served.	**Eligibility Requirements:** 1) member in good standing of bar of Supreme Court of U.S. or bar of U.S. Court of Appeals for Third Circuit; and 2) act on behalf of U.S. Government or any of its departments or agencies.	**Attorneys currently employed by or associated with an organized legal services program:** An attorney may motion to be admitted to a limited practice for all causes in which attorney acts as counsel for the defender association or legal services program with which affiliated.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
03	M.D. Pa.	Rule s201, 202 & 205 Adopted Effective Jan. 1, 1994	**Eligibility Requirements:** 1)member of good moral and professional character of bar of Supreme Court of Pa.; and 2) member in good standing in every jurisdiction where admitted to practice(not disbarred or subject to disciplinary proceeding).	**Eligibility Requirements:** 1) admitted to practice in any U.S. District Court or highest court of any state; and 2)member of bar in good standing in every jurisdiction where admitted to practice; and 3) not subject to pending disciplinary proceedings in any jurisdiction. **Restrictions on practice:** 1) If attorney is eligible to be admitted to M.D. Pa.(but chose not to be), that attorney must retain an associate counsel. 2) If attorney is not eligible to be admitted to Bar of M.D. Pa. and not eligible to be admitted as an attorney for the U.S., then, in each proceeding in which the attorney appears, must have associate counsel admitted to practice in M.D. Pa., whose appearance must also be entered of record and upon whom all papers may be served; associate counsel must be fully prepared to proceed if non-resident attorney is unavailable for any court appearances; attendance of associate counsel upon hearing of any motion or taking of any testimony is sufficient appearance for the party(ies) represented.	**Eligibility Requirements:** 1) member of bar of any U.S. District Court; and 2) member of bar in good standing in every jurisdiction admitted to practice in; and 3)not subject to pending disciplinary proceedings in any jurisdiction; and 4) representing U.S. or an agency thereof, or an officer of U.S. in his/her official capacity.	**Attorneys currently employed by or associated with an organized legal services program:** and member of bar of highest court in another state, territories, or D.C., can practice before M.D. Pa. in all causes in which attorney is associated with the organized legal services program.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
03	W.D. Pa.	Rule 83.5.1 Adopted Effective Jan. 1, 1994	**Eligibility Requirements:** 1) eligible to be admitted to practice before Supreme Court of Pa.; or 2) member in good standing of bar of Supreme Court of Pa.; or 3) member in good standing of Supreme Court of U.S., or any U.S. District Court. **Restrictions on practice:** Any member of bar of W.D. Pa., or any attorney qualified for admission(either admitted generally or specially), or any attorney not admitted to bar of W.D. Pa., serving by appointment or election in either state of Pa. or for U.S. as district attorney of any county in Pa., assistant, deputy or special advisor of any district attorney, attorney general of Pa., assistant, deputy or special advisor of attorney general of Pa., legal counsel for and any assistant or deputy of any agency of U.S. Government, or a magistrate or justice of the peace of any city, county or state, is not permitted to practice in federal criminal law as counsel for any person accused of crime in W.D. Pa.	No provision for *pro hac vice* appearances.	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
01	D. P.R.	Rules 201-204 Amended Effective June 16, 1994	**Eligibility Requirements:** 1) currently in good standing as attorney admitted to practice before courts of P.R.; or 2) highest court of any state or D.C.; and 3) received satisfactory score on an exam approved by District Examination Committee; and 4) served in District Court of P.R. as a judge, magistrate judge, clerk, chief deputy clerk or law clerk. for one year or more; or 5) served in P.R. General Court of Justice as a Supreme Court Justice for 1 year or as a Superior or District Court Judge for 5 years.	**Eligibility Requirements:** 1) authorized to practice law before Bar of any U.S. court; or 2) highest court of any state, territory or possession of U.S. **Restrictions on practice:** Must designate member of Bar of D. P.R. as local counsel.	**Eligibility Requirements:** 1) attorney employed by U.S., its agencies and dependencies; and 2) authorized by statute; and 3) appearing as attorneys of record for U.S., its agencies, dependencies and officers.	
01	D. R.I.	Rule 4 & 5 Amended Effective Jan. 1, 1994	**Eligibility Requirements:** 1) attorney actively engaged in practice of law within R.I.; and 2) maintains an office within R.I. for practice of law; and 3) member in good standing of bar of Supreme Court of R.I.; and 4) passed an examination on federal practice and procedure given by Board of Federal Examiners for D. R.I.(except for applicant who is member in good standing of bar of any other U.S. District Court who can establish requisite experience in practice before federal courts and has read and has knowledge of local rules of D. R.I.).	**Eligibility Requirements:** 1) member in good standing of bar of U.S. Supreme Court, any other U.S. District Court; or 2) member in good standing of bar of highest court of any state. **Restrictions on practice:** 1) Must associate a member of bar of D. R.I. who actively engages in practice of law and maintains an office within R.I.; must sign all pleadings and court papers presented to clerk for filing. 2) If attorney who appears *pro hac vice* is an associate or member of a firm, no other attorney of that firm may appear *pro hac vice* within same year.	**Eligibility Requirements:** 1) attorney in good standing as member of bar in every jurisdiction admitted to practice; and 2) not subject to pending disciplinary proceedings as member of bar in any jurisdiction; and 3) member of bar of any U.S. District Court; and 4) appearing and practicing as attorney for U.S. or any agency thereof or for an officer of U.S. in his official capacity.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	D. S.C.	Rule 2.02 to 2.06 Amended Effective July 12, 1995	**Eligibility Requirements:** Member in good standing of Bar of Supreme Court of S.C.	**Eligibility Requirements:** 1) member in good standing of Bar of a U.S. District Court; and 2) Bar of highest court of any state or D.C. **Restrictions on practice:** Must associate with a member of Bar of D. S.C. and both must sign each document served or filed in D. S.C.; service only on associated local counsel is sufficient; associated local counsel must be present at all pretrial conferences, hearings and trials and be prepared to actively participate if necessary.	No provision for appearances on behalf of U.S.	
08	D. S.D	Rule 83.2 Adopted Effective July 1, 1992	**Eligibility Requirements:** Active member of good moral character of S.D. State Bar.	**Eligibility Requirements:** Not a member of bar of D. S.D. **Restrictions on practice:** Must associate with member in good standing of bar of D. S.D. who must sign all pleadings filed and continue in case unless substituted; associated local counsel must be present during all proceedings in connection with case; service of any paper upon local counsel is sufficient.	**Eligibility Requirements:** 1) admitted to practice in a U.S. District Court; and 2) not qualified for admission to Bar of D. S.D.; and 3) representing U.S., or any officer or agency thereof; and 4) U.S. or any officer or agency thereof is a party in any action or proceeding.	
06	E.D. Tenn.	Rule 83.5 Adopted Effective March 1, 1994	**Eligibility Requirements:** Attorney of good moral and professional character and currently admitted to practice in highest court of a state, territory, or D.C.	**Eligibility Requirements:** An attorney whose application for admission to bar of E.D. Tenn. is pending.	**Eligibility Requirements:** 1) member in good standing of bar of highest court of a state; or 2) any other U.S. district court; and 3) employed by U.S. Government in a professional capacity.	**Reciprocity:** Attorneys admitted to and entitled to practice in other U.S. district courts are permitted to practice in E.D. Tenn. provided they are members in good standing of bar of the U.S. District Court of their residence.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
06	M.D. Tenn.	Rule 1 Amended Effective June 1, 19994	**Eligibility Requirements:** 1) member in good standing of bar of state of Tenn.; or 2) member of bar of a U.S. District Court who has made application for admission to bar of State of Tenn., and has been employed less than 12 months in Office of U.S. Attorney or Office of Federal Public Defender. **Restrictions on practice:** If attorney is not a resident of or does not have principal law office in state of Tenn., must join of record when appearing on behalf of any party in any civil cause, associate counsel qualified to practice in M.D. Tenn. who is resident of Tenn. or has principal law office therein; providing associated local counsel with notice is sufficient;	**Eligibility Requirements:** 1) member in good standing of bar of any other U.S. District Court; and 2) not a resident of and does not maintain an office for practice of law in M.D. Tenn. **Restrictions on practice:** If attorney is not a resident of or does not have principal law office in state of Tenn., must join of record when appearing on behalf of any party in any civil cause, associate counsel qualified to practice in M.D. Tenn. who is resident of Tenn. or has principal law office therein; providing associated local counsel with notice is sufficient;	**Eligibility Requirements:** 1)Any attorney representing the U.S. government or any agency thereof, except for the U.S. Attorney and Assistant U.S. Attorneys for M.D. Tenn.; and 2)appear and participate in particular actions or proceedings in official capacity; and 3) member of bar of a U.S. District Court. **Restrictions on practice:** If attorney is not a resident of or does not have principal law office in state of Tenn., must join of record when appearing on behalf of any party in any civil cause, associate counsel qualified to practice in M.D. Tenn. who is resident of Tenn. or has principal law office therein; providing associated local counsel with notice is sufficient.	
06	W.D. Tenn.	Rule 1 Amended Effective Jan. 1, 1994	**Eligibility Requirements:** Licensed to practice law in state of Tenn. and member in good standing of bar of Supreme Court of Tenn.	**Eligibility Requirements:** 1) not licensed to practice law in Tenn.; and 2) licensed to practice and in good standing of bar of highest court of any other state or any U.S. District Court.	No provisions for appearances on behalf of U.S.	
05	E.D. Tex.	Rule 2 Amended Effective Sept. 2, 1993	**Eligibility Requirements:** 1) admitted to practice before Supreme Court of U.S., or any U.S. Court of Appeals District Court; or 2) highest court of a state; and 3) of good moral and professional character and a member in good standing of state and federal bars in which licensed.	**Eligibility Requirements:** An attorney not admitted to practice in E.D. Tex. (no other eligibility requirements listed).	No provisions for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
05	N.D. Tex.	Rule 13.1, 13.3 & 13.4 Amended Effective March 1, 1995	**Eligibility Requirements:** 1) licensed to practice law by Supreme Court of Tex.; or 2) highest court of any state or D.C.; and 3) of good personal and professional character and member in good standing of state bar of jurisdiction in which licensed. **Restrictions on practice:** If attorney does not reside or maintain an office in N.D. Tex., attorney must designate as local counsel member of bar of N.D. Tex. who resides or maintains an office in Division in which suit is pending, or within 50 miles thereof; or obtain leave from presiding judge to appear without designating local counsel or to designate a local counsel outside scope of Rule. Local counsel must be authorized to present and argue client's position at any hearing, and perform any duty required.	**Eligibility Requirements:** 1) licensed to practice law by highest court of any state or D.C.; and 2) not admitted to practice in N.D. Tex. **Restrictions on practice:** If attorney does not reside or maintain an office in N.D. Tex., attorney must designate as local counsel member of bar of N.D. Tex. who resides or maintains an office in Division in which suit is pending, or within 50 miles thereof; or obtain leave from presiding judge to appear without designating local counsel or to designate a local counsel outside scope of Rule. Local counsel must be authorized to present and argue client's position at any hearing, and perform any duty required.	No provision for appearances on behalf of U.S.	
05	S.D. Tex.	Rule 1 Adopted Effective Feb. 22, 1994	**Eligibility Requirements:** 1) member of good professional character and competence of state bar of Tex.; or 2) member of any U.S. District Court. **Restrictions on practice:** If lawyer resides in S.D. Tex., must apply in division where residing; applicants who do not reside in S.D. Tex. may apply for admission in any division.	**Eligibility Requirements:** Lawyer not admitted to practice before S.D. Tex.(no other eligibility requirements listed) may appear as attorney-in-charge for a party in a case in S.D. Tex. with permission of judge before whom case is pending.	No provision for appearances on behalf of U.S.	

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05	W.D. Tex.	Rule AT-1 & At-3 Amended Effective Feb. 17, 1995	**Eligibility Requirements:** 1) member in good standing of bar of any District Court, Circuit Court, or Supreme Court of U.S.; or 2) member in good standing of State Bar of Tex.; or 3) active in practice in bar of any other state and has 5 years experience in practice of law. **Restrictions on practice:** If an attorney maintains an office outside W.D. Tex., judge to whom a case is assigned has discretion to require the attorney to designate member of Bar of W.D. Tex., who maintains an office within the district, as co-counsel with authority to act as attorney of record for all purposes.	**Eligibility Requirements:** Rule lists no eligibility requirements for an attorney appearing *pro hac vice*; only states that U.S. Magistrate Judges and Bankruptcy Judges have discretion to admit attorneys *pro hac vice* upon motion; admission is limited to case proceeding at hand and is not general admission to practice. **Restrictions on practice:** If an attorney maintains an office outside W.D. Tex., judge to whom a case is assigned has discretion to require the attorney to designate member of Bar of W.D. Tex., who maintains an office within the district, as co-counsel with authority to act as attorney of record for all purposes.	No provision for appearances on behalf of U.S.	
10	D. Utah	Rule 103-1 Adopted Effective March 1, 1993	**Eligibility Requirements:** Active member in good standing of Utah State Bar. **Restrictions on Practice:** 1) Attorney admitted to Bar of D. Utah must agree, as a condition of admission, to engage in a reasonable level of pro bono work when requested by the court. 2) If attorney is a nonresident, must associate a local member of Bar of D. Utah who must sign first pleading filed and continue unless another active local member is substituted; associated local attorney has responsibility and full authority to act for and on behalf of client in all proceedings in connection with case, if nonresident attorney fails to respond to any court order.	**Eligibility Requirements:** 1) not active member of Utah State Bar; and 2) member in good standing of bar of another state; or 3) member in good standing of bar of any federal court. **Restrictions on practice:** If attorney is a nonresident, must associate a local member of Bar of D. Utah who must sign first pleading filed and continue unless another active local member is substituted; associated local attorney has responsibility and full authority to act for and on behalf of client in all proceedings in connection with case, if nonresident attorney fails to respond to any court order.	**Eligibility Requirements:** 1) represent U.S. government or any agency thereof; and 2) member of bar of any other U.S. district court; and 3) provided the attorney resides within D. Utah, assistant U.S. attorneys and attorneys representing agencies of government have 12 months from date of commission to take and pass the Utah State Bar exam, during which time these attorneys may be provisionally admitted to Bar of D. Utah. Note: Judge advocates of armed forces of U.S. representing government in proceeding supervised by judges of D. Utah are not subject to requirements of this Rule.	

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01	D. Vt.	Rule 1 Adopted Effective June 1, 1994	**Eligibility Requirements:** 1) member whose professional character is good of Bar of State of Vt.; or 2) member whose professional character is good of Bar of any U.S. District Court within the First and Second Circuits. **Restrictions on practice:** If attorney does not have a resident office within D. Vt., can not file a cause of action or make answer to complaints or file any motions in the D. Vt. unless associated with a member in good standing of Bar of D. Vt. with a resident office within D. Vt.	Although there is no specific provision addressing eligibility requirements for *pro hac vice* appearances, rules do state that such appearances are permitted: "whenever an attorney applies to be admitted or is admitted, for purposes of a particular proceeding (*pro hac vice*)" then the attorney has conferred disciplinary authority upon D. Vt. for any alleged misconduct arising in course of or in preparation of such proceeding. **Restrictions on practice:** If attorney does not have a resident office within D. Vt., can not file a cause of action or make answer to complaints or file any motions in the D. Vt. unless associated with a member in good standing of Bar of D. Vt. with a resident office within D. Vt.	**Eligibility Requirements:** 1) Any Assistant U.S. Attorney for D. Vt. who does not qualify for admission to Bar of D. Vt.; and 2) attorney whose professional character is good of Bar of any U.S. District Court. N.B. U.S. Attorney for D. Vt. must motion for admission and attorney must pay application fee and take oath and enter name in court records before being allowed to practice.	
03	D. V.I.	Rule 83 Adopted Effective July 21, 1992	**Eligibility Requirements:** 1) licensed to practice by Territorial Court of V.I; and 2) not been suspended, disbarred, resigned or withdrawn from practice of law and not reinstated as member of bar of D. V.I.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S. court; or 2) member in good standing of bar of highest court of any state; and 3) not under suspension or disbarment by any court and thus ineligible to Bar of D. V.I. **Restrictions on practice:** 1) Attorney must file an appearance as counsel of record by a member of bar of D. V.I. upon whom all documents may be served; member attorney must file papers, enter appearances , sign stipulations, or sign and receive payments. 2) Attorney can be admitted *pro hac vice* no more than a total of 3 cases in a calendar year.	**Eligibility Requirements:** 1) admitted to practice in any U.S. District Court; and 2) representing U.S. or any of its officers or agencies in any proceedings. **Restrictions on practice:** If attorney does not have an office in D. V.I., must designate U.S. Attorney to receive service of all notices or papers in that action.	**Appearance by patent attorneys:** Any member in good standing of bar of any U.S. court or highest court of any state for at least 5 years, and not eligible for admittance to Bar of D. V.I., and admitted to practice as an attorney before U.S. Patent Office, and has been continuously engaged in practice of patent law as principal occupation in an established place of business and office located within D. V.I. for at least 2 years prior to application, and has sufficient pre-legal and legal training, may be admitted to practice before D. V.I. limited to cases solely arising under patent laws of U.S. or elsewhere. Any patent attorney admitted this provision must associate of record with member of bar of D. VI.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	E.D. Va.	Rule 7 Amended Effective July 1, 1994	**Eligibility Requirements:** Member of Bar of Supreme Court of Va. **Restrictions on practice:** If maintaining a law office outside Va., must set forth Va. State Bar I.D. Number on any initial pleading filed.	**Eligibility Requirements:** 1) attorney from another state or D.C.; and 2) rules of the federal courts of district in which attorney maintains an office extends similar *pro hac vice* privileges to attorneys of E.D. Va. **Restrictions on practice:** Must associate with a resident member of bar of E.D. Va. who must accompany foreign attorney in all appearances, sign all pleadings or notices, accept service, and have authority so that court can deal with the resident associate alone in all matters connected with the case.	No provision for appearances on behalf of U.S.	Any attorney admitted to practice in W.D. Va. can practice in E.D. Va. upon filing of certificate showing admission to practice in W.D. Va.
04	W.D. Va.	Rule 2 Adopted Effective Jan. 1, 1988	**Eligibility Requirements:** Attorney of good character licensed to practice by state of Va. and admitted to practice in the state courts.	**Eligibility Requirements:** 1) not qualified an licensed to practice under laws of Va.; and 2) licensed and qualified to practice before Supreme Court of U.S. or highest court of any state or D.C. **Restrictions on practice:** Must associate with a member of bar of W.D. Va. who must accompany foreign attorney in all appearances, sign all pleadings or notices, accept service, and have authority so that court can deal with the associate alone in all matters connected with the case.	No provision for appearances on behalf of U.S.	Any attorney admitted to practice in E.D. Va. is permitted to practice in W.D. Va. upon filing of a certificate of good standing from E.D. Va. showing admittance to practice in that district.

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
09	E.D. Wash.	Rule 1.2 Adopted Effective Dec. 1, 1992	**Eligibility Requirements:** 1) member in good standing of Wash. State Bar Association; or 2) member in good standing of bar of any state who is employed by U.S. or one of its agencies in a professional capacity and, while being so employed, may have occasion to appear on behalf of U.S. in E.D. Wash.	**Eligibility Requirements:** 1) member in good standing of bar of any U. S. court; or 2) highest court of any state or organized territory of U.S.; and 3) does not reside in nor maintain an office for practice of law in state of Wash. **Restrictions on practice:** Must join of record an associate attorney having an office in state of Wash. and admitted to practice in E.D. Wash. who must sign all papers prior to filing and meaningfully participate in the case.	No provision for appearances on behalf of U.S. See eligibility requirements for admission to bar of E.D. Wash.	
09	W.D. Wash.	General Rule 2 Amended Effective Sept. 3, 1994	**Eligibility Requirements:** 1) member in good standing of Wash. State Bar; or 2) member in good standing of bar of any state who is employed by U.S. or one of its agencies in a professional capacity and, while being so employed, may have occasion to appear on behalf of U.S or one of its agencies in W.D. Wash.	**Eligibility Requirements:** 1) member in good standing of bar of any U.S court, or of highest court of any other state, or organized territory of U.S.; and 2) does not reside nor maintain an office for practice of law in W.D. Wash. **Restrictions on practice:** Must join of record an associate attorney with an office in W.D. Wash. and admitted to practice in W.D. Wash. who must sign all pleadings prior to filing.	No provision for appearances on behalf of U.S. See eligibility requirements for admission to Bar of W.D. Wash.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	N.D. W.Va.	Rule 1.04 (no adoption date provided)	**Eligibility Requirements:** 1) resident of state of W.Va.; and 2) member in good standing of bar of W.Va. and admitted to practice before Supreme Court of Appeals of W.Va.	**Eligibility Requirements:** 1) nonresident or visiting attorney not a member of bar of N.D. W.Va.; and 2) member in good standing of bar of U.S. Supreme Court, or highest court of any state, or D.C **Restrictions on practice:** 1) Must associate with a member(s) of Bar of, and having an office for transaction of business in, N.D. W.Va. who must accept service of all documents; with court's consent associate member may be excused from further attendance during proceedings, and visiting attorney permitted to continue alone. 2) Visiting government attorneys in litigation involving federal government agency matters must associate with the U.S. Attorney in N.D. W. Va. who must sign all pleadings, notices and other papers that may be served by U.S. and accept service of such documents	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
04	S.D. W. Va.	Rule Gen P 2.01 Adopted Effective Sept. 1, 1994	**Eligibility Requirements:** Admitted to practice before Supreme Court of Appeals of W. Va. and in good standing as member of its bar.	**Eligibility Requirements:** 1) not admitted to practice before Supreme Court of Appeals of W.Va.; and 2) member in good standing of bar of U.S. Supreme Court, highest court of any other state, or D.C.; or 3) employed for less than 1 year by U.S. Attorney or Federal Public Defender for S.D. W.Va.(must qualify as permanent member of bar of S.D. W. Va. within one year of employment). **Restrictions on practice:** 1) Must associate with a permanent member of bar of and who has an office for practice of law in S.D. W.Va., upon whom all documents may be served, and who must sign all documents that require signature of an attorney; with consent of court, permanent member may be excused from further attendance during proceedings and visiting attorney may continue alone in particular case. 2) If employed by U.S Attorney or Federal Public Defender for S.D. W.Va. for less than 1 year, must appear and practice under sponsorship of appointing officer. 3) Visiting government attorneys in proceedings involving the government, must associate with the U.S. Attorney in S.D. W. Va. who must sign all pleadings, notices and other papers that may be served by U.S. and accept service of such documents	No provision for appearances on behalf of U.S.	

Circuit	District	Local Rule[1]	Requirements and Restrictions for Bar Membership in the District Court	Requirements and Restrictions for Pro Hac Vice Appearances (permission to appear and participate in a particular case)	Requirements and Restrictions for Appearances on Behalf of the United States or its Agencies	Other Special Appearances (not requiring membership of the district court's bar)
07	E.D. Wis.	Rule 2 Amended Effective Jan. 15, 1993	**Eligibility Requirements:** 1) licensed attorney in good standing before any U.S. court; or 2) licensed attorney in good standing before highest court of any state, or D.C **Restrictions on practice:** At any time, upon its own motion, E.D. Wis. may require a nonresident attorney to obtain local counsel to assist in conduct of the case.	No provision for appearances *pro hac vice*.	No provision for appearances on behalf of U.S.	
07	W.D. Wis.	Rule 1 Amended Effective March 5, 1993	**Eligibility Requirements:** 1) licensed attorney in good standing before any U.S. court; or 2) licensed attorney in good standing before highest court of any state, or D.C	**Eligibility Requirements:** Any lawyer eligible for membership in bar of W.D. Wis.	No provision for appearances on behalf of U.S.	
10	D. Wyo.	Rule 200 & 201 Adopted Effective Nov. 15, 1992	**Eligibility Requirements:** Regularly admitted and licensed to practice before Supreme Court of Wyo.	**Eligibility Requirements:** 1) not admitted to practice before in courts of Wyo.; and 2) member in good standing of bar of another state. **Restrictions on practice:** Must associate with a currently licensed member of Bar of State of Wyo. who must sign first pleading filed and continue in case unless other resident counsel is substituted, be present in Court during all proceedings in connection with case, and have full authority to act for client in all matters; service only on Wyo. counsel is sufficient.	**Eligibility Requirements:** 1) representing U.S. Government, or any agency thereof; and 2) admitted to practice in highest court of any state; and 3) not qualified to practice in D. Wyo.; and 4) appearing and participating in his official capacity. N.B. U.S. Attorney for D. Wyo. must move for admission of non-resident Government representative. **Restrictions on practice:** U.S. Attorney for D. Wyo. must sign all pleadings before filing and be present during all proceedings in connection with the case, unless excused by Court; U.S. Attorney must be designated for receiving service of notices.	

Attendees List for the Special Study Conference

January, 1996

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

L. RALPH MECHAM
DIRECTOR

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR

JOHN K. RABIEJ
CHIEF, RULES COMMITTEE
SUPPORT OFFICE

December 29, 1995

MEMORANDUM TO JOHN K. RABIEJ

SUBJECT: *Attendees at January 9-10, 1996 Special Study Conference*

Please note that Melanie Sloan, House Judiciary Committee, has been added to the list of attendees. The updated list is, as follows:

WILL ATTEND

Prof. Stephen B. Burbank, *U. of Penn. Law Sch.*

Lawrence J. Fox, Esq., *ABA Litigation Sec.*

Prof. Linda S. Mullenix, *U. of Texas Sch. of Law*

Gerald K. Smith, Esq., *Lewis & Roca*

Prof. Geoffrey C. Hazard, Jr., *American Law Institute*

Margaret C. Love, Esq., *ABA Stand. Cmte. on Ethics & Prof. Respons.*

David W. Ogden, *Associate Dep. Attorney General*, representing
Hon. Jamie S. Gorelick, *Dep. Attorney General*

Hon. Marvin H. Morse, *Federal Bar Association*

Hon. E. Norman Veasey, *Chief Justice, Supreme Ct. of Delaware*

Robert S. Peck, *ATLA*, or representative.

Prof. Roger C. Cramton, (Cornell Law Sch.), *Assn. Am. Law Sch.*

Jeanne P. Gray, *ABA Committee on Lawyer Discipline*

WILL ATTEND (continued)

William J. Genego, *Nat. Assn. of Criminal Defense Lawyers*

Jerome Larkin, *Nat. Org. of Bar Counsel/ Attorney Registration and Disciplinary Commission*

Hon. Michael D. Zimmerman, Ch. Justice, Utah Supreme Court, *Conference of Chief Justices*

Hon. Mary M. Lisi, U.S. Dist. Judge, Providence, RI, *ABA Committee on Lawyer Discipline*, (replacing Mary M. Devlin)

Hon. Ann C. Williams, U.S. Dist. Judge, Chicago, IL, *Chair, Committee on Court Administration and Case Management*

Michael Lenett, *Senate Judiciary Committee*

Rory K. Little, *Asst. Prof., Hastings College of the Law*

Hon. Stephen H. Anderson, *Chair, Committee on Federal-State Jurisdiction*

Hon. Richard J. Arcara, *Committee on Criminal Law*

Hon. Jerome B. Simandle, U.S. Dist. Judge, Camden, NJ, *Committee on Court Administration and Case Management*

Melanie Sloan, *House Judiciary Committee*

WILL NOT ATTEND

Newman Flanagan, *Nat. Dist. Attys. Assn.*

Prof. Charles Alan Wright, *American Law Institute*

Elizabeth Kessler, *Senate Judiciary Committee*

Judy

Judy Krivit
Administrative Specialist

cc: Honorable Alicemarie H. Stotler
Professor Daniel R. Coquillette

Supplement to Study of Federal Rules Governing Attorney Conduct

Washington, D.C.
June 18 -19, 1996

I. INTRODUCTION

This is simply a continuation of the Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, December 1, 1995, originally prepared for the Study Session on Federal Rules Governing Attorney Conduct (the "Study Session") sponsored by the Committee on Rules of Practice of the Judicial Conference of the United States (the "Committee") in Los Angeles on January 9-10, 1996. The purpose is to update the survey of federal cases in the Study to include cases reported between July 1, 1995 to March 23, 1996. I am once again most grateful to my outstanding research assistant James J.G. Dimas and Thomas J. Murphy of Boston College Law School, Class of 1997. Their hard work and intelligence made these exhaustive — and exhausting — surveys possible.

II. METHODOLOGY

This supplement of the Study of December 1, 1995 exactly follows the purposes and methodology set out in the Study at pages 2-3. See also my Report on Local Rules Regulating Attorney Conduct in the Federal Courts presented to the Committee on July 5, 1995 (hereafter "The Report"). A major computer search was designed using the Descriptive-Word Index of the Federal Practice Digest and the Westlaw data base. Thirty five key numbers were identified that closely tracked attorney conduct rules, and key words, phrases, and numbers were also employed. Initially, a restriction date of 1985 was used, but this produced and unmanageably large number of cases. Even the selected restriction date of January 1, 1990 produced a very large number of cases, 851.

My two devoted research assistants, James J.G. Dimas and Thomas J. Murphy, working with the assistance of the prior work of Thomas Burton and Rebecca Lampert, began to read every case. It soon became clear that our research method was very accurate — and in the end 443 of the 851 cases located proved to involve rules governing attorney of the kind discussed in the July 5, 1996 Report. (The other 408 involved issues of attorney conduct in federal courts governed by Rule 11 and other standards. See Study Appendix III — Break Down of Recent Federal Cases (1990-1995) Involving Rule 11 and Other "Attorney Issues" Not Counted in the Survey). In addition, checks were done to see if any relevant cases escaped the net. For example, every case cited by Professor Mullinex's article in the Report, Appendix IV, was checked, and every case cited in the Report, as well as other surveys. All such cases had been picked up by the system.

Next a painstaking description of each case was prepared, with a summary of the facts, the attorney conduct in question, the relevant rules cited, the relevant key numbers, the eventual decision, and other data. These 851 standardized descriptions form the basic data base of the project. See Study, Illustration 1. At this point, a decision was made as which "category" of rule was chiefly involved in each dispute. Again, 408 were "discarded" into Study, Appendix III, because they did not directly involve local rules governing attorney conduct. In addition, where the local model was not based on the ABA Model Rules, the rules were "translated" into the

Model Rule categories of Chart I, Appendix I, using a system similar to the comparative table on page 128 of West's Selected Statutes, Rules and Standards of the Legal Profession (1995 ed.). Of course, this was a "rough" fit, but it permits comparing "apples with apples" — and a review of individual cases showed that the "rough fit" was more than adequate for the purposes of this study. In addition, a separate table was prepared of just those cases involving local rules based on the ABA Code of 1969. This is set out as Chart II in Appendix II. In addition, civil and criminal cases were broken out on Chart I, Appendix I.

Extending this study from July 1, 1995 through March 23, 1996 produced an additional 77 ABA Model Rule and Code cases, with 20 cases citing to the ABA Code. This brings the cumulative number of analyzed cases to 520, between January 1, 1990 and March 23, 1996.

III. FINDINGS

Once again, by far the largest category of rules involved in federal disputes about attorney conduct were conflict of interest rules. Rules analogous to ABA Model Rules 1.7, 1.8, 1.9, 1.10 and 1.11 accounted for 43% of reported federal disputes, or 33 cases of 77. The next largest category, rules involving communication with represented parties, (equivalent to Model Rule 4.2) accounted for only 17%, or 13 cases. The bulk of conflict of interest cases were civil, 28 out of 33 or 85%. See Charts I, II, and III in Appendices I, II and III.

Again, by contrast, important categories within the ABA Model Rules, such as "Confidentiality of Information" were practically absent, despite the prominence of Model Rule 1.6 in ethical controversies. There was only one civil case involving confidentiality issues, and no criminal cases. There were only four cases involving the controversial Rule 1.13 (Organization as Client) and corporate confidentiality. Issues of professional confidence may arise in federal cases, but they are not resolved in the federal courtroom.

There were no other categories that exceeded 10% of the cases reported. The only categories with more than three cases were "Fees" (Rule 1.5), four cases, "Candor Toward the Tribunal" (Rule 3.3), four cases, and "Lawyer or Witness" (Rule 3.7), four cases, all at 5.1%. "Lawyer or Witness" and "Fees" issues were also relatively common in the prior data base, at 10.1% and 4.8% respectively. "Candor Toward the Tribunal" issue also appeared in the prior data base, but in only 2.0% of the cases.

The most important finding of the prior Study was that most Model Local Rule categories appear very infrequently in federal cases. This update reinforces that fact. Thirty-three Model Local Rule categories never appeared in this nine month period. Seven only appeared once. Again, the four most common categories in Federal Court (Conflict of Interest, Represented Parties, Lawyer or Witness and Fees) accounted for 54 of the 77 cases. The total of all remaining cases was only 23; or 30%, which matches closely with the prior Study result of 28%.

Again a number of commentators have suggested that certain rule categories should have "custom made" federal rules for policy reasons. See, for example, the article by Professor Bruce Green "Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules be Created?" attached as Appendix IV to the Study, and that by Professor Linda S. Mullenix "Multiforum Federal Practice: Ethics and Erie" attached as Appendix IV to the original Report. Among the categories mentioned other than those already discussed are "Choice of Law" (Model Rule 8.5 issues), "Confidentiality" (Model Rule 1.6 issues), "Declining on Terminating Representation" (Model Rule 1.16 issues), "Meritorious Claims" (Model Rule 3.1 issues), "Candor Toward Tribunal and Fairness to Opposing Party" (Model Rule 3.3 and 3.4 issues), and "Prosecutorial Responsibility" (Model Rule 3.8 issues). If these common litigation issues are added to the four predominate issues discussed above, the remaining categories would have constituted only 14 cases, or 18% of the data base. The total was 13.7% under the prior Study, and is 15% if the prior Study and this Supplement are combined. See Appendix III, Chart III.

For convenience, Federal Court cases citing the ABA Code have been broken out separately. See Appendix II, Chart II. In addition, two charts adding the original results of the Study of December 1, 1995 and the results of this Supplement have been prepared. See Appendix III, Chart III, and Appendix IV, Chart IV.

IV. CONCLUSIONS

The reported federal cases examined in this Supplement, covering July 1, 1995 to March 23, 1996, track almost exactly the categories of the prior Study of December 5, 1995, covering cases from January 1, 1990 to June 30, 1995. In short, most reported federal cases involving rules governing attorney conduct involve only a very few of the categories represented by the ABA Model Rules, with four specific areas representing over 70% of all activity. Thirty categories covered by the ABA Model Rules never appear, and the rest are very rare. If uniform federal rules or model local rules are drafted to cover just the narrow "core" areas of activities directly related to common litigation problems in federal courts, only about 15% of reported federal problems would remain governed by non-uniform rules, and most of these would be in areas traditionally reserved to state regulation. See III, Findings, supra.

Note: To keep this Study Group and the Committee informed on the latest literature, two relevant articles, about to be published, are attached with the author's permission. They are still in draft form. See Appendix V (Professor Rory Little, "Who Should Regulate the Ethics of Federal Prosecutors?") and Appendix VI (Professor Fred Zacharias, "Who Can Best Regulate the Ethics of Federal Prosecutors—(Or, Who Should Regulate the Regulators))?" In addition, with the kind assistance of the Administrative Office, an issue of the South Texas Law Review (Vol. 36, No. 3, November, 1995) will be distributed. It is entirely devoted to articles about ethical problems in multijurisdictional practice. Other relevant articles, available in print since the last Study, include:

1. Susanna Felleman, "Ethical Dilemmas and the Multistate Lawyer: A Proposed Amendment to the Choice-of-Law Rule in the Model Rules of Professional Conduct," 95 Columbia Law Review 1500 (1995);

2. Rory K. Little "Myths and Principles of Federalization," 46 Hastings Law Journal 1029 (1995);

3. Eli J. Richardson, "Demystifying the Federal Law of Attorney Ethics," 29 Georgia Law Review 137 (1994).

Copies can be obtained by request to the Reporter. There are also extensive collections of relevant articles and treatise set out in the Report of July 5, 1995 and the Study of December 1, 1995, cited above, and in their Appendices.

APPENDIX I

Chart I — Break Down of Recent Federal Cases
(July 1, 1995-March 23, 1996) by *ABA MODEL RULE.*

Total Cases: 77

CASES CLASSIFIED BASED ON MODEL RULES

Rule	Subject matter	Civil	Criminal	Total
1.1	Competence	0	0	0
1.2	Scope of Representation	1	2	3
1.3	Diligence	0	0	0
1.4	Communication	0	0	0
1.5	Fees	4	0	4
1.6	Confidentiality of Information	1	0	1
1.7	Conflict of Interest: General	10	1	11
1.8	Conflict of Int. Prohib. Trans.	2	0	2
1.9	Conflict of Interest: Fmr. Client	10	0	10
1.10	Imputed disqualification (Firm)	5	2	7
1.11	Govt. to private employment	0	2	2
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		28	5	33
1.12	Former Judge or Arbitrator	0	0	0
1.13	Organization as Client	4	0	4
1.14	Client Under a Disability	0	0	0
1.15	Safekeeping Property	1	0	1
1.16	Declining / Terminating Repr.	2	0	2
1.17	Sale of Law Practice	0	0	0
2.1	Advisor	0	0	0
2.2	Intermediary	0	0	0
2.3	Eval. for use by 3rd Persons	0	0	0
3.1	Meritorious Claims/Contentions	0	1	1
3.2	Expediting Litigation	0	0	0

Model rule	Subject Matter	Civil	Criminal	Total
3.3	Candor Toward the Tribunal	3	1	4
3.4	Fairness to opposing party	0	0	0
3.5	Impart. & Decorum of Tribunal	2	0	2
3.6	Trial Publicity	0	0	0
3.7	Lawyer as Witness	4	0	4
3.8	Special respons. of Prosecutor	0	1	1
3.9	Advocate / Non adjudicative	0	0	0
4.1	Truth in Statements to Others	0	0	0
4.2	Comm. w. Pers. Rep. Couns.	10	3	13
4.2 Cases Involving DOJ		0	3	3
4.3	Dealing w/ Unrep. Person	0	1	1
4.4	Respect for Rts. of 3rd Persons	1	1	2
5.1	Resp. of Partner or Supervisor	0	0	0
5.2	Resp. of Subordinate Lawyer	0	0	0
5.3	Resp. Nonlawyer Assist.	0	0	0
5.4	Professional Independence	0	0	0
5.5	Unauthorized Practice of Law	1	0	1
5.6	Restr. on Rt. to Practice	0	0	0
5.7	Resp. Reg. Law Rel. Practice	0	0	0
6.1	Voluntary Pro Bono Publico	0	0	0
6.2	Accepting Appointments	0	0	0
6.3	Member in Legal Svces. Org.	0	0	0
6.4	Law reform / Client Interests	0	0	0
7.1	Comm. Conc. Lawyer's Svces.	0	0	0
7.2	Advertising	0	0	0

APPENDIX II

Chart II — Break Down of Recent Federal Cases
(July 1, 1995-March 23, 1996) by ABA code "DR Number."

Total Cases: 20

CASES CITING MODEL CODE

DR Number	Subject Matter Covered by DR	Number of Cases
1-101	Maintaining Integrity & Competence	0
1-102	Misconduct	0
1-103	Disclosure of Information to Authorities	1
2-101	Publicity	0
2-102	Prof. Notices, Letterheads & Offices	0
2-103	Recommendation of Prof. Employment	0
2-104	Suggestion of Need of Legal Services	0
2-105	Limitation of Practice	0
2-106	Fee for Legal Services	1
2-107	Division of Fees Among Lawyers	1
2-108	Agreements Restricting Prac. of Lawyer	0
2-109	Acceptance of Employment	0
2-110	Withdrawal from Employment	0
3-101	Aiding Unauthorized Practice of Law	0
3-102	Dividing Fees With Non-lawyer	0
3-103	Forming Partnership with Non-lawyer	0
4-101	Preserv. of Confidences & Secrets of Client	0
5-101	Refusing Employment	1
5-102	Withdrawal: Lawyer as Witness	5
5-103	Avoid. Acquisition of Interest in Litigation	1
5-104	Limiting Bus. Rel. w/ Client	1
5-105	Refusal of Employment (conflict of interest)	7
5-106	Settling Similar Claims of Clients	0
5-107	Avoid. Influences by Others than the Client	0

DR Number	Subject Matter Covered by DR	Number of Cases
6-101	Failing to Act Competently	0
6-102	Limiting Liability to Client	0
7-101	Representing Client Zealously	0
7-102	Representing Client Within Law	0
7-103	Perf. Duty of Prosecutor or Govt Lawyer	0
7-104	Comm. w/ One of Adverse Interest (including represented party)	1
7-105	Threatening Criminal Prosecution	0
7-106	Trial Conduct	0
7-107	Trial Publicity	0
7-108	Comm. w/ or Investigation of Jurors	0
7-109	Contact w/ Witnesses	0
7-110	Contact w/ Officials	0
8-101	Action as Public Official	0
8-102	Statements: Judges & Other Adj. Officials	0
8-103	Lawyer Candidate of Judicial Office	0
9-101	Avoiding Even Appearance of Impropriety	1
9-102	Preserv. Identity & Funds of Client	0
TOTAL		**20**

APPENDIX III

Chart III — Break Down of Recent Federal Cases
(1990-1996) Cumulated by *ABA Model Rule*
Through March 23, 1996

Total Cases: 520

Model rule	Subject Matter	Civil	Criminal	Total
3.3	Candor Toward the Tribunal	9	4	13
3.4	Fairness to opposing party	13	0	13
3.5	Impart. & Decorum of Tribunal	4	4	8
3.6	Trial Publicity	0	3	3
3.7	Lawyer as Witness	40	9	49
3.8	Special respons. of Prosecutor	1	5	6
3.9	Advocate / Non adjudicative	0	0	0
4.1	Truth in Statements to Others	0	2	2
4.2	Comm. w. Pers. Rep. Couns.	41	19	60
4.2 Cases Involving DOJ		0	17	17
4.3	Dealing w/ Unrep. Person	4	3	7
4.4	Respect for Rts. of 3rd Persons	2	1	3
5.1	Resp. of Partner or Supervisor	0	0	0
5.2	Resp. of Subordinate Lawyer	0	0	0
5.3	Resp. Nonlawyer Assist.	0	0	0
5.4	Professional Independence	4	0	4
5.5	Unauthorized Practice of Law	6	1	7
5.6	Restr. on Rt. to Practice	1	0	1
5.7	Resp. Reg. Law Rel. Practice	0	0	0
6.1	Voluntary Pro Bono Publico	0	0	0
6.2	Accepting Appointments	0	0	0
6.3	Member in Legal Svces. Org.	0	0	0
6.4	Law reform / Client Interests	0	0	0
7.1	Comm. Conc. Lawyer's Svces.	1	0	1
7.2	Advertising	1	0	1

TOTAL OF CASES CLASSIFIED BASED ON MODEL RULES

Rule	Subject matter	Civil	Criminal	Total
1.1	Competence	2	0	2
1.2	Scope of Representation	4	3	7
1.3	Diligence	1	3	4
1.4	Communication	1	0	1
1.5	Fees	24	1	25
1.6	Confidentiality of Information	10	5	15
1.7	Conflict of Interest: General	77	26	103
1.8	Conflict of Int. Prohib. Trans.	9	1	10
1.9	Conflict of Interest: Fmr. Client	81	5	86
1.10	Imputed disqualification (Firm)	20	4	24
1.11	Govt. to private employment	3	10	13
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		191	46	237
1.12	Former Judge or Arbitrator	0	0	0
1.13	Organization as Client	6	0	6
1.14	Client Under a Disability	0	0	0
1.15	Safekeeping Property	3	1	4
1.16	Declining / Terminating Repr.	7	1	8
1.17	Sale of Law Practice	0	0	0
2.1	Advisor	0	0	0
2.2	Intermediary	0	0	0
2.3	Eval. for use by 3rd Persons	0	0	0
3.1	Meritorious Claims/Contentions	9	3	12
3.2	Expediting Litigation	0	0	0

Model rule	Subject Matter	Civil	Criminal	Total
7.3	Dir. Contact w/ Prospective Cl.	2	0	2
7.4	Comm. of Fields of Practice	1	0	1
7.5	Firm Names & Letterheads	0	0	0
8.1	Bar Admission & Disc. Matters	0	0	0
8.2	Judicial & Legal Officials	2	2	4
8.3	Reporting Prof. Misconduct	1	0	1
8.4	Misconduct	4	3	7
8.5	Disc. Auth.: Choice of Law	6	1	7
Totals		400	120	520

APPENDIX IV

Chart IV — Break Down of Recent Federal Cases
(1990-1996) Citing ABA Code "DR Number"
Through March 23, 1996.

Total Cases: 164

CASES CITING MODEL CODE

DR Number	Subject Matter Covered by DR	Number of Cases
1-101	Maintaining Integrity & Competence	0
1-102	Misconduct	4
1-103	Disclosure of Information to Authorities	1
2-101	Publicity	1
2-102	Prof. Notices, Letterheads & Offices	0
2-103	Recommendation of Prof. Employment	0
2-104	Suggestion of Need of Legal Services	1
2-105	Limitation of Practice	0
2-106	Fee for Legal Services	12
2-107	Division of Fees Among Lawyers	8
2-108	Agreements Restricting Prac. of Lawyer	1
2-109	Acceptance of Employment	0
2-110	Withdrawal from Employment	3
3-101	Aiding Unauthorized Practice of Law	0
3-102	Dividing Fees With Non-lawyer	3
3-103	Forming Partnership with Non-lawyer	0
4-101	Preserv. of Confidences & Secrets of Client	7
5-101	Refusing Employment	12
5-102	Withdrawal: Lawyer as Witness	30
5-103	Avoid. Acquisition of Interest in Litigation	3
5-104	Limiting Bus. Rel. w/ Client	2
5-105	Refusal of Employment (conflict of interest)	37
5-106	Settling Similar Claims of Clients	1
5-107	Avoid. Influences by Others than the Client	0

DR Number	Subject Matter Covered by DR	Number of Cases
6-101	Failing to Act Competently	0
6-102	Limiting Liability to Client	0
7-101	Representing Client Zealously	0
7-102	Representing Client Within Law	1
7-103	Perf. Duty of Prosecutor or Govt Lawyer	2
7-104	Comm. w/ One of Adverse Interest (including represented party)	26
7-105	Threatening Criminal Prosecution	2
7-106	Trial Conduct	2
7-107	Trial Publicity	0
7-108	Comm. w/ or Investigation of Jurors	0
7-109	Contact w/ Witnesses	2
7-110	Contact w/ Officials	0
8-101	Action as Public Official	0
8-102	Statements: Judges & Other Adj. Officials	0
8-103	Lawyer Candidate of Judicial Office	0
9-101	Avoiding Even Appearance of Impropriety	3
9-102	Preserv. Identity & Funds of Client	1
TOTAL		164

APPENDIX V

65 Fordham L. Rev. 355, Fordham Law Review,
October, 1996, *Who Should Regulate the Ethics of Federal Prosecutors?*,
Rory K. Little [not reprinted here]

APPENDIX VI

65 Fordham L. Rev. 429, Fordham Law Review,
October, 1996, *Who Can Best Regulate the Ethics of Federal Prosecutors — Or Who Should Regulate the Regulators?*, Fred C. Zacharias [not reprinted here]

Attendees List for the Special Study Conference

June, 1996

SPECIAL STUDY CONFERENCE
OF FEDERAL RULES GOVERNING ATTORNEY CONDUCT

WASHINGTON, D.C.

JUNE 18-19, 1996

Chair:

Professory Daniel R. Coquillette
Standing Committee

Participants:

Honorable Richard J. Arcara
Judicial Conference Committee on Criminal Law

Professor Roger C. Cramton
Cornell Law School

William Freivogel, Esquire
Attorneys' Liability Assurance Society

Ian H. Gershengorn
Special Assistant to the Deputy Attorney General

William F. Goodman, Jr., Esquire
American College of Trial Lawyers

Honorable Jamie S. Gorelick
Deputy Attorney General, Department of Justice

Jeanne P. Gray
ABA Center for Professional Responsibility

Professor Bruce A. Green
Fordham University School of Law

Professor Geoffrey C. Hazard, Jr.
The American Law Institute

Gregory P. Joseph
ABA Litigation Section

Honorable Robert E. Keeton
U.S. District Judge

Professor Jerome Larkin
National Organization of Bar Counsel/
Attorney Registration and Disciplinary Commission

Honorable Mary M. Lisi
ABA Committee on Lawyer Discipline

Assistant Professor Rory K. Little
Hastings College of the Law

Margaret C. Love
ABA Committee on Ethics and Professional Responsibility

Honorable Marvin H. Morse
Federal Bar Association

Robert S. Peck
Association of Trial Lawyers of America

Professor Gregory C. Sisk
Drake University Law School

Gerald K. Smith
Lewis and Roca

Seth P. Waxman
Associate Deputy Attorney General

Honorable Ann C. Williams
Judicial Conference Committee on Court Administration and Case Managment

Honorable Michael D. Zimmerman
Conference of Chief Justices

JUDICIAL CONFERENCE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

(Standing Committee)

Chair:

Honorable Alicemarie H. Stotler
United States District Judge

Members:

Honorable Frank H. Easterbrook
United States Circuit Judge

Honorable Phyllis A. Kravitch
United States Circuit Judge

Honorable Thomas S. Ellis, III
United States District Judge

Honorable Jamie S. Gorelick
Deputy Attorney General (ex officio)

Professor Geoffrey C. Hazard, Jr.
Director, The American Law Institute

Gene W. Lafitte, Esquire
Liskow & Lewis

Honorable James A. Parker
United States District Judge

Alan W. Perry, Esquire
Forman, Perry, Watkins & Krutz

Sol Schreiber, Esquire
Milberg, Weiss, Bershad, et al

Honorable Alan C. Sundberg
Carlton, Fields, Ward, et al

Honorable E. Norman Veasey
Chief Justice, Supreme Court of Delaware

Honorable William R. Wilson, Jr.
United States District Judge

Reporter:

Professor Daniel R. Coquillette
Boston College Law School

Consultants:

Bryan A. Garner, Esquire
LawProse, Inc.

Professor Mary P. Squirers
Boston College Law School

Joseph F. Spaniol, Jr., Esquire

Secretary:

Peter G. McCabe

CHAIRS AND REPORTERS
OF JUDICIAL CONFERENCE ADVISORY RULES COMMITTEES

APPELLATE RULES COMMITTEE

Chair:

Honorable James K. Logan
United States Circuit Judge

Reporter:

Professor Carol Ann Mooney
University of Notre Dame Law School

BANKRUPTCY RULES COMMITTEE

Chair:

Honorable Paul Mannes
Chief Judge, United States Bankruptcy Court

Reporter:

Professor Alan N. Resnick
Hofstra University School of Law

CIVIL RULES COMMITTEE

Chair:

Honorable Patrick E. Higginbotham
United States Circuit Judge

Reporter:

Professor Edward H. Cooper
University of Michigan School of Law

CRIMINAL RULES COMMITTEE

Chair:

Honorable D. Lowell Jensen
United States District Judge

Reporter:

Professor David A. Schlueter
St. Mary's University of
San Antonio School of Law

EVIDENCE RULES COMMITTEE

Chair:

Honorable Ralph K. Winter, Jr.
United States Circuit Judge

Reporter:

Professor Margaret A. Berger
Brooklyn Law School

OBSERVER FROM THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

John K. Rabiej
Chief, Rules Committee Support Office

OBSERVER FROM THE FEDERAL JUDICIAL CENTER

William B. Eldridge
Research Director

Status Report on Study of Federal Rules Governing Attorney Conduct

Professor Daniel R. Coquillette

December 4, 1996

BOSTON COLLEGE

LAW SCHOOL

TO: Committee on Rules of Practice and Procedure

FROM: Daniel R. Coquillette, Reporter

DATE: December 4, 1996

INTERIM REPORT ON STUDY OF RULES GOVERNING ATTORNEY CONDUCT

Introduction

During the past year, this Committee conducted two special invitational study conferences on federal rules governing attorney conduct. The first was on January 9-10, 1996 in Los Angeles and the second on June 18-19, 1996 in Washington, D.C. Distinguished experts attended these conferences, representing all important constituencies of the bench and bar. They were fairly unified in their conclusions, which are set out in the Committee Minutes of June 19-20, 1996 at pages 31-33, (hereafter, "Minutes").

One of these conclusions was that the Committee should seriously consider recommending a model local rule similar to that recommended by the Committee on Court Administration and Case Management (hereafter "CACM") in 1978. That rule, which was included in the Model Federal Rules of Attorney Disciplinary Enforcement (1978) as Model Rule 4, is set out in Appendix A to this Interim Report.

Before acting on this recommendation, however, this Committee requested the Reporter and the Federal Judicial Center to provide four additional studies. See Minutes, page 33. The studies are as follows: 1) a report on the actual experience in those 23 district courts that have local rules loosely based on the 1978 CACM Model Rule 4; 2) a report on the frequency with which federal courts have handled attorney discipline matters directly instead of referring them to state disciplinary authorities; 3) a report on cases on attorney conduct in the bankruptcy court system and on the impact on such cases of Section 327 of the Bankruptcy Code; and 4) a report on cases on attorney conduct in the courts of appeals, with particular attention to Fed. R. App. P. 46.

The Federal Judicial Center, with the special assistance of Marie Cordisco, has kindly undertaken Studies 1 and 2. I have undertaken Studies 3 and 4 as Reporter. All four studies should be completed in time to be circulated with the materials for the June 19-20, 1997 meeting of this Committee.

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617-552-8550 FAX 617-552-2615

PURPOSE OF THE REPORTS

The purpose of these four reports is to complete the Committee's study of local rules governing attorney conduct, and to permit action by the Committee at the June, 1997 meeting. As indicated in the Minutes, pages 31-33, the options recommended by the Special Study Conference experts are either to ask the Judicial Conference to promulgate a model local rule similar to the 1978 CACM model ("Option 4", page 32) or to recommend to the Judicial Conference a few carefully focused uniform federal rules that are limited to certain special federal interests, leaving the rest of attorney governance to state law ("Option 5", page 32). Success of negotiations between the Conference of Chief Justices and the Department of Justice on ABA Model Rule 4.2 and other matters could influence this choice. It was also left undecided as to whether any recommendations should include bankruptcy courts or courts of appeals.

Study No. 1, undertaken by the Federal Judicial Center, is designed to ascertain whether those district courts which have already adopted a version of the 1978 CACM Model Rule 4 have had a good experience with it in practice. Obviously, this report should inform the Committee's decision whether or not to recommend to the Judicial Conference promulgation of a model local rule similar to the 1978 CACM Model, or whether to recommend a different rule.

The 1978 CACM Model Rule 4 is currently incorporated in the Federal Rules of Disciplinary Enforcement. See Appendix "A" to this Interim Report. It establishes a "dynamic conformance" to state law, i.e. it incorporates the rules of professional conduct of the highest court of the state in which the district court sits, "as amended from time to time by the state court," except otherwise provided by other specific local rules of the district court. One reason for this "dynamic conformance" with state law is the ability it gives to refer problems of attorney conduct directly to state disciplinary authorities, rather than having a separate federal apparatus for investigation and enforcement.

Study No. 2 is designed to ascertain whether such referrals to state disciplinary authorities have, in general, been successful, or whether federal district courts have had to do direct federal investigations and engage in direct bar discipline. See, for example, In re Rufus Cook, 49 F.3d 263 (1995) 1995 WL 73098 (7th Cir.). This study should be of direct assistance to the Committee on the decision of whether to recommend a model rule that incorporates "dynamic conformity" with state law, such as Model Rule 4.

Study No. 3 addresses the special issues presented by bankruptcy courts and the bankruptcy bar. Throughout the two special invitational study sessions, I was greatly assisted by Gerald K. Smith, the ethics liaison from the Advisory Committee on Bankruptcy Rules, and by Patricia S. Channon, Deputy Assistant Chief, Bankruptcy Division. They have made a compelling case that no rules should be

adopted that include bankruptcy courts without careful study of actual cases in the bankruptcy courts and the effect of the Bankruptcy Code, particularly Section 327. (11 U.S.C. § 328). See also Edwin Smith et al "Ethical Standards in Bankruptcy Contexts: Disinterestedness" PL1 Order No. A4-4503 (April 22-23, 1996); Gerald Smith, et al, "Simultaneous Representation — Bankruptcy Representation — Bankruptcy Code and Applicable Ethical Rules," ABA Spring Meeting Materials for Professional Ethics in Bankruptcy Cases Subcommittee (March 29, 1996). Study No. 3 should assist the Committee in whether to include bankruptcy courts in any recommended new rules, or whether to suggest development of independent standards.

Courts of appeals also present special concerns. To begin, of course, there is already a uniform federal rule governing attorney conduct in courts of appeals, Fed. R. App. P. 46. Rule 46(b) states that a member of the bar will be subject to supervision or disbarment from the court when it is shown: (1) that the attorney has been suspended or disbarred from any other court of record or (2) has been guilty of "conduct unbecoming a member of the bar." Rule 46(b) also provides an opportunity for the attorney to show good cause why suspension or disbarment would be unjustified. Rule 46(c) states that a member of the bar practicing before the court will be subject to disciplinary action for (1) "conduct unbecoming a member of the bar" or (2) "for failure to comply with these rules or any rule of the court." Id. Rule 46(c) requires the court to provide "reasonable notice and an opportunity to show cause to the contrary" before taking any disciplinary action against the attorney. Id.

The Supreme Court has defined the phrase "conduct unbecoming a member of the bar." In In re Snyder, 472 U.S. 634, 105 S.Ct. 2874, 2881 (1985), the court interpreted this phrase to require "conduct contrary to the professional standards that shows an unfitness to discharge the continuing obligations to clients or the courts, or conduct inimical to the administration of justice." Id. The Supreme Court further stated that case law, applicable court rules and the codes of professional conduct provide guidance in determining the scope of these affirmative obligations. Id.; see also Matter of Hendrix, 986 F.2d 195, 201 (7th Cir. 1993) (Rule 11 of the Federal Rules of Civil Procedure and the Rules of Professional Conduct provide guidance as to actions sanctionable under Rule 46); In re Bithony, 486 F.2d 319, 324 (1st Cir. 1973) (complex code of behavior embodied in Code of Professional Responsibility helps define "conduct unbecoming a member of the bar."). Indeed, the Supreme Court's own rules also contain the "conduct unbecoming a member of the bar standard. See S.Ct. R. 8.

Because the Rule 46 "conduct unbecoming" standard has been read to include reference to "professional standards," seven courts of appeals have adopted local rules that provide more specific standards. See Report on Local Rules Regulating Attorney Conduct (July 5, 1995) page 8 and Chart III ("Rules of Professional Conduct in the 12 Circuit Courts"), prepared by me at the request of this Committee. Three have adopted local rules with a "dynamic conformity" to the rules adopted by the

highest court of the state in which attorney is admitted to practice. The 11th Circuit also has a rule adopting such a standard, but only to the extent that the state rules "are not inconsistent with the ABA Model Rules, in which case the model rules govern." Both the 11th Circuit and the Court of Appeals of the District of Columbia have local rules that show signs of influence from CACM Model Local Rule 4. Five courts of appeals have no local rules to supplement Rule 46, but the 4th and 8th Circuits have Internal Operating Procedures and the Clerk's Office of the 5th Circuit states that "it is longstanding court practice to look to and follow the ethical rules adopted by the highest court in the state of the attorney's domicile, while always being mindful of the ABA Model Rule." See Chart III, supra, page 2.

The uniformity of these local appellate rules — or lack thereof — has been the subject of a major study by Professor Gregory C. Sisk of Drake University, "The Balkanization of Federal Appellate Justice," about to be published in the University of Colorado Law Review. Professor Sisk believes that "Ideally, the vague standard in Federal Rule of Appellate Procedure 46 should be deleted and replaced by a new standard through the Rules Enabling Act. However, although FRAP 46 does contain a uniform national ethical standard, a model local rules approach could still be applied in this context, in the nature of a clarifying or specifying local rule giving meaningful content to the "conduct unbecoming a lawyer" standard." (Letter, June 26, 1996)

Study No. 4 will address this issue by reviewing all reported cases of attorney discipline in the courts of appeals and the reported record of all applications of F.R. App. P. 46. This study should certainly assist this Committee in deciding whether to recommend a model local rule for application in courts of appeals, as well as district courts.

CONCLUSION

These four studies are all underway. Four other extensive studies have already been completed, and are available from the Rules Committee Support Office of the Administrative Office. (Tel. 202-273-1820; Fax. 202-273-1826). These studies are:

1. "Report on Local Rules Regulating Attorney Conduct" (July 5, 1995). (This report includes charts of the local rules in effect in all district courts and courts of appeal.)

2. Marie Cordisco, "Eligibility Requirements for, and Restrictions on, Practice before the Federal District Courts," Federal Judicial Center, (November 7, 1995). (This excellent report describes the rules governing attorney admission in all federal district courts.)

3. "Study of Recent Cases (1990-1995) Involving Rules of Attorney Conduct" (December 1, 1995). (This report contains charts breaking down all recent federal cases by rule and subject categories.)

4. "Supplement to Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct" (May 14, 1996). (This study includes all reported federal cases between July 1, 1995 and March 23, 1996).

Together, the eight studies will cover all aspects of rules governing attorney conduct in all federal courts. Assistance or suggestions from Committee members is always welcome. Please feel free to contact the Federal Judicial Center, Care of Marie Cordisco, or myself, at the following addresses:

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The Federal Judicial Center
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APPENDIX A

Proposed Model Local Rule, Committee on Court Administration and Case Management, Judicial Conference in the United States. From "Rules of Attorney Disciplinary Enforcement" (1978).

MODEL RULE (4)

Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate 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. The Code of Professional Responsibility [or Rules of Professional Conduct]** adopted by this court is the Code of Professional Responsibility [or Rules of Professional Conduct]** adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

MS1

** Bracketed language is commonly found in districts using this model rule after the adoption of the ABA Model Rules of Professional Conduct in 1983.

Appendix II

Draft Minutes
Standing Committee Report

June 19-21, 1996

Mr. Lafitte suggested that the report be "received" by the committee for its own, internal consideration. **Justice Veasey recommended that the committees "receive" the report rather than "accept" it. Professor Hazard accepted this formulation as an amendment to his motion.**

Judge Ellis stated that he wanted assurance that the record reflect that the subcommittee report had been received for consideration and discussion, but that the committee had not yet acted on it. Judge Stotler pointed out that the full committee would look at the document again at the June 1996 meeting and that the members should read the latest draft carefully and submit to the reporter any comments they may have.

Judge Stotler called for the vote on Professor Hazard's amended motion to receive the report and discharge the committee. The committee approved the motion by a vote of 7-3.

SPECIAL STUDY CONFERENCE ON ATTORNEY CONDUCT

The committee sponsored a special study conference to discuss attorney conduct issues on Wednesday, January 11, 1996. Approximately 25 guests were invited to participate, including a cross-section of interested and knowledgeable attorneys, professors, representatives of professional organizations, and representatives of other Judicial Conference committees. Because of the blizzard in the East and major disruption of air travel, several of the invitees were unable to be present.

Professor Coquillette reported that the special study conference had been very frank and useful. He added that he had spoken to the Department of Justice and others about holding another special study conference and made it clear that the committee would make no decisions on attorney conduct until after the second special study conference. He emphasized the sensitive nature of attorney conduct issues and advised that the committee move with caution.

FUTURE COMMITTEE MEETINGS

Judge Stotler reported that the next meeting of the committee would be held on Wednesday through Friday, June 19-21, 1996, in Washington, D.C. The meeting would be preceded on Tuesday, June 18, by another conference on attorney conduct.

The committee fixed January 8-10, 1997 as the date for the following meeting. The location for the meeting would be decided in the discretion of the chair.

Respectfully, submitted,

Peter G. McCabe,
Secretary

Study of Federal Cases (1990-1997) Involving Federal Rules of Appellate Procedure 46

Standing Committee Report
June 19 - 20, 1997

I. INTRODUCTION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal courts. "Option One" is the adoption of a model local rule similar to Model Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management ("CACM") in 1978. "Option Two" is the adoption of uniform rules of attorney conduct applying to specific "core" areas of federal concern, with the provision that all other areas of attorney conduct are governed by state standards. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995; Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996; and Supplement to Study of Recent Federal Cases Involving Rules of Attorney Conduct (1995-1996), May 14, 1996. At the request of the Committee, I have researched cases dealing with Federal Rule of Appellate Procedure 46 to determine what effect, if any, the proposed changes will have on this rule and on the practice of Courts of Appeals.

I am again deeply indebted to my two most talented and industrious research assistants, James J.G. Dimas and Thomas J. Murphy, whose hard work and intelligence are evident on every page of this study. In addition, I have benefited greatly from discussion with members of the Advisory Committee on Appellate Rules, including the Honorable James K. Logan, Chairman, and the Committee's Reporter, Professor Carol Ann Mooney, Vice President and Associate Provost of Notre Dame. Any Recommendations are, however, my own. In addition, any revision to Rule 46 itself, or any model rules designed for Courts of Appeals, should be considered by the Advisory Committee on Appellate Rules before action is taken.

II. DISCUSSION

Rule 46 is the uniform federal rule governing attorney conduct in the courts of appeals. Fed. R. App. P. 46.[1] It is similar to Rule 8 of the Supreme Courts Rules,[2]

---

[1] Federal Rule of Appellate Procedure 46 provides:

Rule 46. Attorneys

(a) Admission to the Bar of a Court of Appeals; Eligibility; Procedure for Admission. An attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or by a United States district court (including the district courts for the Canal Zone, Guam, and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

I, _____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and accordingly to law; and that I will support the Constitution of the United States.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) Suspension or Disbarment. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be subject to suspension or disbarment by the court. The member shall be afforded the opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) Disciplinary Power of the Court Over Attorneys. A court of appeals may, after reasonable notice and the opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member the bar or for failure to comply with these rules or any rule of the court.

[2] Supreme Court Rule 8 provides:

Rule 8. Disbarment and Disciplinary Action.

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

which governs attorney conduct in the Supreme Court of the United States. Rule 46(b) states that a member of the bar will be subject to supervision or disbarment from the court when it is shown: (1) that the attorney has been suspended or disbarred from any other court of record or (2) has been guilty of "conduct unbecoming a member of the bar." Fed. R. App. P. 46(b). Rule 46(b) also provides an opportunity for the attorney to show good cause why suspension or disbarment would be unjustified. Rule 46(c) states that a member of the bar practicing before the court will be subject to disciplinary action for (1) "conduct unbecoming a member of the bar" or (2) "for failure to comply with these rules or any rules of the court." Rule 46(c) also requires the court to provide "reasonable notice and an opportunity to show good cause to the contrary" before taking any disciplinary action against the attorney.

A. The In re Snyder Standard. See Appendix IV.

The Supreme Court has defined the phrase "conduct unbecoming a member of the bar." See In re Snyder, 472 U.S. 634, 645, 105 S. Ct. 2874 (1985), attached as Appendix IV, infra. In the Snyder case, the Supreme Court interpreted this phrase to require "conduct contrary to professional standards that show unfitness to discharge the continuing obligations to clients or the courts, or conduct inimical to the administration of justice." Id. at 645. The Supreme Court further stated that "case law, applicable court rules and 'the lore of the profession', as embodied in codes of professional conduct" provide guidance in determining the scope of these affirmative obligations. Id. at 645. See also Matter of Hendrix, 986 F.2d 195, 201 (7th Cir. 1993) (Fed. R. Civ. P. 11 and ABA Model Rules provide guidance as to conduct sanctionable under Rule 46); In re Bithony, 486 F.2d 319, 324 (1st Cir. 1973) (complex code of behavior embodied in the ABA Code helps define "conduct unbecoming a member of the bar").

B. Local Rules Interpreting Rule 46. See Appendices V, VII.

The Rule 46 "conduct unbecoming" standard has been consistently read to include reference to "professional standards" and "codes of professional conduct", including

federal local rules governing attorney conduct. Seven courts of appeals have adopted such local rules. See Report on Local Rules Regulating Attorney Conduct in the Federal Courts (July 5, 1995), 8. Four courts of appeal have adopted local rules that have a "dynamic conformity" to the rules of attorney conduct adopted by the highest court of the state in which a particular attorney is admitted to practice. See id. Chart III, set out as Appendix VII, infra. The 11th Circuit has also adopted such a standard, but only to the extent that the state rules "are not inconsistent with the ABA Model Rules, in which case the ABA model rules govern." See Chart III, Appendix VII, infra. Furthermore, both the 11th Circuit and the Court of Appeals for the District of Columbia have local rules that show signs of influence from CACM Model Local Rule IV. See Report on Local Rules Regulating Attorney Conduct in the Federal Courts, Appendix V (July 5, 1995) (containing Model Local Rule IV). Two other courts of appeals have local rules that refer directly to ABA models. The 2nd Circuit's local rule refers to the ABA Code, which is still in effect in the state of New York, and the 6th Circuit's local rule refers to the ABA Model Rules and the Canons of Ethics. See Chart III, Appendix VII, infra.

Six courts of appeals have no local rules to supplement Rule 46.[3] The 8th Circuit has an Internal Operating Procedure which refers to the state standard in which the attorney is admitted to practice. The Clerk's Office of the 5th Circuit states that "it is long-standing practice to look to and follow the ethical rules adopted by the highest court in the state of the attorney's domicile, while always being mindful of the ABA Model Rules." See Chart III, Appendix VII, infra. The 7th Circuit has "Standards for Professional Conduct Within the Seventh Federal Judicial Circuit" which are neither based on an ABA model nor a state standard, but do provide additional guidance. See Jeffrey A. Parness "Enforcing Professional Norms for Federal Litigation Conduct: Achieving Reciprocal Cooperation," 60 Albany Law Review 303 (1996), attached as Appendix V, infra.

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[3] The United States Court of Appeals for the Federal Circuit is one of six courts of appeals which do not have local rules supplementing Rule 46.

C. Court of Appeals Cases on Rule 46. See Appendix I.

Our research shows that, since 1990, 37 decisions of the federal courts of appeals, have cited Rule 46, or a local rule which supplements it.[4] See Appendix I, infra, Chart I, Breakdown of Recent Federal Appellate Cases Citing Federal Rule of Appellate Procedure 46 (1990-1997). Most of the decisions involve misrepresentations of law or fact to a tribunal, maintaining frivolous appeals, failure to prosecute criminal appeals with due diligence, or failure to follow court rules. See Hendrix, supra, 986 F.2d at 200-01 (Court sanctioned attorney under Rule 46 for failure to cite contrary authority in appellate brief); U.S. v. Williams, 952 F.2d 418, 421, cert. denied 506 U.S. 850 (1992) (court publicly censured attorney for misstatements of record in appellate brief thus violating ABA Model Rule 3.3); U.S. v. Song, 902 F.2d 609, 610 (7th Cir. 1990) (Court sanctioned attorney under Rule 46 for lack of due diligence in filing criminal appeal); In re Solerwitz, 848 F.2d 1573, 1580-81 (Fed. Cir. 1988), cert. denied, 488 U.S. 1004 (1989) (Court sanctioned attorney under Rule 46 for filing over 100 frivolous appeals). The rest of the decisions involve other types of attorney misconduct, including misappropriation of a client's funds, conduct by an attorney intended to disrupt a tribunal, and false accusations concerning a judge's qualifications and integrity. See Appendix I, infra Chart I, Breakdown of Recent Federal Appellate Cases Citing Federal Rule of Appellate Procedure 46 (1990-1997). See also Nordberg, Inc. v. Telsmith, Inc., 82 F.3d 394, 398-99 (Fed.Cir. 1996) (Court stated that lawyer who verbally attacked opposing counsel during oral argument can be sanctioned under Rule 46); Tyson v. Jones & Laughlin Steel, 958 F.2d 756, 763 (7th Cir. 1993) (Court warned attorney through written opinion that he can be sanctioned for making unsupported charges against a judge in his appellate brief).

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[4] The exact search in the CTA database was:

> "Federal Rule of Appellate Procedure 46" "F.R.A.P. 46" "Fed. R. App. P. 46" "Fed. R. App. P. 46" (Rule /5 46 /P (Suspen! Disbar! Sanct! "Conduct Unbecoming")) & DA(AFT 1/1/1990)

A typical example is in Matter of Mix, 901 F.2d 1431 (7th Cir. 1990). There the 7th Circuit sanctioned an attorney for failure to prosecute a criminal appeal with due diligence. Id. at 1432. The attorney had let deadlines pass without filing motions for extensions, presented a poor quality brief, and failed to be available for oral argument. Id. at 1431-1432. The court publicly censured the attorney as a message to other members of the 7th Circuit bar that "lackadaisical work is not acceptable." Id. at 1432-33. Another good example is in Matter of Hendrix, supra, 986 F.2d 195 (7th Cir. 1993). There the court sanctioned counsel for filing an appellate brief without citing contrary authority. Id.at 200. (The attorney had failed to cite a reported decision within the circuit which the court would have had to overrule for the attorney's client to succeed on appeal.) The court directed counsel to submit a statement why he should not be sanctioned under Rule 46(c). The charges were 1) violating Fed. R. Civ. P. 11 by failing to make a reasonable inquiry as to whether a position is warranted by existing law and, 2) possibly violating ABA Model Rule 3.3 for intentionally concealing dispositive authority. Id. at 201.

In U.S. v. Williams, supra, 952 F.2d 418 the Court of Appeals for the District of Columbia publicly censured a government attorney for violating ABA Model Rule 3.3 by making material misstatements of the public record in an appellate brief. Id.at 421. The court publicly reprimanded the attorney. It also warned that any further similar conduct by the government would invoke the full extent of the court's sanctioning power under Rule 46. Id. at 422. In Guentchev v. I.N.S., 77 F.3d 1036, 1039 (7th Cir. 1996), the court ordered a show cause hearing why an attorney should not be suspended from practice for failure to follow court rules. There, an attorney submitted a brief without attaching the immigration judge's opinion as required by Fed. R. App. P. 30. Id. at 1038. The court ordered a show cause hearing to have the lawyer account for his failure to competently represent his client. Id. at 1039.

As these examples demonstrate, Rule 46 cases do occur, and they frequently require reference to the ABA Model Rules and the ABA Code, or other standards. While

such cases are not numerous, there appears to be no intrinsic reason for the great disparity between circuit court local rules — or lack therefore — interpreting Rule 46. Professor Gregory C. Sisk has recently completed a major study of the proliferation of disparate local rules among courts of appeals. See Gregory C. Sisk, "The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits," 68 Colorado L. Rev. 1 (1997). (Copies have already been distributed to members of the Standing Committee). Professor Sisk has written to the Committee that:

> "Ideally, the vague standard of Federal Rule of Appellate Procedure 46 should be deleted and replaced by a new standard through the Rules Enabling Act. However, although FRAP 46 does contain a uniform national ethical standard, a model local rules approach could still be applied in this context, in the nature of a clarifying or specifying local rule giving meaningful context to the 'conduct unbecoming a lawyer' standard."

(Letter, June 26, 1996)

While local rules governing attorney conduct are not, in Sisk's view, the worst examples of appellate rule "balkanization," nothing in the reported cases indicates any reason why a simpler, more uniform approach would present difficulties.

III. CONCLUSION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal courts. "Option One" would be the adoption of a model local rule by the Judicial Conference similar to Rule IV of the Federal Rules of Disciplinary Enforcement, first recommended by the Committee on Court Administration and Case Management in 1978. "Option Two" would be the adoption of uniform rules of attorney conduct, pursuant to the Rules Enabling Act, applying to specific "core" areas of federal concern, with the provision that all other areas of attorney conduct are to be governed by state standards. See the reports cited at Section I, supra. The adoption of either option in the federal courts of appeals would provide concrete, meaningful standards governing attorney conduct, instead of the vague "conduct unbecoming" standard of Rule 46. Either option would also follow the trend of the majority of circuit courts, which have adopted local rules, internal operating procedures or other standards to clarify

Rule 46. Finally, either option would be consistent with the Supreme Court's decision in Snyder, supra, holding that supplemental rules are often necessary in determining the scope of the "conduct unbecoming" standard. See In re Synder, supra, 472 U.S. 634, at 645, set out at Appendix IV, infra.

A. "Option One." Model Local Rule. See Appendix II.

"Option One" would be a model local rule recommended by the Judicial Conference and adopted by individual courts pursuant to 28 U.S.C. § 2071. Similar local rules are already in existence in the five courts of appeals. These look to "dynamic conformity" to the rules provided by the highest court in the state in which the attorney is admitted to practice. See Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit, (effective October, 1992, amended January, 1996) and Report on Local Rules Regulating Attorney Conduct in the Federal Courts (July 5, 1995) page 8 and Chart III, Appendix VII, infra. But most of these existing rules have no choice of law standard for attorneys licensed to practice in more than one state. See Chart III, infra. Furthermore, these rules do not give standards of attorney conduct for cases arise in district courts and are appealed to the circuit courts. See id. Presumably, the lower court's standards of attorney conduct should be applied in these types of cases. See e.g. U.S. v. Balter, 91 F.3d 427, 435 (3rd Cir. 1996) (applying district court's local rules of attorney conduct on appeal as to whether U.S. Attorney had violated anti-contact rule).

Thus, the Standing Committee should consider proposing an improved, new model local rule for the courts of appeals. Such a rule should provide a standard of attorney conduct for cases appealed from a district court and a choice of law standard for attorneys who practice in multiple states. For the benefit of the Committee, I have included an example of such a model local rule in Appendix II, infra.[5] This model local rule closely

[5]The Standing Committee requested that I not submit specific proposed rules until this study was completed, and further studies done in relation to Bankruptcy Courts and to actual District Court practice (now being completed by the Federal Judicial Center). Thus the rules set out here are for example only, and have not been reviewed by either the Advisory Committee or Appellate Rules on the Style Subcommittee. The Advisory Committee has, however, been advised of the general approaches under consideration, and has

follows Model Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management in 1978.[6] In particular, part A(2) of the proposed model local rule traces CACM Model Rule IV by imposing a "dynamic conformity" state standard of attorney discipline for issues of misconduct before the courts of appeals. In addition, part A(2) implements a choice of law standard similar to ABA Model Rule 8.5(b)(2) for situations where the attorney is admitted to practice in more than one state. Such a provision provides that an attorney is governed by the state standard of the state in which the attorney principally practices unless the conduct has its predominant effect on another state where licensed to practice. In that case, the rules of the other state govern. Finally, part B of the model local rule provides clarification regarding the range of sanctions a court of appeals may impose on an attorney, while not limiting the court's ability to provide alternative sanctions. This section was modeled after similar language in the Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit, supra.

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expressed general concurrence, subject to future review. The two other requested studies should be completed by the next Committee meeting on June 18-20, 1997.

[6]Twenty five federal courts currently have local rules that reflect in some way the wording of Model Rule IV, as proposed in 1978. These courts consist of 23 district courts and two courts of appeals, the 11th Circuit and the Court of Appeals for the District of Columbia. Twelve of these courts refer to the appropriate State Supreme Court's version of the ABA Model Rules of Professional Conduct. Eight refer to the appropriate State Supreme Court's version of the ABA Code of Professional Responsibility. Five adopt the language, but not the spirit of Rule IV. Of these five, two use very similar language to Rule IV, but refer to the ABA Model Rules and not the appropriate State Rules. The other three refer to a combination of the Federal Rules of Disciplinary Enforcement, the State Supreme Court's standard and either the ABA Model Code or ABA Model Rules as their standard of attorney conduct. The following chart lists the 25 courts by their actual standard of attorney conduct:

State Rules Based on ABA Model Rules	State Rules Based on the ABA Codes	ABA Model Rules Directly	Combination of State Rules and Other Standards
E.D.AR	D.C. Appeals	D.PR	11th Cir.
W.D.AR	D.MA	D.DE	N.D.W.VA
S.D.IL	D.ME		S.D.W.VA
E.D.MI	D.NE		
D.MN	S.D.OH		
D.NH	E.D.VA		
D.NJ	W.D.VA		
M.D.NC	D.VT		

B. "Option Two:" Uniform Federal Rules of Attorney Conduct. See Appendices III, VI

"Option Two" achieves a similar result by a different means — directly amending Fed. R. App. 46. Of course, this would require the full process of the Rules Enabling Act, 28 U.S.C. § 2072-2074. While a model local rule could be directly promulgated by the Judicial Conference, a change in Fed. R. App. 46 would require at least two and one half years, and must be submitted to Congressional examination pursuant to 28 U.S.C. § 2074.

Nevertheless, direct amendment to Fed. R. App. 46 may be desirable, particularly if it is decided to adopt a uniform Federal Rules of Attorney Conduct for the district courts. Such a change would probably be achieved in the district courts by amending Fed. R. Civ. P. 83, and adding an Appendix "A", containing the new Federal Rules of Attorney Conduct. (An example of how this could be done, provided for discussion only, is provided in Appendix VI, infra.)

For the benefit of the Standing Committee, an example of such a revised Rule 46 has been drafted to reflect this option. See Appendix III, infra. It includes an appropriate standard for cases involving attorney conduct adjudicated in the district courts and appealed to the circuit courts, and a choice of law standard to determine the relevant state standard for attorneys licensed to practice in more than one state. The "revised" example of Rule 46 is almost identical to the original Rule 46 in sections (a), (b) and (c). But there is one major change. The old "conduct unbecoming" standard is removed, and replaced by references to "the courts standards for attorney conduct." These "standards" are supplied by a new section (d), "Standards for Attorney Conduct."

The new Rule 46(d)(1) in Appendix III would require a court of appeals to apply the district court standards of attorney conduct to any case appealed to the circuit court. This section was modeled after ABA Model Rule 8.5(b)(1). The new Rule 46(d)(2) would also provide that in all other cases the relevant state standard of attorney conduct applies, except as specifically provided in any new Federal Rules of Attorney Conduct. The new

Rule 46(d)(2) would also provide a choice of law standard similar to ABA Model Rule 8.5(b)(2) for those attorneys licensed to practice in more than one state. Thus, an attorney would be governed by the state standard where that attorney principally practices unless the attorney's conduct has its predominant effect in another state where the attorney is also licensed to practice. If so, the rules of the other state govern.

Attorney conduct is primarily a problem for district courts, where there are many more reported cases. There are relatively few cases in the courts of appeals. Given that both the model local rule option and the uniform rule option are reasonable solutions for the courts of appeals, the circuits should probably follow whatever option is eventually adopted for the district courts. Either a new model local rule or a new uniform federal rule will provide better guidance for attorneys practicing before the courts of appeals than the existing Rule 46 jurisprudence. The first could be done through a model local rule which supplements Rule 46, pursuant to In re Snyder, supra, while the second could only be done by directly amending Rule 46. Again, the option ultimately recommended for courts of appeals should depend primarily on the Committee's judgment about what is best for the district courts.

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Appendix I, Chart I

Breakdown of Recent Federal Appellate Cases Citing Federal Rule of Appellate Procedure 46 (1990-1997)

BREAKDOWN OF RECENT FEDERAL APPELLATE CASES CITING FEDERAL RULE OF APPELLATE PROCEDURE 46 (1990-97)[1]

Type of Attorney Misconduct	Corresponding Model Rule[2]	Number of Cases
Misrepresentation of Law or Fact to the Court	Rule 3.3	8
Failure to Prosecute Criminal Appeals with Due Dilligence	Rule 1.3	5
Misappropriation of Clients' Funds	Rule 1.15	3
Failure to Pay Court Fines	Rule 3.4	3
Failure to Follow Court Rules	Fed.R.App.P. 46(c)	7
Filing of Frivolous Appeals	Rule 3.1	7
Unauthorized Practice of Law	Rule 5.5	1
False Statements Concerning a Judge	Rule 8.2	1
Disruptive Conduct in a Courtroom	Rule 3.5	1
Confidentiality	Rule 1.6	1
TOTAL CASES		37

[1]The 37 cases cite Federal Rule of Appellate Procedure 46 or a local rule which supplements it.

[2]This category was created to show the comparable Model Rule of Professional Conduct for the types of attorney misconduct sanctioned under Rule 46.

Appendix II

Proposed Model Local Rule Governing Attorney Conduct for Federal Courts of Appeals

PROPOSED MODEL LOCAL RULE GOVERNING ATTORNEY CONDUCT FOR THE FEDERAL COURTS OF APPEALS[1]

A. STANDARDS FOR ATTORNEY CONDUCT. The Court's standards for attorney conduct are as follows:

(1) *Proceedings Before District Court.* For any act or omission by an attorney in a proceeding in a district court before which the attorney has been admitted to practice, the rules of attorney conduct of that district court must apply unless the district court's rules provide otherwise; and

(2) *All Other Acts or Omissions by Attorney.* For any other act or omission by an attorney admitted to practice before the Court, the standards for attorney conduct are:

(a) if the attorney is licensed to practice only in one state, the rules of that state as currently adopted by its highest court, or

(b) if the attorney is licensed to practice in more than one state, the rules of the state in which the attorney principally practices as currently adopted by its highest court; provided, however, that if particular conduct clearly has its predominant effect in another state in which the attorney is licensed to practice, then the rules of that state as currently adopted by its highest court.

B. SANCTIONS. Discipline for acts or omissions by an attorney which violate the Court's standards for attorney conduct may consist of disbarment, suspension, reprimand, monetary sanctions (including payment of the costs of the disciplinary proceedings), disqualification, 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 sanctions the Court may deem appropriate.

[1]This proposed rule is for example only, and has not been reviewed by the Subcommittee on Style.

NOTE

Part A(1) provides that courts of appeals will apply the district courts' standards of attorney discipline for any misconduct which occurs in a proceeding before the lower court. This section closely follows the language of Model Rule 8.5(b)(1) of the American Bar Association's Model Rules of Professional Conduct and Model Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management. Part A(2) traces Model Local Rule IV by imposing the state standard of attorney discipline to be applied in the federal courts of appeals for all other attorney misconduct. The state standard would be ""dynamic," i.e. the rules currently adopted by the state's highest court. Additionally, Part A(2) also implements a choice of law standard similar to ABA Model Rule 8.5(b)(2) for situations where the attorney is admitted to practice law in more than one state.

Part B provides clarification regarding the range of sanctions a court may impose on an attorney, while not limiting the court's ability to provide alternative sanctions. This language closely follows the Standards of Attorney Conduct of the Court of Appeals for the Eleventh Circuit.

Some courts of appeals may wish to supplement this model rule by a local rule permitting temporary suspension of attorneys. A good example is Interim Local Rule 46.6 of the First Circuit, which is now being considered for permanent adoption. It reads as follows:

> Interim Rule 46.6 - Temporary Suspension of Attorneys. When it is shown to the Court of Appeals that any member of its bar has been suspended or disbarred from practice by a final decision issued by any other court of record, or has been found guilty of conduct unbecoming of a member of the bar of the court, the member may be temporarily suspended from representing parties before this court pending the completion of proceedings initiated under Fed. R. App. P. 46 and the Rules of Disciplinary Enforcement of the Court of Appeals for the First Circuit.

Appendix III

Proposed Federal Rule of Appellate Procedure 46

PROPOSED AMENDED FEDERAL RULE OF APPELLATE PROCEDURE 46[1]

(a) ADMISSION TO THE BAR OF COURT OF APPEALS; ELIGIBILITY; PROCEDURE FOR ADMISSION. An attorney admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or a United States district court (including the district court for the Canal Zone, Guam and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

> I, ..., do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to the law; and that I will support the Constitution of the United States.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) SUSPENSION OR DISBARMENT. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, *or has violated the court's standards of attorney conduct,* the member will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) DISCIPLINARY POWER OF THE COURT OVER ATTORNEYS. A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any member of the bar who practices before it *and violates the court's standards of attorney conduct or fails* to comply with these rules or any rule of the court.

(d) STANDARDS FOR ATTORNEY CONDUCT. The court's standards for attorney conduct are as follows:

> *(1) Proceedings Before District Court. For any act or omission of an attorney before a district court of this circuit which the attorney has been admitted to practice, the rules of attorney conduct of that district court must apply unless the rules of that district court rules otherwise provide; and*

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[1] New language is in italics. This proposed rule is for example only, and has not been reviewed by the Advisory Committee on Appellate Rules or the Subcommittee on Style. The reference to the "Federal Rules of Attorney Conduct" in Appendix A of Rule 83 of the Federal Rules of Civil Procedure is, of course, purely hypothetical, and assumes that the Rules Committees decide to adopt uniform rules of attorney conduct for the district courts. See Appendix VI, supra, for an example "Federal Rules of Attorney Conduct."

(2) <u>All Other Acts and Omissions by Attorney</u>. For any other act or omission of an attorney admitted to practice before the court, except as otherwise provided by specific rule of the Federal Rules of Attorney Conduct located in Rule 83, Appendix A, Federal Rules of Civil Procedure, the standards for attorney conduct are:

(A) if the attorney is licensed to practice only in one state, the rules of that state as currently adopted by its highest court, or

(B) if the attorney is licensed to practice in more than one state, the rules of the state in which the attorney principally practices as currently adopted by its highest court apply; provided, however, that if particular conduct clearly has its predominant effect in another state in which the attorney is licensed to practice, then the rules of that state as currently adopted by its highest court.

NOTES

All italicized language are proposed amendments to Federal Rule of Appellate Procedure 46.

Rule 46(d)(1) follows closely Section (A)(1) of the *Proposed Model Local Rule Governing Attorney Conduct in the Federal Courts of Appeals*. See Appendix II, infra. It provides that the courts of appeals will apply the district courts' standards of attorney discipline for any misconduct which occurs in the lower court. This section is also modeled after Rule 8.5(b)(1), American Bar Association Model Rules of Professional Conduct and Model Local Rule IV of the Federal Rules of Disciplinary Enforcement, as recommended in 1978 by the Committee in Court Administration and Case Management.

Rule 46(d)(2) is also similar to Section A(2) of the *Proposed Model Local Rule Governing Attorney Conduct in the Federal Courts of Appeals*. See Appendix II, infra. It does, however, make specific provision for adopting uniform *Federal Rules of Attorney Conduct*. See Appendix VI, supra. The relevant state standard would govern all other attorney misconduct. The relevant state standard is determined by a choice of law provision similar to American Bar Association Model Rule 8.5(b)(2).

Appendix IV

In re Snyder

472 U.S. 634 (1985)

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IN RE SNYDER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 84–310. Argued April 16, 1985—Decided June 24, 1985

Petitioner, who was appointed by the Federal District Court for the District of North Dakota to represent a defendant under the Criminal Justice Act (Act), was awarded almost $1,800 by the court for services and expenses in handling the assignment. As required by the Act with regard to expenditures for compensation in excess of $1,000, the Chief Judge of the Court of Appeals for the Eighth Circuit reviewed the claim, found it to be insufficiently documented, and returned it with a request for additional documentation. Because of computer problems, petitioner could not readily provide the information in the requested form, but filed a supplemental application. The Chief Judge's secretary again returned the application, stating that petitioner's documentation was unacceptable; petitioner then discussed the matter with the District Judge's secretary, who suggested that he write a letter expressing his views. In October 1983, petitioner wrote a letter to the District Judge's secretary in which (in an admittedly "harsh" tone) he declined to submit further documentation, refused to accept further assignments under the Act, and criticized the administration of the Act. Viewing the letter as seeking changes in the process for providing fees, the District Judge discussed those concerns with petitioner and then forwarded the letter to the Chief Judge. In subsequent correspondence with the District Judge, the Chief Judge of the Circuit stated, *inter alia*, that he considered petitioner's October letter to be "totally disrespectful to the federal courts and to the judicial system," and that unless petitioner apologized an order would be issued directing petitioner to show cause why he should not be suspended from practice in the Circuit. After petitioner declined to apologize, an order was issued directing petitioner to show cause why he should not be suspended for his "refusal to carry out his obligations as a practicing lawyer and officer of [the] court" because of his refusal to accept assignments under the Act; however, at the subsequent hearing the Court of Appeals focused on whether petitioner's October letter was disrespectful, and petitioner again refused to apologize for the letter. Ultimately, the Court of Appeals suspended petitioner from the practice of law in the federal courts in the Circuit for six months, indicating that its action was based on petitioner's "refusal to show continuing respect for the court," and specifically finding that petitioner's "disrespectful statements" in his October letter as to the court's

administration of the Act constituted "contumacious conduct" rendering him "not presently fit to practice law in the federal courts."

Held: Petitioner's conduct and expressions did not warrant his suspension from practice. Pp. 642–647.

(a) Under Federal Rule of Appellate Procedure 46, which sets forth the standard for disciplining attorneys practicing before the courts of appeals, an attorney may be suspended or disbarred if found guilty of "conduct unbecoming a member of the bar of the court." The quoted phrase must be read in light of the complex code of behavior to which attorneys are subject, reflecting the burdens inherent in the attorney's dual obligations to clients and to the system of justice. In this light, "conduct unbecoming a member of the bar" is conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice. Pp. 642–645.

(b) Petitioner's refusal to submit further documentation in support of his fee request could afford a basis for declining to award a fee, but the record does not support the Court of Appeals' action suspending petitioner from practice; the submission of adequate documentation was only a prerequisite to the collection of his fee, not an affirmative obligation required by his duties to a client or the court. Nor, as the Court of Appeals ultimately concluded, was petitioner legally obligated under the terms of the local plan to accept cases under the Act. A lawyer's criticism of the administration of the Act or of inequities in assignments under the Act does not constitute cause for suspension; as officers of the court, members of the bar may appropriately express criticism on such matters. Even assuming that petitioner's October letter exhibited an unlawyerlike rudeness, a single incident of rudeness or lack of professional courtesy—in the context here—does not support a finding of contemptuous or contumacious conduct, or a finding that a lawyer is not presently fit to practice law in the federal courts; nor does it rise to the level of "conduct unbecoming a member of the bar" warranting suspension from practice. Pp. 645–647.

734 F. 2d 334, reversed.

BURGER, C. J., delivered the opinion of the Court, in which all other Members joined except BLACKMUN, J., who took no part in the decision of the case.

David L. Peterson argued the cause for petitioner. With him on the briefs were *Robert P. Bennett, John C. Kapsner, Charles L. Chapman,* and *Irvin B. Nodland.*

John J. Greer argued the cause for respondent United States Court of Appeals for the Eighth Circuit. With him on the brief was *Ross H. Sidney*.*

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to review the judgment of the Court of Appeals suspending petitioner from practice in all courts of the Eighth Circuit for six months.

I

In March 1983, petitioner Robert Snyder was appointed by the Federal District Court for the District of North Dakota to represent a defendant under the Criminal Justice Act. After petitioner completed the assignment, he submitted a claim for $1,898.55 for services and expenses. The claim was reduced by the District Court to $1,796.05.

Under the Criminal Justice Act, the Chief Judge of the Court of Appeals was required to review and approve expenditures for compensation in excess of $1,000.[1] 18 U. S. C. § 3006A(d)(3). Chief Judge Lay found the claim insufficiently documented, and he returned it with a request for additional information. Because of technical problems with his computer software, petitioner could not readily provide the information in the form requested by the Chief Judge. He did, however, file a supplemental application.

The secretary of the Chief Judge of the Circuit again returned the application, stating that the proffered documentation was unacceptable. Petitioner then discussed the matter with Helen Monteith, the District Court Judge's secretary, who suggested he write a letter expressing his view. Peti-

Charles S. Sims filed a brief for the American Civil Liberties Union as *amicus curiae* urging reversal.

Frank E. Bazler and *Albert L. Bell* filed a brief for the Ohio State Bar Association as *amicus curiae*.

[1]The statutory limit has since been raised to $2,000. 18 U. S. C. § 3006A(d)(2) (1982 ed., Supp. III).

tioner then wrote the letter that led to this case. The letter, addressed to Ms. Monteith, read in part:

> "In the first place, I am appalled by the amount of money which the federal court pays for indigent criminal defense work. The reason that so few attorneys in Bismarck accept this work is for that exact reason. We have, up to this point, still accepted the indigent appointments, because of a duty to our profession, and the fact that nobody else will do it.
>
> "Now, however, not only are we paid an amount of money which does not even cover our overhead, but we have to go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this work. We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.
>
> "Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.
>
> "Thank you for your time and attention." App. 14–15.

The District Court Judge viewed this letter as one seeking changes in the process for providing fees, and discussed these concerns with petitioner. The District Court Judge then forwarded the letter to the Chief Judge of the Circuit. The Chief Judge in turn wrote to the District Judge, stating that he considered petitioner's letter

> "totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts." *Id.*, at 16.

The Chief Judge expressed concern both about petitioner's failure to "follow the guidelines and [refusal] to cooperate with the court," and questioned whether, "in view of the let-

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ter" petitioner was "worthy of practicing law in the federal courts on any matter." He stated his intention to issue an order to show cause why petitioner should not be suspended from practicing in any federal court in the Circuit for a period of one year. *Id.*, at 17–18. Subsequently, the Chief Judge wrote to the District Court again, stating that if petitioner apologized the matter would be dropped. At this time, the Chief Judge approved a reduced fee for petitioner's work of $1,000 plus expenses of $23.25.

After talking with petitioner, the District Court Judge responded to the Chief Judge as follows:

> "He [petitioner] sees his letter as an expression of an honest opinion, and an exercise of his right of freedom of speech. I, of course, see it as a youthful and exuberant expression of annoyance which has now risen to the level of a cause. . . .
>
> "He has decided not to apologize, although he assured me he did not intend the letter as you interpreted it." *Id.*, at 20.

The Chief Judge then issued an order for petitioner to show cause why he should not be suspended for his "refusal to carry out his obligations as a practicing lawyer and officer of [the] court" because of his refusal to accept assignments under the Criminal Justice Act. *Id.*, at 22. Nowhere in the order was there any reference to any disrespect in petitioner's letter of October 6, 1983.

Petitioner requested a hearing on the show cause order. In his response to the order, petitioner focused exclusively on whether he was required to represent indigents under the Criminal Justice Act. He contended that the Act did not compel lawyers to represent indigents, and he noted that many of the lawyers in his District had declined to serve.[2]

[2] A resolution presented by the Burleigh County Bar Association to the Court of Appeals on petitioner's behalf stated that of the 276 practitioners eligible to serve on the Criminal Justice Act panel in the Southwestern Division of the District of North Dakota, only 87 were on the panel. App. 85.

He also informed the court that prior to his withdrawal from the Criminal Justice Act panel, he and his two partners had taken 15 percent of all the Criminal Justice Act cases in their district.

At the hearing, the Court of Appeals focused on whether petitioner's letter of October 6, 1983, was disrespectful, an issue not mentioned in the show cause order. At one point, Judge Arnold asked: "I am asking you, sir, if you are prepared to apologize to the court for the tone of your letter?" *Id.*, at 40. Petitioner answered: "That is not the basis that I am being brought forth before the court today." *Ibid.* When the issue again arose, petitioner protested: "But, it seems to me we're getting far afield here. The question is, can I be suspended from this court for my request to be removed from the panel of attorneys." *Id.*, at 42.

Petitioner was again offered an opportunity to apologize for his letter, but he declined. At the conclusion of the hearing, the Chief Judge stated:

> "I want to make it clear to Mr. Snyder what it is the court is allowing you ten days lapse here, a period for you to consider. One is, that, assuming there is a general requirement for all competent lawyers to do pro bono work that you stand willing and ready to perform such work and will comply with the guidelines of the statute. And secondly, to reconsider your position as Judge Arnold has requested, concerning the tone of your letter of October 6." *Id.*, at 50.

Following the hearing, petitioner wrote a letter to the court, agreeing to "enthusiastically obey [the] mandates" of any new plan for the implementation of the Criminal Justice Act in North Dakota, and to "make every good faith effort possible" to comply with the court's guidelines regarding com-

pensation under the Act. Petitioner's letter, however, made no mention of the October 6, 1983, letter. *Id.*, at 51–52.

The Chief Judge then wrote to Snyder, stating among other things:

> "The court expressed its opinion at the time of the oral hearing *that interrelated with our concern* and the issuance of the order to show cause *was the disrespect that you displayed* to the court by way of your letter addressed to Helen Montieth *[sic]*, Judge Van Sickle's secretary, of October 6, 1983. The court expressly asked if you would be willing to apologize for the tone of the letter and the disrespect displayed. You serve as an officer of the court and, as such, the Canons of Ethics require every lawyer to maintain a respect for the court as an institution.
>
> "Before circulating your letter of February 23, I would appreciate your response to Judge Arnold's specific request, and the court's request, for you to apologize for the letter that you wrote.
>
> "Please let me hear from you by return mail. I am confident that if such a letter is forthcoming that the court will dissolve the order." *Id.*, at 52–53. (Emphasis added.)

Petitioner responded to the Chief Judge:

> "I cannot, and will never, in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms. . . .
>
> "It is unfortunate that the respective positions in the proceeding have so hardened. However, I consider this to be a matter of principle, and if one stands on a principle, one must be willing to accept the consequences." *Id.*, at 54.

After receipt of this letter, petitioner was suspended from the practice of law in the federal courts in the Eighth Circuit for six months. 734 F. 2d 334 (1984). The opinion stated

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that petitioner "contumaciously refused to retract his previous remarks or apologize to the court." *Id.*, at 336. It continued:

> "[Petitioner's] refusal to show continuing respect for the court *and his refusal to demonstrate a sincere retraction of his admittedly 'harsh' statements* are sufficient to demonstrate to this court *that he is not presently fit to practice law in the federal courts*. All courts depend on the highest level of integrity and respect not only from the judiciary but from the lawyers who serve in the court as well. Without public display of respect for the judicial branch of government as an institution by lawyers, the law cannot survive. . . . Without hesitation *we find Snyder's disrespectful statements* as to this court's administration of CJA *contumacious conduct*. We deem this unfortunate.
>
> "We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the Eighth Circuit for a period of six months; thereafter, Snyder should make application to both this court and the federal district court of North Dakota to be readmitted." *Id.*, at 337. (Emphasis added.)

The opinion specifically stated that petitioner's offer to serve in Criminal Justice Act cases in the future if the panel was equitably structured had "considerable merit." *Id.*, at 339.

Petitioner moved for rehearing en banc. In support of his motion, he presented an affidavit from the District Judge's secretary—the addressee of the October 6 letter—stating that she had encouraged him to send the letter. He also submitted an affidavit from the District Judge, which read in part:

> "*I did not view the letter as one of disrespect for the Court*, but rather one of a somewhat frustrated lawyer hoping that his comments might be viewed as a basis for some changes in the process.

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". . . Mr. Snyder has appeared before me on a number of occasions and has always competently represented his client, and has shown the highest respect to the court system and to me." App. 83–84. (Emphasis added.)

The petition for rehearing en banc was denied.[3] An opinion for the en banc court stated:

"*The gravamen of the situation is that Snyder in his letter [of October 6, 1983] became harsh and disrespectful to the Court.* It is one thing for a lawyer to complain factually to the Court, it is another for counsel to be disrespectful in doing so.

. . . . . .

". . . Snyder states that his letter is not disrespectful. We disagree. In our view, the letter speaks for itself." 734 F. 2d, at 343. (Emphasis added.)

The en banc court opinion stayed the order of suspension for 10 days, but provided that the stay would be lifted if petitioner failed to apologize. He did not apologize, and the order of suspension took effect.

We granted certiorari, 469 U. S. 1156 (1985). We reverse.

II

A

Petitioner challenges his suspension from practice on the grounds (a) that his October 6, 1983, letter to the District Judge's secretary was protected by the First Amendment, (b) that he was denied due process with respect to the notice of the charge on which he was suspended, and (c) that his challenged letter was not disrespectful or contemptuous. We avoid constitutional issues when resolution of such issues is not necessary for disposition of a case. Accordingly, we consider first whether petitioner's conduct and expressions

[3] 734 F. 2d, at 341. Circuit Judges Bright and McMillian voted to grant the petition for rehearing en banc.

warranted his suspension from practice; if they did not, there is no occasion to reach petitioner's constitutional claims.

Courts have long recognized an inherent authority to suspend or disbar lawyers. *Ex parte Garland*, 4 Wall. 333, 378–379 (1867); *Ex parte Burr*, 9 Wheat. 529, 531 (1824). This inherent power derives from the lawyer's role as an officer of the court which granted admission. *Theard* v. *United States*, 354 U. S. 278, 281 (1957). The standard for disciplining attorneys practicing before the courts of appeals[4] is set forth in Federal Rule of Appellate Procedure 46:[5]

"*(b) Suspension or Disbarment. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of*

[4] The panel opinion made explicit that Snyder was suspended from the District Court as well as the Court of Appeals by stating: "[T]hereafter Snyder should make application to both this court and the federal district court of North Dakota to be readmitted." 734 F. 2d, at 337.

Federal Rule of Appellate Procedure 46 does not appear to give authority to the Court of Appeals to suspend attorneys from practicing in the District Court. As the panel opinion itself indicates, the admission of attorneys to practice before the District Court is placed, as an initial matter, before the District Court itself. The applicable Rule of the District Court indicates that a suspension from practice before the Court of Appeals creates only a rebuttable presumption that suspension from the District Court is in order. The Rule appears to entitle the attorney to a show cause hearing before the District Court. Rule 2(e)(2), United States District Court for the District of North Dakota, reprinted in Federal Local Rules for Civil and Admiralty Proceedings (1984). A District Court decision would be subject to review by the Court of Appeals.

[5] The Court of Appeals relied on Federal Rule of Appellate Procedure 46(c) for its action. While the language of Rule 46(c) is not without some ambiguity, the accompanying note of the Advisory Committee on Appellate Rules, 28 U. S. C. App., p. 496, states that this provision "is to make explicit the power of a court of appeals to impose sanctions less serious than suspension or disbarment for the breach of rules." The appropriate provision under which to consider the sanction of suspension would have been Federal Rule of Appellate Procedure 46(b), which by its terms deals with "suspension or disbarment."

> *the bar of the court, he will be subject to suspension or disbarment by the court.* The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why he should not be suspended or disbarred. Upon his response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order." (Emphasis added.)

The phrase "conduct unbecoming a member of the bar" must be read in light of the "complex code of behavior" to which attorneys are subject. *In re Bithoney*, 486 F. 2d 319, 324 (CA1 1973). Essentially, this reflects the burdens inherent in the attorney's dual obligations to clients and to the system of justice. Justice Cardozo once observed:

> "'Membership in the bar is a privilege burdened with conditions.' [An attorney is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *People ex rel. Karlin* v. *Culkin*, 248 N. Y. 465, 470–471, 162 N. E. 487, 489 (1928) (citation omitted).

As an officer of the court, a member of the bar enjoys singular powers that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers. Admission creates a license not only to advise and counsel clients but also to appear in court and try cases; as an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that, while subject to the ultimate control of the court, may be conducted outside courtrooms. The license granted by the court requires members of the bar to conduct themselves in a manner

compatible with the role of courts in the administration of justice.

Read in light of the traditional duties imposed on an attorney, it is clear that "conduct unbecoming a member of the bar" is conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice. More specific guidance is provided by case law, applicable court rules, and "the lore of the profession," as embodied in codes of professional conduct.[6]

B

Apparently relying on an attorney's obligation to avoid conduct that is "prejudicial to the administration of justice,"[7] the Court of Appeals held that the letter of October 6, 1983,

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[6]The Court of Appeals stated that the standard of professional conduct expected of an attorney is defined by the ethical code adopted by the licensing authority of an attorney's home state, 734 F. 2d, at 336, n. 4, and cited the North Dakota Code of Professional Responsibility as the controlling expression of the conduct expected of petitioner. The state code of professional responsibility does not by its own terms apply to sanctions in the federal courts. Federal courts admit and suspend attorneys as an exercise of their inherent power; the standards imposed are a matter of federal law. *Hertz* v. *United States*, 18 F. 2d 52, 54–55 (CA8 1927).

The Court of Appeals was entitled, however, to charge petitioner with the knowledge of and the duty to conform to the state code of professional responsibility. The uniform first step for admission to any federal court is admission to a state court. The federal court is entitled to rely on the attorney's knowledge of the state code of professional conduct applicable in that state court; the provision that suspension in any other court of record creates a basis for a show cause hearing indicates that Rule 46 anticipates continued compliance with the state code of conduct.

[7]734 F. 2d, at 336–337. This duty is almost universally recognized in American jurisdictions. See, *e. g.*, Disciplinary Rule 1–102(A)(5), North Dakota Code of Professional Responsibility; Rule 8.4(d), American Bar Association, Model Rules of Professional Conduct (1983); Disciplinary Rule 1–102(A)(5), American Bar Association, Model Code of Professional Responsibility (1980).

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and an unspecified "refusal to show continuing respect for the court" demonstrated that petitioner was "not presently fit to practice law in the federal courts." 734 F. 2d, at 337. Its holding was predicated on a specific finding that petitioner's "disrespectful statements [in his letter of October 6, 1983] as to this court's administration of the CJA [constituted] contumacious conduct." *Ibid.*

We must examine the record in light of Rule 46 to determine whether the Court of Appeals' action is supported by the evidence. In the letter, petitioner declined to submit further documentation in support of his fee request, refused to accept further assignments under the Criminal Justice Act, and criticized the administration of the Act. Petitioner's refusal to submit further documentation in support of his fee request could afford a basis for declining to award a fee; however, the submission of adequate documentation was only a prerequisite to the collection of his fee, not an affirmative obligation required by his duties to a client or the court. Nor, as the Court of Appeals ultimately concluded, was petitioner legally obligated under the terms of the local plan to accept Criminal Justice Act cases.

We do not consider a lawyer's criticism of the administration of the Act or criticism of inequities in assignments under the Act as cause for discipline or suspension. The letter was addressed to a court employee charged with administrative responsibilities, and concerned a practical matter in the administration of the Act. The Court of Appeals acknowledged that petitioner brought to light concerns about the administration of the plan that had "merit," 734 F. 2d, at 339, and the court instituted a study of the administration of the Criminal Justice Act as a result of petitioner's complaint. Officers of the court may appropriately express criticism on such matters.

The record indicates the Court of Appeals was concerned about the tone of the letter; petitioner concedes that the tone of his letter was "harsh," and, indeed it can be read as ill-

mannered. All persons involved in the judicial process—judges, litigants, witnesses, and court officers—owe a duty of courtesy to all other participants. The necessity for civility in the inherently contentious setting of the adversary process suggests that members of the bar cast criticisms of the system in a professional and civil tone. However, even assuming that the letter exhibited an unlawyerlike rudeness, a single incident of rudeness or lack of professional courtesy—in this context—does not support a finding of contemptuous or contumacious conduct, or a finding that a lawyer is "not presently fit to practice law in the federal courts." Nor does it rise to the level of "conduct unbecoming a member of the bar" warranting suspension from practice.

Accordingly, the judgment of the Court of Appeals is

Reversed.

JUSTICE BLACKMUN took no part in the decision of this case

Appendix V

60 Alb. L. Rev. 303, Albany Law Review, 1996,
Enforcing Professional Norms For Federal Litigation Conduct: Achieving Reciprocal Cooperation, Jeffrey A. Parness [not reprinted here]

Appendix VI

Examples of Uniform Federal Rules of Attorney Conduct and Possible Revisions to Fed. R. Civ. P. 83.

NOTE

The attached are for example only, and thus have not been reviewed by either the Advisory Committee on Civil Rules or the Style Subcommittee. The "Notes" are for the Standing Committee's assistance, and are not intended to be "Committee Notes."

FEDERAL RULES OF CIVIL PROCEDURE

(Addition of a new Fed. R. Civ. P. 83(c))

RULE 83: RULES BY DISTRICT COURTS

(c) ATTORNEY CONDUCT. In addition to rules adopted under 28 U.S.C. §§ 2072 and 2075, the rules governing attorney conduct in the federal district courts are the Federal Rules of Attorney Conduct.

NOTE

The new part (c) of this rule promotes uniformity in the standards of conduct for all attorneys admitted to practice before federal district courts. In the past, the federal district courts relied upon many different local rules to prescribe standards of attorney conduct. See, *Report on Local Rules Regulating Attorney Conduct in the Federal Courts*, 1-3 (July 5, 1995) (Appendices I and II charted the many different of attorney conduct rules in the 94 districts). These local rules took many forms. Some were ambiguously drafted. Others adopted conflicting standards of conduct. Still others adopted standards so vague they may have violated constitutional due process principles. See Report, supra, at 11-23, Appendix IV (Appendix IV contains Professor Linda Mullinex's article entitled, *Multiforum Federal Practice: Ethics and Erie*, in 9 Geo. J. Legal Ethics 89 (1995)); Eli J. Richardson, *Demystifying the Federal Law of Attorney Ethics*, 29 Geo. L. Rev. 137, 151-58 (1994). Finally, some districts failed to incorporate any standards of conduct in their local rules, leaving attorneys to guess the applicable standards. See Report, supra, at 8-11; Richardson, supra, at 152. This rule, applicable in all districts, seeks to eliminate the confusion. See *Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct*, Appendix IV (Dec. 1, 1995) (containing: Bruce A. Green, *Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules be Created*, 64 Geo. Wash. L. Rev. (1996)); Roger C. Cramton, *Memorandum to Participants of the Special Study Conference*, 3 (Jan. 8, 1996).

FEDERAL RULES OF ATTORNEY CONDUCT

RULE 1. GENERAL RULE

(a) STANDARDS FOR ATTORNEY CONDUCT. Except as provided by specific rule adopted pursuant to 28 U.S.C. §§ 2072 and 2075 or by specific rule of the Federal Rules of Attorney Conduct, the standards for attorney conduct are as follows:

(1) Proceedings Before District Court. For conduct in connection with a proceeding in a district court before which an attorney has been admitted to practice, the rules to be applied must be the standards of attorney conduct currently adopted by the highest court of the state in which the district court sits, and

(2) All Other Acts or Omissions by Attorney. For any other act or omission by an attorney admitted to practice before a district court, the standards for attorney conduct are:

(i) if the attorney is licensed to practice only in one state, the rules of that state as currently adopted by its highest court, or

(ii) if the attorney is licensed to practice in more than one state, the rules of the state in which the attorney principally practices as currently adopted by its highest court; provided, however, that if particular conduct has its predominant effect in another state in which the attorney is licensed to practice, then the rules of that state as currently adopted by its highest court.

(3) Acts or omissions by an attorney admitted to practice before a district court of the United States, individually or in concert with any other person or persons, which violate these rules constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) SANCTIONS. For misconduct defined in the Federal Rules of Attorney Conduct, for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before a district court may be disbarred, suspended, reprimanded or subjected to such other disciplinary action as the district court deems appropriate. An attorney may also be subject to the disciplinary authority of the state or states where the attorney is admitted to practice for the same misconduct.

NOTE

This rule is based on Model Local Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management in 1978 and ABA Model Rule of Professional Conduct 8.5 governing choice of law for disciplinary authority. See *Report on Local Rules Regulating Attorney Conduct in the Federal Courts*, Appendix V (July 5, 1995) (original version of Rule IV of the Federal Rules of Disciplinary Enforcement).

RULE 2. CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal, and to the extent required by Federal Rules of Attorney Conduct 7 and 9(b) must reveal, such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another: or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 1.6 in its entirety with one significant exception. The rule modifies Rule 1.6 to permit disclosures of confidential information in order to prevent a fraudulent act which would result in substantial injury to the financial interests or property of another. The rule was modified to reflect prevailing state views which permit this type of disclosure. Thirty-six states permit disclosure under these circumstances, and five states mandate disclosure in these circumstances. By permitting disclosure, the federal rule comports with or avoids conflict with forty-one jurisdictions. See Roger C. Cramton, *Memorandum to Participants of the, Special Study Conference, 2* (Jan. 8, 1996). Finally, the rule provides a reference to Federal Rules of Attorney Conduct 7 and 9 which are based on the ABA Model Rules of Professional Conduct 3.3 and 4.1 respectively. This reference emphasizes that Federal Rule of Attorney Conduct 2(b) is not the only provision of these rules which deals with disclosure of information and that in some circumstances disclosure of such information may be required and not merely permitted.

RULE 3. CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 1.7 in its entirety. Over the last five years, the largest number of federal disputes involving attorney conduct concerned conflict of interest rules. See Daniel R. Coquillette, *Study of Recent Federal Cases (1990-95) Involving Rules of Attorney Conduct,* 3 (Dec. 1, 1995) (forty-six percent of reported federal disputes involved conflict of interest rules).

RULE 4. CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Federal Rules of Attorney Conduct 2 or 7.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to the representation of a client is protected as required by Federal Rule of Attorney Conduct 2.

(g) A lawyer who represents two or more clients shall not participate in making aggregate settlement of claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon the consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 1.8 in its entirety except for the cross references to these rules. Again, over the last five years, the largest category of federal disputes involving attorney conduct centered on conflict of interest rules. See Daniel R. Coquillette, *Study of Recent Federal Cases (1990-95) Involving Rules of Attorney Conduct,* 3 (Dec. 1, 1995) (forty-six percent of reported federal disputes involved conflict of interest rules). DR 4-101(B)(2) and (3), DR 5-103, DR 5-104, DR 5-106, DR 5-107(A) and (B), DR 5-108 and DR 6-102 are the corresponding provisions of the ABA Code of Professional Responsibility.

RULE 5. CONFLICT OF INTEREST: FORMER CLIENT

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's

interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client,

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Federal Rules of Attorney Conduct 2 and 5(c) that is material to the matter;

unless the former client consents after consultation.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as Federal Rule of Attorney Conduct 2 and 7 would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as Federal Rule of Attorney Conduct 2 or 7 would permit or require with respect to a client.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 1.9 in its entirety except for the cross references to these rules. DR 4-101(B) and (C) and DR 5-105(C) are the corresponding provisions of the ABA Code of Professional Responsibility.

RULE 6. IMPUTED DISQUALIFICATION: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Federal Rules of Attorney Conduct 4, 5(c) or 6.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Federal Rules of Attorney Conduct 2 and 5(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Federal Rule of Attorney Conduct 3.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 1.10 almost in its entirety except for cross references to these rules. The rule does not include a federal rule similar to ABA Model Rule 2.2, dealing with the lawyer as an intermediary. No recent federal cases have involved ABA Model Rule 2.2, and the matter should be left to state rules. See Daniel R. Coquillette, *Study of Recent Federal Cases (1990-95) Involving Rules of Attorney Conduct*, 3 (Dec. 1, 1995) (no reported federal disputes involve Model Rule 2.2). DR 5-105(D) is the corresponding provision of the ABA Code of Professional Responsibility.

RULE 7. CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Federal Rule of Attorney Conduct 2.

(c) A lawyer may refuse to offer evidence that, the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 3.3 in its entirety except for a cross reference to these rules. To preserve the integrity of the court proceedings, candor toward the tribunal is a matter of significant federal interest, and as such, requires a single uniform standard applicable in all federal courts. See Roger C. Cramton, *Memorandum to Participants of the Special Study Conference*, 2-3 (Jan. 8, 1996). DR 7-102 and DR 7-106(B) are the corresponding provisions of the ABA Code of Professional Responsibility.

RULE 8. LAWYER AS WITNESS

(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work a substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from so doing by Federal Rules of Attorney Conduct 3 or 5.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 3.7 in its entirety, except for a cross reference to these rules. Over the last five years, ten percent of reported federal disputes involve lawyer as witness rules. See Daniel R. Coquillette, *Study of Recent Federal Cases (1990-95) Involving Rules of Attorney Conduct,* 3 (Dec. 1, 1995). Thus, a federal lawyer as witness rule is needed to create uniform standards of conduct for attorneys practicing in the federal courts. The corresponding provisions of the ABA Code of Professional Responsibility are DR 5-101(B) and DR 5-102.

RULE 9. TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client, unless disclosure is prohibited by Federal Rule of Attorney Conduct 2.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 4.1 in its entirety except for a cross reference to these rules. The corresponding provision of the ABA Model Code of Professional Responsibility is DR 7-102.

RULE 10. COMMUNICATIONS WITH PERSONS REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

NOTE

This rule adopts ABA Model Rule of Professional Conduct 4.2 in its entirety. In fact, the final rule is likely to reflect an agreement between the U.S. Department of Justice and the Conference of Chief Justices, and be somewhat different from ABA Model Rule 4.2. Over the last five years, twelve percent of reported federal cases involve rules governing communications with represented persons. See Daniel R. Coquillette, *Study of Recent Federal Cases (1990-95) Involving Rules of Attorney Conduct*, 3 (Dec. 1, 1995). Thus, a federal rule is needed to create uniform standards of conduct for attorneys practicing in the federal courts. The corresponding provision of the ABA Code of Professional Responsibility is DR 7-104.

Appendix VII

"Chart III" for the
Report on Local Rules & Regulations
Attorney Conduct in the
Federal Courts (July 5, 1995)

CHART THREE

RULES OF PROFESSIONAL CONDUCT IN THE FEDERAL CIRCUIT COURTS

May 24, 1995

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
DC App. V, Rule I	The Code of Prof. Responsibility adopted by the District of Columbia Court of Appeals, as amended fom time to time by that Ct, except as otherwise provided by specific rule of this Ct.					
1st Rule 4(b)	Code of Prof. Responsibility; that code adopted by the highest ct of the state, or commonwealth, as amended from time to time by that ct, except as otherwise provided by specific Rule of this Ct after consideration of comments by rep's of bar associations within the state or commonwealth.					
2nd Rule 46(h)(2)			The ct may refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules under the Code of Professional Responsibility			
3rd App. D						Adopted the Rules of Disciplinary Enforcement; Rule 2 states that the ct must look to FRAP, the rules and internal operating procedures of the Ct, or other instruction of the ct... or any other conduct unbecoming a member of the court

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
4th					Internal Operating Procedure Rule 46.6 (a)(3): Rules of Prof. Conduct or Resp. in effect in the state or other jurisdiction in which the atty maintains his or her principal office, the FRAP, the local rules and internal operating procedures of this Ct, or orders or other instructions of this Ct.	
5th					No Local Rule: "it is longstanding court practice to look to and follow the ethical rules adopted by the highest court in the state of the atty's domicile, while always being mindful of the ABA Model Rules" (clerk's office)	
6th Rule 32(b)		The ct may impose discipline on any member who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct		The ct may impose discipline on any member who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct		
7th App. III						Standards of Prof. Conduct within the 7th Judicial Circuit

Cir.	REFERS TO STATE RULES	REFERS TO A MODEL RULE			No Local Rule	Local Rule: Refers Neither to State Rules nor an ABA Model
		ABA Model Rules	ABA Model Code	Other		
8th					Internal Operating Procedure Rule II D: attys may be disciplined for failure to comply with FRAP or 8th Cir. Rules. Clerk's office stated that issues are sent to a panel of 8th Cir. judges; determinations made on an case-by-case basis.	
9th					No Local Rule: Ct cites to cases that exist (clerk's office)	
10th Add. III Sect. 2.3	Conduct unbecoming a member of the bar which violates the federal laws, federal statutes, FRAP, rules of this ct, orders or other instructions of this ct, or the Code of Prof. Resp. adopted by the highest ct of any state in which the atty is admitted to practice					
11th Add. VIII Rule 1A	FRAP, the ct's local rules, the ABA Model Rules of Prof. Cond., and the rules of prof. cond. adopted by the highest ct of the state(s) in which the atty is admitted to practice to the extent that those state rules are not inconsistent with the ABA Model Rules of Prof. Cond., in which case the model rules shall govern.	FRAP, the ct's local rules, the ABA Model Rules of Prof. Cond., and the rules of prof. cond. adopted by the highest ct of the state(s) in which the atty is admitted to practice to the extent that those state rules are not inconsistent with the ABA Model Rules of Prof. Cond., in which case the model rules shall govern.				

Study of Recent Bankruptcy Cases (1990-1996) Involving Rules of Attorney Conduct

Standing Committee Report
June 19 - 20, 1997

I. INTRODUCTION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal district courts. "Option one" would be the adoption of a model local rule similar to Model Local Rule IV of the Federal Rules of Disciplinary Enforcement, first proposed by the Committee on Court Administration and Case Management in 1978. (This would be recommended by the Judicial Conference to the federal courts for adoption by each court individually pursuant to 28 U.S.C. § 2071.) "Option two" is the adoption of nationwide uniform rules of attorney conduct pursuant to the Rules Enabling Act, 28 U.S.C. § 2072-2074. These uniform rules would apply to specific "core" areas where problems frequently arise in federal district courts, leaving all other areas to be governed by state standards. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995; Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996; and Supplement to Study of Recent Federal Cases Involving Rules of Attorney Conduct (1990-1995), May 14, 1996.

This memorandum examines how such changes in the federal district courts would effect the bankruptcy courts and what, if anything, should be done to improve rules of attorney conduct in the bankruptcy courts. At the request of the Committee, I have conducted three separate bankruptcy studies. The first study determined the number of reported bankruptcy cases focusing on local rules of attorney conduct and categorized each case by the specific rule involved. The second study traced the sources of local rules currently governing attorney conduct in each district of the bankruptcy court system. The final study researched reported cases and law reviews discussing the application of these rules in conjunction with applicable provisions of the Bankruptcy Code, especially § 327.[1]

[1] Some districts have already made efforts to improve the administration of attorney discipline in bankruptcy court. For example, the Central District of California, by a general order, has established procedures by which bankruptcy judges can refer disciplinary problems to the Clerk of Court. See General Order 96-05, U.S. Bankruptcy Court C.D. Ca.

I am, once again, most deeply indebted to my talented and industrious research assistants, James J.G. Dimas and Thomas J. Murphy. Their hard work and intelligence has been vital to this entire series of reports, and they can take great pride in them on the eve of their graduation and entry to the "real world." In addition, I have benefited greatly from conversations with members of the Advisory Committee on Bankruptcy Rules. Of particular help has been the Chairman, the Honorable Adrian G. Duplantier, and Gerald K. Smith. Gerald Smith has attended every one of our task force meetings, and is a leading expert on attorney conduct rules in bankruptcy proceedings. The Committee's Reporter, Professor Alan N. Resnick, and Patricia S. Channon, Senior Attorney, Bankruptcy Judges Division, Administrative Office of the U.S. Courts, have also been of invaluable assistance. Particularly important was Patricia Channon's prior study of local rules in the bankruptcy courts, on which I have relied heavily. Any recommendations are, however, my own. In addition, any revisions to the Bankruptcy Rules, or any model local rules designed for bankruptcy proceedings, should be considered by the Bankruptcy Advisory Committee before action is taken.

II. METHODOLOGY AND FINDINGS:

A. "Study I": Reported Bankruptcy Cases Involving Rules of Attorney Conduct (1990-1996). See Appendices I, II.

The first study ("Bankruptcy Case Study") researched reported cases concerning local rules of attorney conduct, and categorized each case by the specific rule involved. The purpose of this study was to determine which kinds of attorney conduct are most important to the bankruptcy courts. This study was modeled after previous studies done for this Committee on local rules of attorney conduct in the federal district courts and federal courts of appeals. See Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, December 1, 1995; Supplement to Study of Recent Federal Cases (1990-1995)

Involving Rules of Attorney Conduct, May 14, 1996. (Collectively, the "Federal Case Studies")

As in the prior studies, an extensive computer search was designed, using the Descriptive Word Index of the Federal Practice Digest and the Westlaw data base. The search employed thirty five West Digest key numbers that closely tracked attorney conduct rules, as well as key words, phrases and numbers relating to these rules. A date restriction of January 1, 1990 to March 23, 1996 was used to allow for adequate comparison with the previous Federal Case Studies. The resulting search produced ninety-three reported bankruptcy cases involving local rules of attorney conduct.

Devoted research assistants then read each of the ninety-three cases. They prepared a painstaking written analysis of each case, including a summary of the underlying facts, the attorney conduct in question, the relevant standards of attorney conduct cited, the relevant key numbers assigned by West Publishing and the court's eventual decision. See Illustration I, Appendix I. At this point, a decision was to be made as to which "category" of rule was chiefly involved in each dispute. When the local standards were not based on the ABA Model Rules of Professional Conduct ("Model Rules"), the standards were "translated" into the applicable ABA Model Rule categories of Chart I, Appendix II using a system similar to the comparative table on page 128 of West's Selected Statutes, Rules and Standards of the Legal Profession (1995 ed.). Of course, this was a "rough fit," but it permits comparing "apples with apples" -- and a review of individual cases showed that the "rough fit" was more than adequate for the purposes of this study.

The results of the Bankruptcy Study show that ABA Model Rules 1.7, 1.8, 1.9, 1.10 and 1.11 or standards analogous to those rules were central to 53% of reported bankruptcy cases involving issues of attorney conduct (49 cases of the 93). The next largest category involved safekeeping of client property (ABA Model Rule 1.15 or its equivalents) accounting for 13%, or 12 cases. The third largest category involved attorney's fees (equivalent to ABA Model Rule 1.5) containing 9%, or 8 cases. Combined,

these three categories account for 75% of all reported bankruptcy cases. The next highest category involved "Lawyer as a Witness" (ABA Model Rule 3.7) with 4%, or only 4 cases.

These results were compared with the prior studies of federal district courts and courts of appeals (the "Federal Case Studies"). The frequency of "Conflict of Interest" rules was consistent with the results of the prior studies, with 53% of the reported bankruptcy cases involving such conflicts, as opposed to 46% of the other reported federal cases. But the "Communications with Represented Parties" Rule (ABA Model Rule 4.2) and the "Lawyer as Witness" Rule (ABA Model Rule 3.7) were significantly less prevalent in the Bankruptcy Study than in the prior Federal Case Studies: 4% and 1% respectively in the Bankruptcy Study, as opposed to 10% each in the Federal Case Studies. Conversely, cases involving "Attorney's Fees" (ABA Model Rule 1.5) constituted 9% of the bankruptcy cases, as opposed to 5% of the federal cases, and cases involving "Safekeeping of Client Property" (ABA Model Rule 1.15)[2] involved 13% of the bankruptcy cases, as opposed to 1% of the federal cases. Not surprisingly, in light of the Federal Case Studies, most ABA Model Rules, or their equivalents, never feature in reported bankruptcy decisions. Almost all bankruptcy cases involving attorney conduct involve the small "core" group of rules

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[2] ABA Model Rule 1.15, "Safekeeping Property," is far more important in bankruptcy courts than it is in other federal courts. The text is as follows:

> "(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.
>
> (b) Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
>
> (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

mentioned above. See Chart I, Appendix II; see also Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, December 1, 1995; Supplement to Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, May 14, 1996.

B. "Study II": Sources of Local Rules Governing Attorney Conduct in Bankruptcy Courts. See Appendix III.

The second study ("Bankruptcy Rule Study") traced the sources of the local standards governing attorney conduct in each bankruptcy court. The purpose was to determine how closely the bankruptcy courts follow the local rules of attorney conduct used by their corresponding district courts, which in turn would reveal how widespread the impact of changes in the federal district courts would be in the bankruptcy court system. This study was built upon the excellent research of Patricia S. Channon, "Professional Responsibility Rules in the Local Rules of Bankruptcy Courts," and a previous report done for this Committee on local rules regulating attorney conduct in the federal district courts and courts of appeals. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995.

The results of this study reveal that most bankruptcy courts do not have their own independently developed set of local rules governing attorney conduct. See Chart II, Appendix III, Infra. Over seventy-three (73) percent of the ninety-four bankruptcy courts have either explicitly or implicitly adopted the local rules of attorney conduct of their respective federal district courts. Thirty-two (32) of the ninety-four (94) bankruptcy courts have no local rule at all governing attorney conduct. (These courts still require that the attorney be admitted to the local federal district court, which presumably implies that the attorney is governed by the federal district court's rules of attorney conduct, if any.[3])

[3] Where the local rules of a bankruptcy court are silent on attorney conduct, we have assumed that the rules of the federal district court apply. See e.g. In re Glenn Elec. Sales Corp., 99 B.R. 596, 598 (D. N.J. 1988)

Nineteen (19) of the bankruptcy courts explicitly adopt the standards of attorney conduct employed by the local federal district court. Eighteen (18) others adopt all the rules of the local federal district court generally. Thus, sixty -nine (69) of the bankruptcy courts explicitly or implicitly adopt district court standards. Additionally, three (3) bankruptcy courts use district court rules in combination with other standards, meaning that over seventy-seven (77) percent of the bankruptcy courts could automatically import changes made to district court attorney conduct rules.

The remaining bankruptcy courts use other standards. Four (4) courts have local rules authorizing disciplinary enforcement, but fail to state the standard to be applied. Eight (8) bankruptcy courts refer to the rules of attorney conduct as promulgated by the state's highest court. Three (3) courts refer to a combination of state and ABA standards. Two (2) courts, the Bankruptcy Courts for the Eastern and Western Districts of Arkansas, adopt the Uniform Rules of Disciplinary Enforcement, first promulgated by the Committee on Court Administration and Case Management in 1978. One court (1), the Bankruptcy Court for the Southern District of Georgia, refers to the "current canons of professional ethics of the American Bar Association."

As discussed in the prior reports, there is a growing "balkanization" of rules governing attorney conduct in the federal district courts. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995. It appears that the bankruptcy court system has, for the most part, "imported" this problem by adopting the differing rules of attorney conduct of their respective federal district courts. See Chart II, Appendix III. See also Knopfler v. Schraiber, 103 B.R. 1001, 1003 (Bankr. N.D. Ill 1989) (holding that a federal court may consider both the Model Code and the Model Rules as standards governing attorney conduct); In re Consupak, Inc., 87 B.R. 529, 550 (Bankr. N.D. Ill. 1988) (holding that a federal court may consider both the Model Code and the Model Rules as

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(holding that when local rules of bankruptcy court are silent on issue of attorney conduct, federal district court's local rules apply).

standards governing attorney conduct); In re Glenn Elec. Sales Corp., 99 B.R. 596, 598 (D.N.J. 1988) (disqualified law firm argues Model Code improperly invoked by District Court in Model Rules jurisdiction).

C. "Study III": Application of Rules for Attorney Conduct in Conjunction with the Bankruptcy Code. See Appendices IV, V.

The third and final study examined the application of local rules of attorney conduct in conjunction with the applicable provisions of the Bankruptcy Code, especially, § 327. See 11 U.S.C. § 327(a). The purpose was to consider what effects, if any, the options considered by this Committee would have on the application of Bankruptcy Code.

The bankruptcy system is unique in American jurisprudence and presents unique ethical issues. This is particularly true in the area of conflict of interest regulation. As revealed by our prior studies, conflict of interest issues frequently arise in federal district courts, even in ordinary civil litigation where there are only two parties. See Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996, and the other studies cited at Section I, supra. The bankruptcy arena is far more complicated. There are rarely just two diametrically opposed adversaries, and frequently dozens, or even hundreds of parties with shifting alignments and differing interests that can change over time. See Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in the Bankruptcy Process," 97 Commercial L.J. 149, 150 (1992), set out in Appendix V, infra. "[T]here are ordinarily a number of parties whose interests and alliances are constantly in a state of flux during the case." Id., 150. According to Professor Meltzer:

> "Bankruptcy involves shifting relationships: Today's enemy is tomorrow's friend and vice versa. Thus bankruptcy is rich in the potential for conflict, but it is also rich in the potential for cooperation. The parties need to work together even when they are at sword's points. This fact makes it extra difficult to identify just when a conflict exists."

Id. at 151, quoting, Ayer, "How to Think About Bankruptcy Ethics," 60 Am. Bankr. L.J. 355, 386-87 (1986).[4]

§ 327 of the Bankruptcy Code is a statutory prescribed ethical rule governing conflict of interests for attorneys and other professional persons in the bankruptcy context. The statute permits the Bankruptcy Trustee to only employ professional persons (including attorneys) "that do not hold or represent an interest adverse to the estate" and are "disinterested persons." 11 U.S.C. § 327(a). The Bankruptcy Code does not define the words "hold or represent an interest adverse to the estate," but caselaw has defined this provision to include : 1. "the possessing or asserting of any economic interest that would tend to lessen the value of the bankruptcy estate" or 2. "possessing a predisposition under circumstances that render such a bias against the estate." See In re Roberts, 46 B.R. 815, 827-29 (Bankr. D. Utah 1985), *aff'd in part, rev'd in part*, 75 B.R. 402 (D. Utah 1987) (en banc).

The Bankruptcy Code does define "disinterested person." See 11 U.S.C. § 101(14). The definition lists five categories of individuals who are not "disinterested." Examples of such individuals includes creditors, equity security holders, insiders and investment bankers for any outstanding security of the debtor. 11 U.S.C. § 101(14). The definition section also possesses a "catch-all" provision which some courts have interpreted to require an attorney to be free from "the slightest personal interest which might be

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[4] For example, conflict of interest is inherent in the representation of a debtor in possession (DIP) during a chapter 11 reorganization. Unless a trustee has been appointed (not the usual situation), the DIP is the debtor itself. 11 U.S.C. § 1101. Section 1107 of the Bankruptcy Code imposes on the DIP most of the duties of a trustee. Nowhere is there any reference to duties to the owner of the debtor. See Jay Lawrence Westbrook, "Fees and Inherent Conflicts of Interest," 1 Am. Bankr. Inst. L. Rev. 287, 290 (1993). Nor is the Bankruptcy Code clear on whether any duty is owed to creditors. Id. Three cases from the Northern District of Texas, however, provide that the DIP owes a duty of loyalty to creditors. See Diamond Lumber, Inc. v. Unsecured Creditors' Comm. of Diamond Lumber, Inc., 88 B.R. 773 (N.D. Tex. 1988); In re Kendavis Indus. Int'l, Inc., 91 B.R. 742 (Bankr. N.D. Tex. 1988); In re Chapel Gate Apartments, Ltd., 64 B.R. 569 (Bankr. N.D. Tex. 1986). This can create conflict of interest. While the DIP is not charged with a duty to the owners of the debtor, the DIP is very often the owner or managers employed by the owner. Charging the DIP with a duty that conflicts with its own interest passes this conflict along to the attorneys that represent the DIP.

reflected in their decisions." See In re Tinley Plaza Assocs. L.P., 142 B.R. 272, 277-78 (Bankr. N.D. Ill. 1992)[5].

Among the bankruptcy courts, application of § 327 is far from uniform. See the extensive discussion in Marcia L. Goldstein et al., "Ethical Considerations for Bankruptcy Professionals: Disinterestedness, Conflicts of Interest, and Retainers," C995 ALI-ABA 397 (May 4, 1995); William Kohn, "Deciphering Conflicts of Interests in Bankruptcy Representation," 98 Commercial L. J. 127 (1993). For example, there is a split of authority regarding the application of § 327 for "potential" conflicts of interest. Some courts have held that a "potential conflict" is a contradiction in terms, finding that all conflicts are actual. See In re Kendavis, 91 B.R. at 753-54 ("The concept of potential conflicts of interest is based on a mistaken interpretation of the Bankruptcy Code."); In re BH & P, Inc., 103 B.R. 556, 563-64 (Bankr. N.D. Texas 1989) (holding that "[t]he terms 'actual' and 'potential' conflict merely describe different stages in the same relationship" because the prospect of future conflict could "exert a subtle influence" leading to a more active conflict.) On the other hand, the Court of Appeals for the First Circuit has rejected a literal reading of § 327(a) and held that there is no per se rule against employment of counsel where there is only a "potential" conflict. See In re Martin, 817 F.2d 175, 180 (1st Cir. 1987). The First Circuit pointed out a practical reason for this conclusion. "[T]o interpret the law in such an inelastic way would virtually eliminate any possibility of legal assistance for the debtor in possession, except under a cash-and-carry arrangement or on a pro bono basis." Id., at 180. See the extensive discussion in Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in

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[5] The "catch-all" provision defines a "disinterested person" as one who:

> "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph."

11 U.S.C. § 101(14)(E).

the Bankruptcy Process," 97 Commercial L. J. 149 (1992), 154-158, set out as Appendix V, infra.

To make matters more complex, cases applying § 327 also frequently involve the conflict of interest rules of the ABA Code of Professional Responsibility ("Model Code") and the ABA Model Rules of Professional Conduct. See e.g., SLC Ltd. v. Bradford Group West, Inc., 999 F.2d 464, 467 (10th Cir. 1993) (Attorney who had represented debtor's general partner disqualified under the Utah version of the Rules of Professional Conduct.); In re F & C Intern., Inc., 159 B.R. 220, 222-23 (Bankr. S.D. Ohio 1993) (Court denied motion of expanded employment for special counsel of DIP under § 327 of Bankruptcy Code and Canon 5 of the ABA Code).

Courts have also applied these rules in a variety of ways, contributing to a wide ranging set of interpretations of § 327. For example, some courts have imported the consent exceptions of the ABA Code or ABA Model Rules into the Bankruptcy Code, and others have not. See e.g. In re Dynamark, Ltd, 137 B.R. 380, 381 (Bankr. S.D. Cal. 1991) (after holding that attorneys did not hold or represent an adverse interest and were disinterested under § 327, the court stated that "although consent to representation by the parties is not necessarily sufficient by itself to overcome a lack of disinterestedness, this court takes judicial notice that [the client creditor] has submitted a written waiver of any conflict that exists or may exist"). But see In re Envirodyne Indus., Inc. 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993) (holding § 327 does not allow waiver of conflicts of interest); In re Diamond Mortg. Corp. of Illinois, 135 B.R. 78, 90 (Bankr. N.D. Ill. 1990) ("certain conflicts that a client could waive after full disclosure outside of the bankruptcy context, such as simultaneous representation of the client and the client's creditors, are prohibited by the Bankruptcy Code itself from being waived.").[6] Other courts have

[6] At least one author has argued that the adoption of the consent provisions of the ABA Model Rules and the ABA Code into § 327 may be beneficial. See Karen J. Brothers, "Disagreement among the Districts: Why Section 327(a) of the Bankruptcy Code Needs Help," 138 U. Pa. L. Rev. 1733, 1751 (1990). For example, conflicts often arise when the debtor's pre-bankruptcy attorney is retained by the trustee or DIP. It

imported the vague "appearance of impropriety" aspirations of Canon 9 of the ABA Code in construing the requirements of § 327. See e.g. In re 419 Co., 133 B.R. 867, 869 (Bankr. N.D. Ohio 1991) (holding that § 327 covers "both actual and potential conflicts of interest in order to avoid even the appearance of impropriety."). This despite the intent of the drafters of the ABA Code that only the mandatory "Disciplinary Rules," not the Canons, should be enforced by sanction. See ABA Code, "Preamble and Preliminary Statement," 1. (1969).

At least one law review article has suggested that the conflict of interest standards of the ABA Model Rules are consistent with § 327, while the standards employed by the ABA Code are not. See William Kohn, "Deciphering Conflicts of Interest in Bankruptcy Representation," 98 Commercial L. J. 127, 139-140, set out as Appendix VI, infra. According to Kohn, Congress rejected a per se rule against "potential" conflicts of interest when it amended § 327 to require an "actual conflict of interest." Id. at 140. He also argues that the ABA Code contains Canon 9 which bars even "the appearance of professional impropriety," while the ABA Model Rules do not contain such a per se prohibition and therefore are more consistent with Congressional intent. See id, at 139-40. Kohn would apparently favor a uniform rule covering conflict of interest in the bankruptcy courts based on the ABA Model Rules, and would regard that as consistent with the Bankruptcy Code.

Professor Jay Lawrence Westbrook also sees practical problems in a "per se" bar against "potential" conflicts of interest in bankruptcy cases. See Jay Lawrence Westbrook, "Paying the Piper: Rethinking Professional Compensation In Bankruptcy," 1 Am. Bankr. Inst. L. Rev. 287 (1993), 288-304. He argues that a "per se" rule against "potential"

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has been suggested that disqualifying the debtor's pre bankruptcy attorney is disadvantageous because of such counsel's likely knowledge of the situation and the debtor's confidence in such counsel. Id. at 1751. One possible remedy would be to employ a standard similar to Rule 1.7, allowing the pre-bankruptcy attorney to continue representation upon disclosure and consent, with the additional requirement that parties in interest would also need to consent because the attorney would actually be representing the bankruptcy estate. Id. at 1756.

conflicts will leave debtors unrepresented or represented by inferior lawyers who are willing to face the risk of disqualification because they cannot find other work. Id. at 289. Professor Westbrook would most likely support a uniform rule for bankruptcy conflict of interest based on the ABA Model Rules because those model rules lack a "per se" prohibition against "potential" conflicts of interest.

There are many other disagreements and policy disputes concerning the proper relationship between the Bankruptcy Code provisions, particularly § 327, and local rules governing attorney conduct in the bankruptcy courts. This is true whether the bankruptcy rules are based on the ABA Code, the ABA Model Rules, or on entirely different standards. See the full discussion in Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in the Bankruptcy Process," 97 Commercial L. J. 149 (1992), set out in full at Appendix V, supra. Whatever position is taken on the individual disputes, one thing is certain. The conditions in bankruptcy practice are sufficiently different from that in other federal courts as to require separate analysis and, quite possibly, special rules of attorney conduct.

III. CONCLUSIONS

The first study ("Bankruptcy Cases") establishes that the rules of attorney conduct commonly litigated in the federal district courts are also among those most frequently invoked in the bankruptcy courts. Thus, rule reform for the federal district courts could also benefit the bankruptcy system. On the other hand, bankruptcy courts have a unique professional "culture" and a strong statutory environment. Rules appropriate for district courts cannot be automatically "carried over" with assured success. Whether the ultimate decision is to proceed with a model local rule, or with uniform rule making pursuant to the Rules Enabling Act, 28 U.S.C. § 2072-2074, the Committee should carefully consider which rules should be applied to the bankruptcy court system. For example, ABA Model

Rule 1.15 "Safekeeping of Client Property" is far more important in bankruptcy courts than in district courts[7].

The second study ("Bankruptcy Rules") indicates that seventy-seven percent of the bankruptcy courts have, explicitly or implicitly, adopted the local rules of attorney conduct used by their respective district courts. Thus, unless special care is taken, proposed changes in federal district court rules could technically carry over to most of the bankruptcy courts, even if there is no direct action on bankruptcy rules. To do this in an unreflective way would be a bad mistake. If new district court rules are inappropriate for the conditions of bankruptcy practice, they will be ignored in the bankruptcy courts. This would be of no real assistance to the bankruptcy bar. Specific, and different model local rules of attorney conduct may be required for bankruptcy courts.

Finally, the third study ("Bankruptcy Code") demonstrates that simply changing the rules of attorney conduct in the bankruptcy courts will not automatically produce consistent standards, particularly as to conduct also governed by the Bankruptcy Code. Bankruptcy courts are highly "balkanized" in their interpretation of § 327 of the Bankruptcy Code. Adopting carefully drafted uniform federal rules, however, could lead to more consistent application of statutory standards by curbing the casual use of the old ABA Canon 9 and the unpredictable disqualification of lawyers with "potential" conflicts of interest under § 327 and under the vague "catch-all" provision of 11 U.S.C. § 101(14). See Section II (C), supra. A well crafted model local rule, specially designed for bankruptcy courts, could do the same.

Initially, the Standing Committee set out to review local rules governing attorney conduct in the district courts. After the three extensive "Federal Cases" studies cited in Section I, supra, it became clear that standards for attorney conduct in district courts had become extremely "balkanized." But any attempt to restore uniform standards in the district

[7] For text of Rule 1.15, see footnote 2, supra.

courts is bound to effect bankruptcy practice, due to the numerous "carry over" local rules described at Section II (B), supra. Unlike courts of appeals, where there are relatively few cases and no apparent barriers to adopting the same kind of rules as district courts, the bankruptcy courts are subjected to a complex statutory system, which includes conflict of interest criteria, and other standards directly governing attorney conduct. See Section II (C), supra. See also Study of Recent Cases (1990-1997) Involving Federal Rule for Appellate Procedure 46 (May 10, 1997).

Discussion with members of the Bankruptcy Advisory Committee, particularly the Honorable Adrian G. Duplantier and Gerald K. Smith, and the Reporter, Alan N. Resnick, suggest that the Standing Committee should specifically request the Bankruptcy Advisory Committee for recommendations. In addition, the Federal Judicial Center should undertake an empirical study of bankruptcy courts similar to the very helpful "Study of Standards of Attorney Conduct and Disciplinary Procedures in Federal District Courts" that the Center is now completing at the Standing Committee's request. Final recommendations could take the form of a different model local rule for bankruptcy courts, or of a uniform federal rule that made special allowance for the conditions of bankruptcy practice.

One practical first step would be for this Standing Committee to decide how to proceed with the district courts: whether to proceed with a model local rule ("option one"), or to proceed with some limited uniform rulemaking under the Enabling Act ("option two). That decision would give the Bankruptcy Advisory Committee the context necessary to make its own recommendations. No final action on new district court rules should be taken until specific provisions for bankruptcy practice are also ready.

APPENDIX I

Illustration I - Standard Form for Located Cases (1990-1996)

NAME OF CASE: _____

CITATION: _____

RELEVANT KEY NUMBERS: _____

FACTS/ATTORNEY CONDUCT AT ISSUE: _____

HOLDING: _____

RULES CITED: _____

APPENDIX II

Chart I - Break Down of Recent Bankruptcy Cases (1990-1996) by ABA Model Rules of Professional Conduct

TOTAL NUMBER OF CASES CLASSIFIED BASED ON MODEL RULES: BANKRUPTCY COURTS FROM JAN. 1, 1990 THROUGH MAR 23 1996

Rule	Subject matter	Total	
1.1	Competence	3	
1.2	Scope of Representation	3	
1.3	Diligence	0	
1.4	Communication	0	
1.5	Fees	8	
1.6	Confidentiality of Information	1	
1.7	Conflict of Interest: General	20	
1.8	Conflict of Int. Prohib. Trans.	8	
1.9	Conflict of Interest: Fmr. Client	13	
1.10	Imputed disqualification (Firm)	7	
1.11	Govt. to private employment	1	
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		⇨	49
1.12	Former Judge or Arbitrator	1	
1.13	Organization as Client	1	
1.14	Client Under a Disability	0	
1.15	Safekeeping Property	12	
1.16	Declining / Terminating Repr.	2	
1.17	Sale of Law Practice	0	
2.1	Advisor	0	
2.2	Intermediary	0	
2.3	Eval. for use by 3rd Persons	0	
3.1	Meritorious Claims/Contentions	1	

Model rule	Subject matter	Total
3.2	Expediting Litigation	0
3.3	Candor Toward the Tribunal	2
3.4	Fairness to opposing party	1
3.5	Impart. & Decorum of Tribunal	0
3.6	Trial Publicity	0
3.7	Lawyer as Witness	4
3.8	Special respons. of Prosecutor	1
3.9	Advocate / Non adjudicative	0
4.1	Truth in Statements to Others	0
4.2	Comm. w. Pers. Rep. Couns.	1
4.3	Dealing w/ Unrep. Person	0
4.4	Respect for Rts. of 3rd Persons	0
5.1	Resp. of Partner or Supervisor	0
5.2	Resp. of Subordinate Lawyer	0
5.3	Resp. Nonlawyer Assist.	2
5.4	Professional Independence	0
5.5	Unauthorized Practice of Law	1
5.6	Restr. on Rt. to Practice	0
5.7	Resp. Reg. Law Rel. Practice	0
6.1	Voluntary Pro Bono Publico	0
6.2	Accepting Appointments	0
6.3	Member in Legal Svces. Org.	0
6.4	Law reform / Client Interests	0
7.1	Comm. Conc. Lawyer's Svces.	0
7.2	Advertising	0

Model rule	Subject matter	Total
7.3	Dir. Contact w/ Prospective Cl.	0
7.4	Comm. of Fields of Practice	0
7.5	Firm Names & Letterheads	0
8.1	Bar Admission & Disc. Matters	0
8.2	Judicial & Legal Officials	0
8.3	Reporting Prof. Misconduct	1
8.4	Misconduct	0
8.5	Disc. Auth.: Choice of Law	0
Totals		93

APPENDIX III

Chart II - Sources of Federal District Court and Bankruptcy Court Local Rules of Professional Conduct

SOURCES OF FEDERAL DISTRICT COURT & BANKRUPTCY COURT LOCAL RULES ON PROFESSIONAL CONDUCT[1]

DISTRICT	DISTRICT COURT[2]	BANKRUPTCY COURT[3]
M.D.AL.	ABA Rules and State rules (r)	Adopted District Court rules generally[4]
N.D.AL.	ABA Rules and State rules (r)	Adopted District Court rules generally
S.D.AL.	ABA Rules and State rules (r)	ABA Rules and State rules (r)
D.AK.	State Rule Based on ABA Model Rules	Adopted District Court rules generally
D.AZ.	State Rule Based on ABA Model Rules	No local rule[5]
E.D.AR.	Uniform Federal rules of Disciplinary Enforcement	Uniform Federal Rules of Disciplinary Enforcement
W.D.AR.	Uniform Federal rules of Disciplinary Enforcement	Uniform Federal Rules of Disciplinary Enforcement

[1]The text of these local rules may be located in Federal Local Court Rules, Lawyers Cooperative Publishing, 1995 and Bankruptcy Local Court Rules Service, Callaghan & Company 1989.

[2]Sources of district court rules drawn from memorandum from Daniel R. Coquillette to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, dated Jan. 2, 1995, concerning Local Rules Regulating Attorney Conduct (attached).

[3]Sources of bankruptcy court rules drawn from memorandum from Patricia S. Channon to Gerald K. Smith, dated Mar. 27, 1996, concerning Professional Responsibility Rules in the Local Rules of Bankruptcy Courts, and Bankruptcy Local Rules Service, Callaghan & Co., 1989.

[4]Where a Bankruptcy Court is listed as having "Adopted District Court Rules Generally," it is not possible to determine from the local bankruptcy rules whether the district court rules contain provisions concerning attorney conduct and professional responsibility. See Channon Memo.

[5]Where Bankruptcy Court is listed as having "no local rule," the court still requires that an attorney must be admitted to the District Court. This usually means being a member in good standing of the state bar. Presumably, state rules apply. See Channon memo, p. 1.

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
C.D.CA.	CA. Rules of Prof. Conduct	Adopted District Court Rules[6]
E.D.CA.	Refers to ABA Code and CA Rules	Adopted District Court Rules
N.D.CA.	CA. Rules of Prof. Conduct	Incorporated into District Court Rules
S.D.CA.	Refers to ABA Code and CA. Rules	Adopted District Court Rules generally
D.CO.	State Rule Based on ABA Model Rules	No Local Rule
D.CT.	State Rule Based on ABA Model Rules	No Local Rule
D.DE.	Model Federal Rules of Disciplinary Enforcement	Adopted District Court Rules generally
D.D.C.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
M.D.FL.	State Rule Based on ABA Model Rules	ABA Rules and State Rules
N.D.FL.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.FL.	State Rule Based on ABA Model Rules	Atty. must read and remain familiar w/ Fla. Bar's Rules of Prof. Conduct. No explicit statement on whether these rules apply o govern.
M.D.GA.	ABA rules and GA. Rules (c)	No Local Rule
N.D.GA.	State Rule Based on ABA Code	Adopted District Court Rules
S.D.GA.	Old ABA Canons	LBR 505(d), "Current canons of prof. ethics of the ABA"
D. Guam	Refers to ABA Model Code and Model Rules	Adopted District Court Rules Generally
D.HI.	State Rule Based on ABA Model Rules	No Local Rule

[6]Bankruptcy Courts listed as having "Adopted District Court rules" state they have adopted the district court's rules on attorney conduct, attorney discipline, professional responsibility, or a similar phrase. See Channon memo.

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
D.ID.	State Rule Based on ABA Model Rules	LBR 9010(g), Rules of Prof. Conduct adopted by S.Ct. of ID.
C.D.IL.	State Rule Based on ABA Model Rules	No Local rule
N.D.IL.	Unique Standing Order	Adopted District Court Rules generally
S.D.IL.	State Rule Based on ABA Model Rules	Adopted District Court Rules
N.D.IN.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.IN.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
N.D.IA.	No Local Rule	Modified standards
S.D.IA.	No Local Rule	Adopted District Court Rules generally
D.KS.	State Rule Based on ABA Model Rules	Adopted District Court Rules
E.D.KY.	State Rule Based on ABA Model Rules	No Local Rule
W.D.KY.	State Rule Based on ABA Model Rules	LBR 3(b)(2)(E), Stds. of Prof. Conduct adopted by KY S.Ct.
E.D.LA.	State Rule Based on ABA Model Rules	No Local Rule
M.D.LA.	State Rule Based on ABA Model Rules	Rules of Professional Conduct of LA. State Bar Assoc.
W.D.LA.	State Rule Based on ABA Model Rules	Adopted District Court Rules
D.ME.	State Rule Based on ABA Code	No Local Rule
D.MD.	State Rule Based on ABA Model Rules	LBR 42(k). Counsel are "encouraged to be familiar" with the "Discovery Guidelines of the Maryland State Bar."
D.MA.	State Rule Based on ABA Code	No Local Rule
E.D.MI.	State Rule Based on ABA Model Rules	Adopted District Court Rules Generally

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
W.D.MI.	State Rule Based on ABA Model Rules	Local rule authorizing discipline of attorneys which does not state standard to be applied.
D.MN.	State Rule Based on ABA Model Rules	No Local Rule
N.D.MS.	No Local Rule	Adopted District Court Rules
S.D.MS.	No Local Rule	Adopted District Court Rules
E.D.MO.	State Rule Based on ABA Model Rules	No Local Rule
W.D.MO.	No Local Rule	Adopted District Court Rules
D.MT.	Refers to ABA Code	Adopted District Court Rules
D.NE.	State Rule Based on ABA Code	Adopted District Court Rules
D.NV.	State Rule Based on ABA Model Rules	No separate bkrtcy. court rules; only bkrtcy. specific rules in Dist. Ct. Rules.
D.N.H.	State Rule Based on ABA Model Rules	No Local Rule
D.N.J.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.N.M.	State Rule Based on ABA Model Rules	No Local Rule
E.D.N.Y.	State Rules and ABA Code	No Local Rule
N.D.N.Y.	Refers to ABA Code	No Local Rule
S.D.N.Y.	State Rules and ABA Code	No Local Rule
W.D.N.Y.	State rule based on ABA Code	Local rule which does not state standard to be applied
E.D.N.C.	State rule based on ABA Model Rules	No Local Rule
M.D.N.C.	State rule based on ABA Model Rules	No Local Rule
W.D.N.C.	State rule based on ABA Model Rules	No Local Rule

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
D.N.D.	State rule based on ABA Model Rules	Adopted District Court Rules generally
D.N.M.I.	Refers to ABA Model Rules	No Local Rule
N.D.OH.	State Rule Based on ABA Code	Adopted District Court Rules
S.D.OH	Model Federal Rules of Disciplinary Enforcement	LBR 4, Code of Prof. Resp. adopted by OH S.Ct.
E.D.OK.	State Rule Based on ABA Model Rules	No Local Rule
N.D.OK.	State rule based on ABA Model Rules	No Local Rule
W.D.OK.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.OR.	State Rule Based on ABA Code	No Local Rule
E.D.PA.	State Rule Based on ABA Model Rules	Local rule which does not state standard to be applied
M.D.PA.	State Rule Based on ABA Model Rules	Local rule which does not state standard to be applied
W.D.PA.	State Rule Based on ABA Model Rules	Adopted District Court Rules
D.P.R.	Refers to ABA Code	Adopted District Court Rules
D.R.I.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.S.C.	State Rule Based on ABA Model Rules	Dist. Ct. Rule 2.0,08., SC Code of Prof. Resp.
D.S.D.	No Local Rule	Adopts District Court rules generally
E.D.TN.	State Rule Based on ABA Code	LBR 2(c), Code of Prof. Conduct adopted by S.Ct. of TN.
M.D.TN.	Refers to ABA Code	Adopts Dist. Ct. Rule and has local bankruptcy rule that asserts jurisdiction to enforce standards of conduct.
W.D.TN.	State Rule Based on ABA Code	Refers to ABA Code and District Court rules as they relate to attorney conduct
E.D.TX.	State Rule Based on ABA Model Rules	No Local Rule

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
N.D.TX.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.TX.	State Rules and ABA Code	Adopted District Court Rules
W.D.TX.	State Rule Based on ABA Model Rules[7]	Adopted Dist. Ct. Rules and references "litigation standard" announced in local case and states that it applies
D.UT.	State Rule Based on ABA Model Rules	LBR 4, Code of Prof. Resp. adopted by OH S. Ct.
D.VT.	State Rule Based on ABA Code	No Local Rule
E.D.VA.	State Rule Based on ABA Code	LBR 105(I), Canons of Prof. Ethics of the ABA & the VA Stat Bar
W.D.VA.	State rule based on ABA Code	No Local Rule
D.V.I.	. Refers to ABA Model Rules	No Local Rule
E.D.WA.	State Rule Based on ABA Model Rules	No Local Rule
W.D.WA.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
N.D.W.V.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.W.V.	State Rules and ABA Code	No Local Rule
E.D.WI.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
W.D.WI.	No Local Rule	No Local Rule
D.WY.	State Rule Based on ABA Model Rules	No Local Rule

[7]ABA Code noted.

APPENDIX IV

Chart III - Break Down of Recent Federal Cases (1990-96) by ABA Model Rules of Professional Conduct

TOTAL NUMBER OF CASES CLASSIFIED BASED ON MODEL RULES: FEDERAL DISTRICT AND APPEALS COURTS FROM JAN. 1, 1990 THROUGH MAR. 23, 1996

Rule	Subject matter	Civil	Criminal	Total
1.1	Competence	2	0	2
1.2	Scope of Representation	4	3	7
1.3	Diligence	1	3	4
1.4	Communication	1	0	1
1.5	Fees	24	1	25
1.6	Confidentiality of Information	10	5	15
1.7	Conflict of Interest: General	77	26	103
1.8	Conflict of Int. Prohib. Trans.	9	1	10
1.9	Conflict of Interest: Fmr. Client	81	5	86
1.10	Imputed disqualification (Firm)	20	4	24
1.11	Govt. to private employment	3	10	13
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		191	46	237
1.12	Former Judge or Arbitrator	0	0	0
1.13	Organization as Client	6	0	6
1.14	Client Under a Disability	0	0	0
1.15	Safekeeping Property	3	1	4
1.16	Declining / Terminating Repr.	7	1	8
1.17	Sale of Law Practice	0	0	0
2.1	Advisor	0	0	0
2.2	Intermediary	0	0	0
2.3	Eval. for use by 3rd Persons	0	0	0
3.1	Meritorious Claims/Contentions	9	3	12

Rule	Subject matter	Civil	Criminal	Total
7.2	Advertising	1	0	1
7.3	Dir. Contact w/ Prospective Cl.	2	0	2
7.4	Comm. of Fields of Practice	1	0	1
7.5	Firm Names & Letterheads	0	0	0
8.1	Bar Admission & Disc. Matters	0	0	0
8.2	Judicial & Legal Officials	2	2	4
8.3	Reporting Prof. Misconduct	1	0	1
8.4	Misconduct	4	3	7
8.5	Disc. Auth.: Choice of Law	6	1	7
Totals		400	120	520

APPENDIX V

97 Com. L. J. 149, Commercial Law Journal, Summer, 1992,
Whom Do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in the Bankruptcy Process,
Peter E. Meltzer [not reprinted here]

APPENDIX VI

98 Com. L. J. 127, Commercial Law Journal, Summer, 1993,
***Deciphering Conflicts of Interest in Bankruptcy Representation*,**
William I. Kohn [not reprinted here]

Standards of Attorney Conduct and Disciplinary Procedures

A Study of the Federal District Courts

Report to the Committee on Rules of Practice and Procedure

Marie Leary
Federal Judicial Center
June 1997

Summary

The Judicial Conference Committee on Rules of Practice and Procedure is studying the effect of having multiple standards of professional conduct for attorneys practicing in the federal district courts. The Federal Judicial Center is assisting by reporting on the experiences of federal districts with local rules that govern attorney conduct, and procedures used by the courts to address alleged misconduct. Based on the published local rules of the federal district courts and the responses to questionnaires sent to each federal district in April 1997, we have made the following findings:

I. Local rules governing attorney conduct in the federal district courts:

- Eighty-nine federal districts (95% of all districts) have a local rule informing attorneys practicing before the districts' courts which professional standards of conduct they are required to abide by. Five districts do not have such a local rule.

- The local rules of 68 districts (76% of federal districts with attorney conduct rules) incorporate the relevant standards of the state in which the district is located. The local rules of eight districts (9% of federal districts with attorney conduct rules) adopt an ABA Model directly. The local rules of 12 districts (14% of federal districts with attorney conduct rules) adopt both the relevant state standards of the state in which the district is located and an ABA Model. One district adopts a unique standard of conduct that varies substantially from the ABA model rules and state standards.

- Twenty-one districts have adopted a local rule regulating attorney conduct identical or nearly identical to Model Rule 4(B) of the Model Federal Rules of Disciplinary Enforcement. By comparing the important components of Model Rule 4(B) with those found in the local rules of the other 47 state-based districts that are not identical or similar in language to Model Rule 4(B), we found that the rules of 35 districts (74%) contain language similar in meaning to two or more of the components of Rule 4(B).

- Although the local rules differ as to the source of the standards adopted, the important components of Model Rule 4(B) are also found in a substantial number of districts with model rule-based and combination model rule and state-based local rules. Two important components are (1) whether the district also adopts any amendments to the standards adopted by the rule and (2) whether the district explicitly preserves the right to prescribe any rule or adopt any modification different than or in addition to the standards adopted. However, whereas these provisions are found in the majority of state-based local rules (60% of local rules that adopt relevant state standards), they are incorporated in only a small number of the other districts (25% of either districts with model based-rules or districts with combination state-based and model-based rules).

- Some local rules explicitly identify exceptions to its adopted standards either by providing that the standards cannot "conflict with federal law" or by explicitly identifying provisions of the adopted standards that are not incorporated. Some rules provide that no subsequent amendments to the adopted standards apply unless expressly adopted by the court. And some local rules have provisions addressing whether the district's local rule adopting a standard of conduct also adopts judicial or other agency interpretations of the standard.

- Based upon an average response rate of 75 districts, a total of 40 districts (53%) reported having experienced one or more of the following five problems: problems created by ambiguously drafted rules, federal courts incorporating standards of conduct not included in any rule, due process and vagueness problems, multiforum problems, and problems resulting from the promulgation by federal agencies of their own attorney conduct rules. However, when each of the problems are examined individually, a small minority of the districts reported their occurrence. Using the average response rate of 75 districts, 17% of all districts responding reported the occurrence of conflicts or confusion derived from ambiguous language in their local rule; 9% reported that attorneys practicing in their district were prevented from relying on the explicit language of their local rules because their court used external standards to interpret the districts; 8% reported experiencing complaints regarding lack of attorney due process caused, in part, by the vagueness of their attorney conduct rule; 9% reported having experiencing difficulties resulting from attorney conduct problems involving multiple venues; and only 9% of respondents reported that they had experienced problems due to conflicts between their local rules and rules of professional conduct adopted by a federal agency.

- Based upon a response rate of 78 districts for each category, 17 districts (22%) reported problems with their rules in one or more of the following five areas: confidentiality, communication with represented parties, lawyers as witnesses, candor towards a tribunal, and conflict of interest. However, when these reported problems are viewed in the context of all districts responding to this inquiry (4% of all districts responding reported problems with confidentiality; 17 % of all districts reported problems with communication with represented parties; 4% with lawyers as witnesses; 8% with candor towards a tribunal, and 6% reporting problems with issues involving conflict of interest), with the exception of communication with represented parties to a limited extent, these specific ethical standards do not present a problem for most federal districts.

- The majority of districts do not support having the same rules governing the professional conduct of attorneys in all federal district courts. Out of 79 districts that responded, 24 (30%) indicated that they would be in favor of a national rule; 53 respondents (67%) did not support a national rule, and two had no opinion.

- The majority of districts not in favor of national uniformity do not support, as an alternative, having the same rules governing the professional conduct of attorneys with regard to the issues of confidentiality (73% opposed), communication with represented parties (71% opposed), lawyers as witnesses (75% opposed), candor towards a tribunal (65% opposed), and conflict of interest (73% opposed).

II. Attorney discipline in the federal district courts:

- Eighty-eight federal districts (94% of all federal districts) have a local rule containing some type of procedures for the discipline of attorneys, and six do not have such a local rule.

- Relying on information in the local rules and assuming that all attorney conduct matters are handled by each district according to the procedures in the rules, we can make only the following definitive statements: (1) districts providing the judicial officer with many options and wide discretion for choosing among them for addressing complaints of attorney misconduct are in the overwhelming majority; (2) districts handling attorney discipline matters exclusively within the district or exclusively referring the matters outside of the district with no provisions for disposing of the matter within the district are a minority.

- To obtain a better sense of the actual practices followed in the districts, the respondents were asked to indicate the approaches to attorney conduct that were used by the district and the approach most frequently used by the district. Of the 73 districts responding, the procedure they reported as using most frequently (34 districts or 47% of all districts responding) was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. In order of decreasing popularity, 11 districts (15% of all districts responding) reported referring the matter to a panel or group of judges within the district; eight districts (11%) refer the matter to a single judge within the district; 7 districts (10%) appoint an attorney to investigate and present the matter to the federal district court; 6 districts (8%) refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court; 6 districts (8%) refer the matter to the United States Attorney for investigation; 6 districts (8%) handle the matter another way (all reported disciplinary matters are handled within the district); and 4 districts (5%) appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.

- Out of the approaches that the districts reported as using most frequently, 34 of these approaches (41 % of all approaches reported used most frequently) referred the disciplinary matter outside of the district court for investigation and final disposition; 39 of these approaches (47% of all approaches reported used most frequently) investigate and arrive at a final disposition of the complaint within the district court; and 17 of these approaches (20% of all approaches reported used most frequently) both send the complaint outside of the district court for investigation and within the district court for final disposition. From this comparison, we observed: (1) The approach slightly favored by the largest number (47% of all approaches reported as used most frequently) of all responding districts is to address the attorney misconduct matter within the district court, both for investigation and final disposition; (2) The majority of all responding districts (61% of all approaches reported as used most frequently) prefer to refer the investigation of attorney misconduct allegations outside of the district court; (3) The majority of all responding districts (67% of all approaches reported as used most frequently) favor handling the final disposition of the matter within the district court.

- The number of complaints or allegations of attorney misconduct that occur within the district court are small. In calendar year 1996, the median for a range of zero to 32 complaints received by the districts was 7.2, and the median for a range of zero to 32 complaints on which formal action was taken was 7.

I. Introduction[1]

The Judicial Conference Committee on Rules of Practice and Procedure is studying the effect of having multiple standards of professional conduct for attorneys practicing in the federal district courts. The Committee requested the Federal Judicial Center to assist by preparing a report on (1) the experiences of federal districts with local rules that govern attorney conduct, and (2) procedures used by the courts to address alleged misconduct. This report is based on the published local rules of the federal district courts and the responses to questionnaires sent to each federal district in April 1997. We sent each district two questionnaires. The first, addressed to the district clerk, asked about the current status of pertinent local rules, the history of the rules, and the frequency of attorney misconduct complaints. The second, addressed to the Chief Judge, or other judicial representative identified as familiar with the rules and issues, asked about the districts' experiences with the rules and procedures relating to attorney conduct and discipline.

Section II describes the current status of local rules governing attorney conduct in the federal district courts. These rules are categorized according to the source of the standards the district has adopted. In addition, the language and key components of these rules are compared to those of Model Rule 4(B) of the original 1978 Model Federal Rules of Disciplinary Enforcement. Also, Section II reports the districts' responses to inquiries concerning problems experienced with the overall approach of their rule and with specific ethical standards such as those governing confidentiality, communication with represented parties, lawyers as witnesses, candor towards the tribunal, and conflict of interest. This section also reports the responses to questions about the need for uniformity of rules governing the professional conduct of attorneys.

Section III describes the current procedures used by federal courts to address attorney misconduct matters. First, the districts' local rules that establish procedures for handling complaints of alleged misconduct are examined. These rules are loosely grouped based on the options the rule provides for the disposition of original allegations of misconduct. As will be explained in greater detail in this section, the manner in which districts are currently handling attorney misconduct allegations cannot accurately be determined from their local rules because the majority of these rules provide several procedures from which the court may chose, and some even permit the court to dispose of the matter in any other manner deemed appropriate but not described in the rules. Therefore, the questionnaires asked the districts to report the procedures they use "typically" and "most frequently." Section III also reports the districts' satisfaction with and problems experienced with the procedure they reported using most frequently. Finally, additional information is presented about districts that typically refer attorney disciplinary matters to state disciplinary authorities and districts that typically refer disciplinary matters to committees or panels created within the district.

II. Local Rules Governing Attorney Conduct in the Federal District Courts

A. Analysis of Current Local Rules

1. Present Status and Categorization of Local Rules

All 94 federal districts verified the existence (or lack thereof) and content of their current local rules adopting standards of professional conduct for attorneys practicing before the districts' courts. Eighty-nine federal districts (95% of all districts) have a local rule informing attorneys

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[1] Special acknowledgments are made to James B. Eaglin, Judith A. McKenna, David Rauma and Elizabeth C. Wiggins for their assistance throughout each stage of this study.

practicing before the districts' courts which professional standards of conduct they are required to abide by. Five districts do not have such a local rule.[2]

The July 5, 1995 report to the Committee, "Local Rules Regulating Attorney Conduct in the Federal Courts", identified several types of attorney conduct rules that vary according to the source of the standards adopted.[3] For purposes of analysis, this report uses a similar approach to categorize the current local rules:

1. State-based Rules[4]: The district's local rule incorporates the relevant standards of the state in which the district is located. The local rules of 68 districts (76% of federal districts with attorney conduct rules) follow this approach.
2. ABA Model-based Rules: The district's local rule adopts an ABA Model directly (either the ABA Canons of Professional Ethics (1908), the ABA Code of Professional Responsibility (1969) or the ABA Rules of Professional Conduct (1983)). The local rules of eight districts (9% of federal districts with attorney conduct rules) follow this approach (five adopt the ABA Model Rules, three adopt the ABA Model Code, and one adopts the ABA Canons).
3. Combination State and ABA Model-based Rules: The district's local rule adopts both the relevant state standards of the state in which the district is located and an ABA Model. The local rules of 12 districts (14% of federal districts with attorney conduct rules) follow this approach.

The local rule of one district does not follow any of these three approaches. The local rule for the Northern District of Illinois adopts a unique standard of conduct that varies substantially from the ABA Model Rules and state standards.

Verification by the districts and categorization of the districts' local rules based upon the source of the standards adopted allows us to conclude that the overwhelming majority of federal districts (95%) have adopted professional standards of attorney conduct by local rule and the majority of these districts (76%) incorporate the standards of professional conduct adopted by the state in which the district is located. Table A-1 in the Appendix identifies the current local rule governing attorney conduct in each of the eighty-nine districts with rules and shows the five districts that do not have such a local rule. In addition, this table indicates which of the three previously defined approaches each district's local rule follows.

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[2] All references to the districts' local rules and procedures are current as of April 28, 1997.

[3] Daniel R. Coquillette, Local Rules Regulating Attorney Conduct In The Federal Courts 3-5 (July 5, 1995) (Report to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States) [hereinafter July 1995 Report to the Committee].

[4] *Id.* The July 1995 Report to the Committee further subdivides local rules that adopt state standards: (1) local rules that adopt state standards based on the ABA Model Rules of Professional Conduct (1983); (2) local rules that adopt state standards based on the ABA Code of Professional Responsibility (1969); (3) local rules that adopt the unique California Rules of Professional Conduct (different from both the ABA Rules and ABA Code). This report does not utilize these subdivisions.

2. Rule 4(B) of the 1978 Model Federal Rules of Disciplinary Enforcement

In 1978, the Judicial Conference Committee on Court Administration approved the Model Federal Rules of Disciplinary Enforcement to be adopted on a voluntary district-by-district basis. Model Rule 4(B) provided:

> Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate 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. The Code of Professional Responsibility [or Rules of Professional Conduct] adopted by this court is the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.[5]

Twenty-one districts[6] have adopted a local rule regulating attorney conduct identical or nearly identical to Model Rule 4(B). Because Model Rule 4(B) incorporates the rules of professional responsibility adopted by the highest court of the state in which the district is located, these 21 districts are part of the group of 68 districts we have identified as having adopted a state-based rule. We examined the similarity between the rules of these 21 districts and the other 47 districts with state-based rules. To do this, we determined whether the rules of the districts contained one or more of the five distinct components of Model Rule 4(B). Those components are:

1. Subject to standards: Language defining who is subject to discipline for violation of the standards of professional conduct adopted by the district. Model Rule 4(B) applies its standards to "an attorney admitted to practice before this Court."
2. Misconduct warranting discipline: Language defining misconduct and behavior warranting discipline. Model Rule 4(B) defines misconduct and behavior warranting discipline as "acts or omissions . . . individually or in concert with any other person or persons, which violate 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."
3. Identification of standards: Language identifying the standard of conduct adopted by the district. Model Rule 4(B) adopts "the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by the highest court of the state in which this Court sits." Note that all of the eighty-nine attorney conduct rules in the districts were required to contain this component in order to be identified as a local rule establishing professional standards of conduct in this report.

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[5] Model Rule (4) of the Model Federal Rules of Disciplinary Enforcement, as proposed by the Committee on Court Administration, Judicial Conference of the United States (1978). Bracketed language is commonly found in districts adopting this model rule in some form after adoption of the ABA Model Rules of Professional Conduct (1983).

[6] D. Me., D. Mass., D. N.H., D. Vt., E.D. Pa., M.D. Pa., W.D. Pa., M.D. N.C., E.D. Va., W.D. Va., S.D. Ohio, E.D. Mich., S.D. Ill., S.D. Ind., E.D. Ark., W.D. Ark., D. Minn., E.D. Mo., W.D. Mo., D. Neb., D. Wyo.

4. Amendments to standards: Language indicating the district's intention to also adopt any amendments to its standards which may be promulgated by the source of its standards. Modal Rule 4(B) adopts standards of the highest state court "as amended from time to time by that state court."
5. Exceptions to standards: Language explicitly preserving the district's ability to prescribe any rule or adopt any modification which is different than or in addition to the standards adopted. Model Rule 4(B) adopts standards of the highest state court as amended by that state court, "except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state."

Table 1 shows how often the components of Model Rule 4(B) are found in the 21 districts with rules similar or identical to Model Rule 4 (B) and how often the components are found in the state-based local rules of the other 47 districts. The component, identification of standards, is not addressed in the table because all of the districts' rules contain language identifying the standards adopted by the rule. For each of the 68 districts with state-based attorney conduct rules, Table A-2 in the Appendix presents the components of Model Rule 4(B) found in each rule.

Table 1
Components of Model Rule 4(B) in State-Based Attorney Conduct Local Rules

	Components of Model Rule 4(B)			
	Subject to Standards	**Misconduct Warranting Discipline**	**Amendments to Standards**	**Exceptions to Standards**
Local rules identical or similar to Model Rule 4(B) (21 districts)	21 (100%)	21 (100%)	21 (100%)	18 (86%)
State-based local rules not similar or identical to Model Rule 4(B) in language used (47 districts)	34 (72%)	20 (43%)	17 (36%)	23 (49%)

Almost by definition, three of the four components are found in the 21 local rules similar or identical in language to Model Rule 4(B); the fourth component is found in most of them. The various components of Model Rule 4(B) are also found in substantial numbers in the other state-based rules: two districts' rules contain none of the components of Model Rule 4(B); nine districts' rules contain one of the components; 22 districts' rules contain two of the components, 11 districts rules contain three of the components, and two districts' rules contain all four components. Thus, the rules of 35 districts (74%), with state-based rules not identical or similar in language to Model Rule 4(B), contain language similar in meaning to two or more of the components of Rule 4(B).

Table 2 below provides a comparison of the components of Model Rule 4(B) found in each of the three approaches to attorney conduct rules[7]: state-based local rules, model rule-based local rules, and combination model rule and state-based local rules.

Table 2
Components of Model Rule 4(B) in All Attorney Conduct Local Rules

	Components of Model Rule 4(B)			
	Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards
State-Based Local Rules (68 districts)	55 (81%)	41 (60%)	38 (56%)	41 (60%)
Model Rule-Based Local Rules (8 districts)	7 (88%)	6 (75%)	1 (13%)	2 (25%)
Combination Model Rule and State-Based Local Rule (12 districts)	12 (100%)	10 (83%)	3 (25%)	3 (25%)

Although the local rules differ as to the source of the standards adopted, the other components of Model Rule 4(B) are found in a substantial number of districts with model rule-based and combination model rule and state-based rules. Of the eight model rule-based rules, seven (88%) contain language similar in meaning to two or more of the components of Rule 4(B). For each of these eight districts with model rule-based attorney conduct rules, Table A-3 in the Appendix presents the components of Model Rule 4(B) found in each rule. Of the rules of the 12 districts with combination model rule and state-based rules, 10 (83%) contain language similar in meaning to two or more of the components of Rule 4(B). However, whereas provisions indicating whether the district also adopts any amendments to the standards adopted by the rule or provisions which explicitly preserve the districts' right to prescribe any rule or adopt any modification different than or in addition to the standards adopted are found in the majority of state-based local rules (60% of local rules that adopt relevant state standards), these provisions have been incorporated in only a small number of the other districts (25% of either districts with model based-rules or districts with combination state-based and model-based rules).For each of these 12 districts with combination model rule and state-based attorney conduct rules, Table A-4 in the Appendix presents the components of Model Rule 4(B) found in each rule.

3. Other Important Provisions in Attorney Conduct Rules

Besides the components of Model Rule 4(B), several other provisions found in attorney conduct rules are notable. As will be reported in section II, part B.1, ambiguity in the language of a

[7] The Northern District of Illinois' local rule, which does not adopt either of the three approaches to attorney conduct rules identified in this report, only contains the first two components of Model Rule 4(B)—identification of who is subject to the adopted standards and a definition of the misconduct which will violate adopted standards and warrant discipline.

district's local rule can result in conflict between, or confusion over, the applicable standards of conduct for attorneys practicing within a district. The presence or lack of certain provisions in a district's local rule may provide important insights into a district's experience with attorney conduct issues. One such provision indicates areas where a federal district court found it necessary to explicitly diverge from the standards adopted. Model Rule 4(B) adopts standards of the highest state court as amended by that state court, "except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state." Many districts contain similar language generally preserving the district's ability to prescribe any rule or adopt any modification which is different than or in addition to the standards adopted. However, some districts' attorney conduct rules more explicitly identify exceptions to its adopted standards. Six districts[8] (four with state-based rules and two with ABA Model rule-based rules) have local rules that adopt standards with the exception that these standards cannot conflict with federal law (i.e., statutes, regulations, court rules or decisions or law). Furthermore, the attorney conduct rules of eight districts[9] explicitly identify provisions of the adopted standards that are not incorporated. Seven of the eight districts with explicit exceptions in their rules have a state-based rule, while one district has a combined model rule and state-based rule. The state-based rules explicitly refused to adopt state ethical standards governing the following areas: public statements by counsel in a criminal case (one district); lawyer as a witness in both civil and criminal cases (one district); propriety of prior court approval for issuance of subpoena to attorney in criminal case (five districts); confidentiality of information (one district); and misconduct issues (one district). The combination model rule and state-based rule explicitly refused to adopt ethical standards governing ABA Model Rule 3.8(f) (prosecutor's duty not to subpoena attorney in a criminal proceeding to present evidence about past or present client). These exceptions are presented in detail in the column "Exceptions to Adopted Rules" in Tables A-2 through A-4 in the Appendix.

Standards of attorney conduct, both state standards and ABA Modal Rules, are regularly amended or modified. The issue of whether a state's local rule adopting a standard of conduct also adopts all subsequent amendments or modifications to those standards is addressed by some districts in their local rule. Rule 4(B) adopts standards of the highest state court "as amended from time to time by that state court." This language indicates the district's intention to adopt any amendments to its standards which may be promulgated by the source of those standards (i.e., the state court). Three districts[10] have provisions providing for the opposite---no subsequent changes valid unless expressly adopted by court order. These exceptions are presented in detail in the column "Other Important Provisions" in Tables A-2 through A-4 in the Appendix.

Standards of attorney conduct may be interpreted by courts or other sources of attorney conduct standards. For example, state bars may issue opinions interpreting specific ethical standards. The issue of whether a district's local rule adopting a standard of conduct also adopts judicial or other agency interpretations of its standards is addressed by some districts in their local rule. Five districts[11] with state-based attorney conduct rules explicitly state the district's intention to follow judicial interpretations of their adopted state standards only by federal courts. Other districts[12] (five districts with state-based rules and three districts with combination model rule and state-based rules) explicitly state the district's intention to adopt judicial interpretations by any court to which the districts' adopted standards apply. These exceptions are presented in detail in the column "Other Important Provisions" in Tables A-2 through A-4 in the Appendix.

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[8] D. N.J., N.D. Ohio, D. Alaska, N.D. Fla., D. Del., D. V.I. See also Tables A-2 and A-3 in the Appendix.

[9] D. Conn., E.D. Pa., M.D. Pa., W.D. Pa., E.D. Va., W.D. Tenn., D. Haw., N.D. Ala. See also Tables A-2 and A-4 in the Appendix.

[10] D. Conn., M.D. La., D. Utah. *See also* Table A-2 in the Appendix .

[11] D. Conn., E.D. N.Y., S.D. N.Y., D. Utah., N.D. Ga. *See also* Table A-1 in the Appendix.

[12] D. Alaska, N.D. Cal., C.D. Cal., D. Idaho, W.D. Tex., E.D. Cal., S.D. Cal., N.D. Okla. *See also* Tables A-2 and A-4 in the Appendix.

4. History of and Anticipated Changes to Local Rules Regulating Attorney Conduct

a. History

The responses received to inquiries regarding the history of the districts' local rules indicate that local rules adopting professional standards of conduct for attorneys started emerging in the districts in the early 1970s, but by the early 1980s only a small minority of districts had adopted them. However, over the next decade the districts gradually adopted professional standards by local rule, and today all but five districts have such rules. Respondents in 52 districts reported that there have been no changes in their standards since initial adoption of the local rule. Respondents in twenty districts reported at least one change in standards since initial adoption. Eighteen districts were not aware of the history of their current local rule regulating attorney conduct. Among the districts reporting a change in standards, six districts reported changing the approach adopted by their local rule from an ABA model-based approach to a state-based approach; two districts changed from a combined ABA model rule-based approach to a state-based approach; one district reported moving from state-based standards to ABA model-based standards; three districts changed from state-based standards to combination model rule and state-based standards; and one district reported adopting a state-based local rule governing attorney conduct after previously having no specific standards. Table A-5 in the Appendix describes these reported changes in standards in more detail. Many of the respondents were not able to provide information about the reason for the changes.

b. Anticipated Changes

The districts were asked whether they had any current plans to amend their present local rule either by changing the standards governing attorney conduct in their district or adopting additional standards. Of the 76 districts responding to this inquiry, only three districts reported having current plans for significant changes to their standards. The Southern District of Indiana is examining the possibility of adding a local rule that specifically encompasses the standards of professional conduct within the Seventh Circuit and the Standards of Civility adopted by the Seventh Circuit. The District of Colorado is considering eliminating the adoption of the Colorado Supreme Court Rules of Professional Conduct and establishing its own new rules of conduct for lawyers admitted to its bar. If it does so, the District of Colorado will share the Northern District of Illinois' distinction as a federal district with standards of professional conduct unique to the district. The Middle District of North Carolina is considering amending its current rule to specifically adopt the final ethics opinions of the North Carolina State Bar that interpret and apply the Code of Professional Responsibility adopted by the North Carolina Supreme Court.

5. Districts Without a Local Rule Regulating Attorney Conduct

The five districts[13] that reported having no local rule specifying standards governing attorney conduct reported no plans to adopt such a local rule in the future. Respondents for these districts reported no problems due to the absence of a local rule. However, most of them have informal standards or local rules that establish general guidelines for attorney conduct. For example, when attorney conduct issues arise, the Northern District of Iowa applies the Code of Professional Responsibility for Lawyers adopted by the Iowa Supreme Court and supplemented by the ABA Model Rules. The Southern District of Iowa and the District of North Dakota both have

[13] W.D. Wis., N.D. Iowa, S.D. Iowa, D. N.D., D. S.D.

local rules[14] that establish general guidelines for courtroom decorum and conduct that warrants discipline, but do not adopt any specific standards of professional conduct.

B. Problems Experienced by Federal Districts Due to the Overall Approach of Their Attorney Conduct Rule

The Committee identified five major problems related to the practical application of the variants of attorney conduct rules in the districts.[15] These problems are those created by ambiguously drafted rules, federal courts incorporating standards of conduct not included in any rule, due process and vagueness problems, multiforum problems, and problems resulting from the promulgation by federal agencies of their own attorney conduct rules. Overall, based upon an average response rate of 75 districts for each of the five problems discussed below, a total of 40 districts (53%) reported having experienced one or more of these five problems with their attorney conduct rules. However, when each of these problems are examined individually as shown below, a very small minority of the districts reported their occurrence.The following five sections present the districts' responses to inquiries as to whether these problems have occurred in their district due to the approach adopted by their local rule regulating attorney conduct.

1. Problems Created by Ambiguously Drafted Rules

We asked districts: "Has ambiguity in the language of the rule resulted in any conflicts between, or confusion over, applicable standards of conduct for attorneys practicing within your district?" If so, the district was requested to indicate whether the conflict or confusion had resulted from any of the following:

1. The local rule adopts an ABA model as its standard of conduct, but the rule does not specify whether the Model Rules of Professional Conduct or the Model Code of Professional Responsibility are the applicable standard.
2. The local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits.
3. The rule prescribes multiple standards of conduct without indicating which controls.
4. The rule adopts the standards of the highest state court but does not specify what those standards are (e.g., a version of the Model Rules of Professional Conduct or the Model Code of Professional Responsibility).
5. The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule.
6. The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
7. Other. Describe any other problems that have arisen in your district due to ambiguous language in your local rule.

Sixty-nine of the 77 districts (90%) responding to this inquiry reported no conflicts or confusion resulting from ambiguity created by the language of their attorney conduct rule; 13

[14] Local Rules for the U.S. District Court for the S.D. Iowa, Rule 83.2(f)-(h); Local Rules for the U.S. District Court for the D. N.D., Rules 79.1 & 83.2(B).

[15] July 1995 Report to the Committee, at 11-32.

(17%) reported the occurrence of conflicts or confusion derived from ambiguous language in their local rule.

Six of the 13 districts reported problems resulting from rules that adopt the standards of the highest state court but do not specify what those standards are. Five districts experienced problems because their rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. Three districts reported experiencing conflict or confusion because their rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule. Two districts reported experiencing conflict or confusion because their rule prescribes multiple standards of conduct without indicating which controls. One district reported experiencing conflict or confusion because their local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits. In addition, seven districts reported experiencing "other" problems because of ambiguous language in their attorney conduct rule. Table A-6 in the Appendix describes the problems reported by the 13 districts.

2. Problems Created by Federal Courts Incorporating Standards Not Explicit In The Districts' Local Rules

We asked districts: "Are attorneys practicing in your district prevented from relying on the explicit language of your local rule because your district has 'incorporated' external standards into your local rules or utilized external standards not apparent in the rules themselves to interpret the rules?" If so, the districts were requested to indicate whether any of the following had occurred in their courts:

1. The local rule does not mention an ABA model, but your district has expressly incorporated an ABA model into your local rule governing attorney conduct.
2. The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
3. Other. Describe how standards not explicit in your local rule were used to decide an issue(s) of attorney conduct in your district and any problems that this created.

Out of the 71 districts responding to this inquiry, only seven (10%) reported that attorneys practicing in their district were prevented from relying on the explicit language of their local rules because their court used external standards to interpret the districts' attorney conduct rules. Two of the seven districts reported that their district looks to ABA models to "interpret" local rules and resolve ambiguities, even though their district has not expressly "incorporated" ABA models into its local rules. Four districts reported "other" situations and problems caused by their use of external standards. For each of these seven districts, Table A-7 in the Appendix summarizes the nature of the problems reported by the seven districts.

3. Due Process and Vagueness Problems

Standards for attorney conduct must not be so vague as to not provide an attorney with sufficient notice of the prohibited conduct to meet constitutional due process guarantees. We asked districts: "Have complaints regarding lack of attorney due process arisen due to, at least in part, the vagueness of your district's local rule?" If so, the districts were requested to describe the nature and extent of such complaints. Out of the 76 districts responding to this inquiry, only six districts (8%) reported experiencing such complaints. All of these complaints reported due process

problems with the districts' attorney discipline and reinstatement procedures. Table A-8 in the Appendix briefly describes the nature and extent of the complaints received by the six districts.

4. Multiforum Problems

We asked districts: "Has your district experienced any difficulties arising from an attorney conduct problem involving multiple venues such as conflicts between different state standards, between different district and circuit local rules, or between federal and state standards within your own district?" Out of the 76 districts responding to this inquiry, seven (9%) districts reported having experienced difficulties resulting from attorney conduct problems involving multiple venues. Most of these districts reported problems involving conflict between federal and state standards within their district, such as disagreeing with state's interpretation of standards and the decision to impose discipline. Table A-9 in the Appendix briefly describes the nature and extent of the difficulties experienced by the seven districts.

5. Conflict with federal agencies promulgating their own attorney conduct rules.

We asked districts: "Has your district experienced any difficulties arising from conflicts between your district's local rule and rules of professional conduct adopted by some federal agencies (such as the Department of Justice, the Securities and Exchange Commission, or the Patent and Trademark Office to name a few examples) to govern the conduct of their attorneys?" Of the 74 districts responding to this inquiry, seven (9%) districts reported that they had experienced problems due to conflicts between their local rules and rules of professional conduct adopted by a federal agency. Most of these districts reported problems with conflicting standards promulgated by the Department of Justice. Table A-10 in the Appendix briefly describes the nature and extent of the difficulties experienced by the districts.

C. Problems Experienced by Districts Due to Specific Ethical Standards: Identification and Frequency of Problems

The Committee has identified five categories of rules or ethical standards that appear to be implicated in most federal disputes involving attorney conduct[16]:

1. Confidentiality: issues analogous to those addressed in ABA Model Rule 1.6.
2. Communication with represented parties: issues analogous to those addressed in ABA Model Rule 4.2.
3. Lawyers as witnesses: issues analogous to those addressed in ABA Model Rule 3.7.
4. Candor towards the tribunal: issues analogous to those addressed in ABA Model Rule 3.3.
5. Conflict of interest: issues analogous to those addressed in ABA Model Rules 1.7, 1.8, 1.9, 1.10. 1.11.

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[16] Daniel R. Coquillette, Study of Recent Federal Cases Involving Rules of Attorney Conduct (December 1, 1995) (Report to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States) [hereinafter December 1995 Report to the Committee].

Through the surveys, we attempted to determine whether the concentration of disputes in these areas resulted from problems with the controlling rule or standard (for example, lack of clarity or overbreadth). The districts were asked to identify the kinds of problems, if any, that they had experienced with the rules or standards in these five areas and any other area noteworthy to the district. Seventeen districts, 22 percent of the 78 districts responding to the inquiry, reported problems in one or more of the five areas. These districts were asked to indicate whether the particular ethical standard or standards identified as having created a problem(s) did so in at least one specific instance by meeting any of the following criteria:

1. not speaking to the alleged unethical conduct.
2. being unclear.
3. being too broad.
4. being too narrow.
5. being inconsistent with other standards of conduct (e.g., local federal rules in conflict with state rules, local federal rules in conflict with other federal agency rules).
6. Other. Please specify.

For each of the 17 districts reporting a problem, Table A-11 in the Appendix shows which category of ethics standards created a problem and the manner or manners in which each standard created a problem(s) in at least one specific instance. The districts were also asked to indicate the frequency with which these problems were experienced within the past two years. Their responses are also shown in Table A-11 in parenthesis following the listing of criteria violated by the problematic ethical standard.

The table below provides a summary of the responses of the 17 districts reporting a problem with one or more of the five areas of ethical standards.

Table 3
Problems Created by Specific Ethics Standards in the Federal District Courts

Ethical standard:	# Districts Reporting Ethics Standard Created a Problem:	# Districts Responding That Ethics Standard Created a Problem by:					
		not speaking to alleged unethical conduct:	being unclear:	being too broad:	being too narrow:	being inconsistent with other standards of conduct:	Other:
1. Confidentiality	3	1	1	1		1	
2. Communication with Represented Parties	13	4	2	3	0	5	5
3. Lawyers as Witnesses	3	1	1	1		1	
4. Candor Towards A Tribunal	6	2	3		2	1	2
5. Conflict of Interest	5	2	4	1		1	1

The most problematic area is "communication with represented parties." This standard reportedly caused problems by being inconsistent with other standards of conduct (5 districts), not speaking to the alleged unethical conduct (4 districts), being too broad (3 districts), being unclear (2 districts), and for a variety of other reasons (5 districts). (See Table A-11 in the Appendix for a description of the "other" problems.) Issues involving candor towards a tribunal and conflict of interest created the second largest source of problems (65% combined), while lawyers as witnesses and confidentiality created the least (35% combined). However, when these reported problems are viewed in the context of all districts responding to this inquiry (4% of all districts responding reported problems with confidentiality; 17 % of all districts reported problems with communication with represented parties; 4% with lawyers as witnesses; 8% with candor towards a tribunal, and 6% reporting problems with issues involving conflict of interest), with the exception of communication with represented parties to a limited extent, these specific ethical standards do not present a problem for most federal districts.

D. National Uniformity

One of the questions before the Committee is whether a single set of rules should govern the professional conduct of attorneys in all federal courts.[17] We asked the questionnaire recipients[18]: "Should all federal district courts have the same rules governing the professional conduct of attorneys?"

Out of 79 districts that responded, 24 (30%) indicated that they would be in favor of a national rule; 53 respondents (67%) did not support a national rule, and two had no opinion. Table A-12 in the Appendix presents the individual responses for the 79 districts answering this inquiry.

E. Selective Uniformity

An alternative to a national standard would be uniform national federal rules for attorney conduct only in certain key areas with state standards governing all other areas. We asked the 55 respondents who said their district is not in favor of a national rule regulating attorney conduct in all areas: "Should all federal courts have the same rule governing the professional conduct of attorneys in the area of: confidentiality? communications with represented parties? lawyers as witnesses? candor towards a tribunal? conflict of interest?"

The following table presents an overview of the responses to selective uniformity for each category of ethical standards. See Table A-13 in the Appendix for the individual responses of districts in favor of uniformity for one or more of the areas of ethics standards. Close to three-fourths of the districts opposed to national uniformity are also opposed to uniformity of standards in each of the selected areas of ethical standards. In addition, among the candidates for uniformity, there is no one ethical standard significantly more favored by the districts over the others.

[17] July 1995 Report to the Committee, at 38-40.

[18] Questions regarding national and selective uniformity of standards were asked only of the Chief Judge or other identified judicial representative for the district.

Table 4
Selective Uniformity of Ethical Standards in the Federal District Courts

Ethical Standard:	# Districts in Favor of Selective Uniformity	# Districts Opposed to Selective Uniformity	# Districts with No Opinion
1. Confidentiality	12 (22%)	40 (73%)	3 (5%)
2. Communication with Represented Parties	13 (24%)	39 (71%)	3 (5%)
3. Lawyers as Witnesses	11 (20%)	41 (75%)	3 (5%)
4. Candor Towards A Tribunal	16 (29%)	36 (65%)	3 (5%)
5. Conflict of Interest	12 (22%)	40 (73%)	3 (5%)

III. Attorney Discipline in the Federal District Courts

All 94 federal districts responded to the inquiry verifying the existence (or lack thereof) and content of their current local rule adopting procedures for the discipline of attorneys in their courts. Eighty-eight federal districts (94% of all districts) have a local rule containing some type of procedures for the discipline of attorneys, and six districts do not have such a local rule. Table A-14 in the Appendix presents the current attorney discipline rules in each district and identifies the districts without rules.

Attorney discipline in the federal districts is a catchall phrase encompassing several different situations that could warrant discipline. Attorneys convicted of a serious crime could be immediately suspended from practice before the court and after hearing, further disciplined. An attorney formally disciplined by another court could be subject to the identical discipline by the district court. Finally, a district court might impose discipline upon an attorney when misconduct or allegations of misconduct are brought to the court's attention, whether by complaint or otherwise. A district with a local rule adopting disciplinary procedures may specifically address some, all, or none of these situations.

The Committee requested information on the procedures used by districts to address complaints or allegations of attorney misconduct. These procedures may include investigation, prosecution, and application of the districts' attorney ethics standards to determine if discipline is warranted. The inquiries in the second section of the questionnaire focused on the districts' approaches for addressing allegations of misconduct, and not on their procedures for determining whether reciprocal or additional discipline should be imposed after the attorney's conduct has already been adjudicated as warranting conviction or discipline by another court. Most districts allow broad judicial discretion in this area—both in determining how complaints of attorney misconduct should be handled and where the matter should be referred. This makes it difficult to gain an accurate picture of the approaches actually followed in the districts from the local rules. Therefore, questionnaire responses are used in conjunction with their districts' local rules to provide a more complete account of the actual approaches followed by federal district courts.

A. Current Local Rules Regulating Attorney Discipline

1. Analysis and Grouping of Attorney Discipline Rules

Wide variation exists among the provisions of the districts' local rules establishing procedures for addressing misconduct or allegations of misconduct brought to the courts' attention

by formal complaint or otherwise. Some of these rules are extremely detailed and provide procedures for every stage of disposition, while others are very broad and general. For purposes of analysis and comparison, we have placed the eighty-eight districts with disciplinary rules into one of the following loosely defined groups based upon the options provided by the districts' local rule for disposition of attorney misconduct matters:

Group 1[19]: Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court[20] (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) **and/or** to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Group 2: Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) **exclusively** to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

Group 3: Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter **exclusively** to bodies or person(s) within the federal district court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

At present, the disciplinary rules of 54 districts (61% of districts with rules) fit into Group 1; three districts' rules fall into Group 2 (3% of districts with rules), and the rules of 31 districts fit into Group 3 (35% of districts with rules). For each district with a disciplinary rule, Table A-14 in the Appendix indicates which of the three groups the rule fits into. If we operate under the assumption that all attorney conduct matters are handled by each district according to the procedures provided in its local rule, we cannot make many definitive statements about the approaches followed in the federal districts. With this assumption, the only conclusions that can be made are that: (1) districts providing the judicial officer with many options and wide discretion for choosing among them for addressing complaints of attorney misconduct are in the overwhelming majority; (2) districts handling attorney discipline matters exclusively within the district or exclusively referring the matters outside of the district with no provisions for disposing of the

[19] There is wide variation among the rules of districts within this grouping. Some of these rules allow for discretion as to referral of the matter either within or outside of the district court only at the investigation and prosecution stages, with the district making the final decision as to discipline. Other rules permit the matter to be referred either outside or within the district or sometimes both for investigation, prosecution and final disposition.

[20] All references to "outside of the district" or "within the district" refer to judicial employees of the federal district court and attorneys who are members of the district court's bar, and not to the geographical boundaries of the district within which the federal court is located.

matter within the district are a minority. Further, both Groups 1 and 3 (which represent 97% of all districts with disciplinary rules) contain districts with disciplinary rules that are discretionary. In other words, the rule outlines procedures for addressing attorney misconduct complaints that a judicial officer "may" choose to follow or, if not, adopt any other procedures deemed appropriate. This makes it even more difficult to accurately determine which approach among the several provided in these rules is actually used, not to mention determining which is used most frequently.

2. History of and Anticipated Changes to Local Rules on Attorney Discipline

The districts' responses to inquiries regarding the history of their disciplinary rules shows movement towards more detailed procedures for addressing complaints of attorney misconduct. Many districts (25) reported amending their rules several times since initial adoption due to a "need for more detailed procedures" and also so that their local rules reflect actual practices within the districts.

Among the 78 districts responding to an inquiry about whether they had plans to amend their current disciplinary rules, 18 reported having proposed amendments. Some proposals are only at the discussion stage while others are in draft form awaiting approval. Five of the 18 districts plan to adopt rules that contain substantially more detailed disciplinary procedures than previously found in their local rules.[21] Other reasons given for the planned or proposed changes include the need to have rules that provide more streamlined, precise and simpler disciplinary procedures from those previously described as cumbersome;[22] to adopt rules that allow for a more proactive approach to attorney discipline[23], and to adopt rules which allow for more discretion and flexibility for the court in the disciplinary process.[24]

B. Procedures Reportedly Used by the Federal District Courts to Address Complaints of Attorney Misconduct

1. Districts Report Typical Approaches Used and Most Frequently Used Approach

We asked the respondents to choose from a list of general approaches (1) all of the approaches to attorney disciplinary used by the district; and (2) the approach most frequently used by the district. The respondents chose from the following list of general approaches:

1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.
3. Refer the matter to a single judge in the district.
4. Refer the matter to a panel or committee of judges in the district.
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.
6. Appoint an attorney to investigate and present the matter to the federal district court.

[21] W.D. Mich., D. Or., D. N.M., D. Vt., M.D. Ala.

[22] D. P.R., S.D. Ill., W.D. Mo.

[23] S.D. Ind.

[24] D. Mass., E.D. Mich., E.D. Ark., W.D. Mo.

7. Refer the matter to the U.S. Attorney for investigation.
8. Handle it in another way. Please explain.

Next, we asked the respondents to think about the most recent case of alleged attorney misconduct in which the district used what they indicated as the "most frequently used procedure" and reply as to whether the respondent or, to his or her knowledge, other judges in the district, were either (1) dissatisfied with the procedure used; or (2) dissatisfied with the outcome of the case. The following three subsections present the responses to these inquiries for each of the three groupings of districts defined above in section III.A.

a. Group 1 Districts

For Group 1 districts, districts with rules permitting or requiring disciplinary matter to be handled within the district court and/or referred to a person or body outside of the district court, Table A-15 in the Appendix presents the approaches the individual districts reported using, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the 45 Group 1 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 5
Approaches Used by Group 1 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	30 (67%)	19 (42%)	7	7
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	13 (29%)	4 (9%)	0	1
3. Refer the matter to a single judge in the district.	15 (33%)	0		
4. Refer the matter to a panel or committee of judges in the district.	14 (31%)	7 (16%)	1	1
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	8 (18%)	4 (9%)	0	0
6. Appoint an attorney to investigate and present the matter to the federal district court.	19 (42%)	7 (16%)	2	2
7. Refer the matter to the U.S. Attorney for investigation.	10 (22%)	3 (7%)	1	0
8. Handle it in another way. Please explain.	5 (11%)	6 (13%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Out of the 45 responding districts in Group 1, the approach the majority of these districts (30 districts or 67% of responding Group 1 districts) reported using, and the approach the largest group

of districts (19 districts or 42% of responding Group 1 districts) reported as the most frequently used approach in their district was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted. Likewise, this approach received the highest number (seven) of complaints of dissatisfaction both with the procedure and outcome of recent cases.

To analyze the responses further, we can divide the eight approaches into three categories based upon whether the disciplinary matter is handled outside of the district court (both for investigation and final disposition), within the district court (both for investigation and final disposition), or both outside of the district court (for investigation) and within the district court (for final disposition).[25] The category that refers the matter outside of the district court for investigation and final disposition includes the following approach (row 1 in the table above): referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. The second category of approaches handles the matter within the district court: referring the matter to a single judge in the district (row 3); referring the matter to a panel or committee of judges in the district (row 4); referring the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court (row 5); handling the matter another way (these districts reported handling the matter within the district, either by the presiding judge or the court as a whole) (row 8). The third category of approaches refers the matter both outside of the district court for investigation and within the district court for final disposition: appointing the agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court (row 2); and referring the matter to a United States Attorney for investigation (row 7). One approach, appointing an attorney to investigate and present the matter to the federal district court (row 6), can fit into either the second or third category depending upon whether the appointed attorney is a member of the district court (fits into second category) or not (fits into third category).

Out of the approaches the responding Group 1 districts reported using, 30 of these approaches (26% of all approaches reported being used by Group 1 districts) refer the matter outside of the district court for investigation and final disposition; 61 of these approaches (53% of all approaches reported being used by Group 1 districts) handle the investigation and final disposition within the court; and 42 of these approaches (37% of all approaches reported being used by Group 1 districts) refers the matter both outside the district court for investigation and within the district court for final disposition. Out of the approaches the responding Group 1 districts reported using most frequently, 19 of these approaches (38% of all approaches reported used most frequently by Group 1 districts) handle the matter outside of the district court for investigation and final disposition; 24 of these approaches (48% of all approaches reported used more frequently by Group 1 districts) handle the investigation and final disposition within the court; and 14 of these approaches (28% of all approaches reported used most frequently by Group 1 districts) refer the matter both outside the district court for investigation and within the district court for final disposition. Note that the percentages do not add to 100 because the reported instances of "appointing an attorney to investigate and present the matter to the federal district court" are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently.

This categorization scheme allows us to make some observations: (1) The category of approaches used by the largest number of Group 1 districts (based both upon the approaches reportedly used and used most frequently) handles complaints or allegations of attorney misconduct by addressing the matter within the district court, both investigation and final disposition; (2) The majority of Group 1 districts (based both upon the approaches reportedly used (63%) and used

[25] As indicated earlier, all references to "outside of the district" or "within the district" refer to judicial employees of the federal district court and attorneys who are members of the district court's bar, and not to the geographical boundaries of the district within which the federal court is located.

most frequently (66%)) favor the approach of referring the matter outside of the district court for investigation of the allegations.(3) The majority of Group 1 districts, based both upon the approaches reportedly used (90%) and approaches reported as used most frequently (78%), prefer to conduct the final disposition of the matter within the district court.

b. Group 2 Districts

For Group 2 districts, districts with rules requiring disciplinary matters of a serious nature to be referred to a person or body outside of the district court, Table A-16 in the Appendix presents the approaches the individual districts reported using in their district, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the three Group 2 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 6
Approaches Used by Group 2 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	1 (33%)	2 (67%)	0	0
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	1 (33%)	0 (0%)	0	0
3. Refer the matter to a single judge in the district.	1 (33%)	1 (33%)	0	0
4. Refer the matter to a panel or committee of judges in the district.	1 (33%)	0 (0%)	0	0
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	0 (0%)	0 (0%)	0	0
6. Appoint an attorney to investigate and present the matter to the federal district court.	1 (33%)	0 (0%)	0	0
7. Refer the matter to the U.S. Attorney for investigation.	0 (0%)	0 (0%)	0	0
8. Handle it in another way. Please explain.	0 (0%)	0 (0%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Of the three responding districts in Group 2, two districts said the most frequently used approach was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted; these districts also reported sending the matter outside the district court for investigation but making the final disposition within the district court. The other Group 2 district reported that the approach it uses most frequently is referring the matter

to a single judge in the district; this district also reported sending the matter to a panel or committee of judges in the district. Thus, although the local rules of these three districts specifically require serious disciplinary matters to be sent outside of the district court for investigation and final disposition, this practice is not always followed in these districts.

c. Group 3 Districts

For Group 3 districts, districts with rules permitting or requiring disciplinary matters to be handled within the district, Table A-17 in the Appendix presents the approaches the individual districts reported using in their district, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the 25 Group 3 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 7
Approaches Used by Group 3 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	15 (60%)	13 (52%)	1	0
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	0	0	0	0
3. Refer the matter to a single judge in the district.	10 (40%)	7 (28%)	2	1
4. Refer the matter to a panel or committee of judges in the district.	7 (28%)	4 (16%)	1	0
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	8 (32%)	2 (8%)	3	1
6. Appoint an attorney to investigate and present the matter to the federal district court.	6 (24%)	0	1	0
7. Refer the matter to the U.S. Attorney for investigation.	3 (12%)	3 (12%)	0	0
8. Handle it in another way. Please explain	3 (12%)	1 (4%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Out of the 25 responding districts in Group 3, the approach the majority of these districts (15 districts or 60% of responding Group 3 districts) reported using, and the approach the largest group of districts (13 districts or 52% of responding Group 3 districts) reported as the most frequently used approach in their district was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted. This finding directly contradicts the procedures provided for in these districts local rules. However, as explained in section III.A.1, several of the local rules for Group 3 districts are discretionary. The judicial

officer may use his or her discretion and either follow the procedures provided for by the rule (addressing the matter within the district) or handle the matter in another way deemed appropriate.

For further analysis, we can use the categorization introduced earlier that distinguishes between an approach that refers investigation and disposition of the misconduct complaint outside of the district court, approaches that investigate and arrive at final disposition within the district court, and approaches that both refer the matter outside of the district court for investigation and within the district court for final disposition. Of the approaches the responding Group 3 districts reported using, 15 of these approaches (29% of all approaches reported being used by Group 3 districts) refer the matter outside of the district court for investigation and final disposition; 34 of these approaches (65% of all approaches reported being used by Group 3 districts) handle the matter within the district court for investigation and final disposition; and 9 of these approaches (17% of all approaches reported being used by Group 3 districts) refer the matter both outside of the district court for investigation and within the district court for final disposition. Out of the approaches the responding Group 3 districts reported using most frequently, 13 of these approaches (43% of all approaches reported being used most frequently by Group 3 districts) refer the matter outside of the district court for investigation and final disposition; 14 of these approaches (47% of all approaches reported being used most frequently by Group 3 districts) handle the matter within the district court for investigation and final disposition; and 3 of these approaches (10% of all approaches reported being used most frequently by Group 3 districts) refer the matter both outside of the district court for investigation and within the district court for final disposition.[26]

This categorization scheme allows us to make some observations: (1) The category of approaches reportedly used by the largest number of Group 3 districts (based both upon the approaches reportedly used (65%) and reported as used most frequently (47%)) handles attorney misconduct matters within the district court, both for investigation and prosecution; (2) Although the majority of Group 3 districts (65% of approaches reportedly used) preferred to handle the investigation of attorney misconduct matters within the district court, their responses based upon the approach most frequently used shows a slight preference (53% of approaches reported as used most frequently) for referring the matter outside the district court for investigation; (3) The majority of Group 3 districts (based both upon the approaches they reported as using (82%) and as used most frequently (57%)), prefer to conduct the final disposition of the matter within the district court.

d. All Groups Combined

Of the 73 districts responding from Groups 1, 2 and 3 combined, the procedure they reported as using most frequently (34 districts or 47% of all districts responding) was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. In order of decreasing popularity, 11 districts (15% of all districts responding) reported referring the matter to a panel or group of judges within the district; eight districts (11%) refer the matter to a single judge within the district; 7 districts (10%) appoint an attorney to investigate and present the matter to the federal district court; 6 districts (8%) refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court; 6 districts (8%) refer the matter to the United States Attorney for investigation; 6 districts (8%) handle the matter another way (all reported disciplinary matters are

[26] Note that the percentages do not add to 100 because the reported instances of "appointing an attorney to investigate and present the matter to the federal district court" are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently. In addiiton, the approaches reported by districts that "handle the matter another way" fit within the category of approaches that address attorney misconduct matters within the district court, for both investigation and final disposition.

handled within the district); and 4 districts (5%) appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.

Of the approaches that Groups 1, 2, and 3 reported as using most frequently, 34 of these approaches (41 % of all approaches reported used most frequently) referred the disciplinary matter **outside** of the district court for investigation and final disposition; 39 of these approaches (47% of all approaches reported used most frequently) investigate and arrive at a final disposition of the complaint **within** the district court; and 17 of these approaches (20% of all approaches reported used most frequently) both send the complaint outside of the district court for investigation and within the district court for final disposition.[27] This comparison allows us to make some overall observations: (1) The approach slightly favored by the largest number (47% of all approaches reported as used most frequently) of all responding districts is to address the attorney misconduct matter within the district court, both for investigation and final disposition; (2) The majority of all responding districts (61% of all approaches reported as used most frequently) prefer to refer the investigation of attorney misconduct allegations outside of the district court; (3) The majority of all responding districts (67% of all approaches reported as used most frequently) favor handling the final disposition of the matter within the district court.

2. Referring Attorney Misconduct Complaints to State Disciplinary Authorities

We asked respondents from districts that typically refer the majority of attorney disciplinary matters to committees or panels created within their district to answer several questions about their practices. We asked them to indicate their district's level of overall satisfaction with the process by which allegations of attorney misconduct in federal court are addressed by the state disciplinary agencies. Of the 45 districts who responded to this inquiry, 23 districts (51%) reported being very satisfied, 15 districts (33%) reported being somewhat satisfied, 3 districts (7%) reported being somewhat dissatisfied, 2 districts (4%) reported being very dissatisfied, and 3 districts (7%) indicated they don't know.

Next, we asked these districts if there had been instances during the past two years in which the districts were not satisfied with the process by which attorney misconduct complaints were handled by state disciplinary agencies and/or the final outcome decided by the state disciplinary agency. Of the 47 districts responding to this inquiry, 34 reported no instances of dissatisfaction, and 13 districts indicated that there have been instances within the past two years when they were not satisfied. In addition, we asked the 13 districts reporting instances of dissatisfaction to indicate (1) whether they had experienced problems with the procedure and/or problems with the outcome (or other problems); and (2) whether they had addressed any of these matters de novo in federal court; and (3) the frequency of this occurrence within the past two years. Four districts indicated problems with the procedure and ten districts indicated problems with the outcome. Five of the districts reporting instances of dissatisfaction indicated they had addressed a matter de novo within the past two years.

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[27] Note that the percentages do not add to 100 because the reported instances of appointing an attorney to investigate and present the matter to the federal district court are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently. In addition, all responses to row 8 "handle another way" are included within the category that handles complaints within the district court.

3. Referring Attorney Misconduct Complaints to Committees or Panels Within the District

We asked respondents from districts that typically refer the majority of attorney disciplinary matters to committees or panels created within their district to answer several questions about their practices. We asked the 17 districts[28] that responded to discuss the advantages and disadvantages of addressing complaints of ethics violations within the district court instead of referring the matters to state disciplinary bodies or other external bodies. Ten districts felt that an advantages of having established internal bodies included the ability to address a violation occurring in the district court by the body most familiar with the issues and where relatively few complaints arise, instead of by state disciplinary bodies that are considered by some districts to be overworked and much too slow. Two districts feel that having control over the disciplinary process would more clearly and closely reflect the views and priorities of the district, rather than risk relinquishing the matter to a state agency that may have its own agenda. One district believes that handling disciplinary matters within the district court conveys to attorneys practicing in the district interest in their professional compartment and has a strong effect on the tone of practice in a district.

Disadvantages reported included the necessary time that must be allocated for disciplinary matters which results in an increased workload for federal judges and practitioners (four districts); lack of funds to support disciplinary committees (two districts); possibility of presenting conflict of interest issues (one district); and lack of public notification regarding federal committee's decision (one district). In addition, one district reported feeling that having a separate investigative body and staff would not be cost effective given the relatively few situations that present themselves for processing in the federal districts. Another respondent pointed out that since most lawyers who breach state standards also breach federal court standards simultaneously, reciprocal discipline is reasonable, fair and effective.

4. Districts Without a Local Rule Prescribing Procedures for Addressing Attorney Misconduct Complaints

As mentioned previously in section III, A.1, at present six districts do not have a local rule establishing procedures for addressing allegations of attorney misconduct. However, several of the districts reported regularly using informal procedures to address disciplinary matters. For example, in the District of Arizona the presiding judge in each division handles routine disciplinary matters, and in unusual or more serious cases, the court refers the matter to its "Lawyers Discipline Committee" consisting of two district judges and one bankruptcy judge. The Western District of Wisconsin feels that routine attorney misconduct matters are adequately addressed by individual dealings between trial judges and attorneys in the case before them. In more complex or serious cases, the chief judge may refer the matter to the state bar.

We asked these districts what problems (if any) they had or were experiencing due to their lack of local rules establishing formal disciplinary procedures. All five responding districts reported experiencing no problems. Moreover, only one district, the Western District of Louisiana, reported that it was considering adopting rules of disciplinary procedure in the future; the other five responding districts had no plans to do so.

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[28] D. Mass., D. P.R., D. R.I., E.D. N.Y., S.D. N.Y., E.D. Pa., D. Md., E.D. Va., W.D. Tex., N.D. Ohio, W.D. Ark., E.D. Wash., D. N.M.I., D. Colo., D. N.M., E.D. Okla., and N.D. Okla.

C. Frequency of Attorney Misconduct Complaints in the Federal District Courts

We conclude attempting to put a perspective on the scope of attorney misconduct problems in the federal districts. We asked the districts to provide the approximate number of complaints (either formal or otherwise) alleging attorney misconduct received or initiated sua sponte in calendar year 1996, and the number of these dropped or dismissed before any formal procedures were begun. The responses show that allegations of misconduct that occurred within the districts are very small in number. The table below shows the median and range for complaints received in 1996 and complaints on which formal action was taken in 1996. Most of the districts reported that notices from state disciplinary authorities of disciplinary action already taken and sent to the federal district court for imposition of reciprocal discipline comprise the overwhelming majority of their disciplinary matters.

Table 8
Frequency of Attorney Misconduct Complaints in the Federal Districts for Calendar 1996

	Median	Range
Number of Complaints Received in 1996:	7.5	0 - 32
Number of Complaints Formal Action was Taken on in 1996:	7	0 - 32

Table A-18 in the Appendix shows the frequency of complaints for calendar year 1996 in each of the federal districts responding to the inquiry.

Appendices

Table A-1

Rules Governing Attorney Conduct in the Federal District Courts

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
01	D. Me.	Local Rule 83.3	X		
01	D. Mass.	Local Rule 83.6(4)	X		
01	D. N.H.	Local Rule 83.5 (DR-1 and DR-5)	X		
01	D. R.I.	Local Rule 4(d)	X		
01	D. P.R.	Local Rule 211.4(b) (renumbered as Rule 83.5 but effective date unknown at present)		X	
02	D. Conn.	Local Civil Rule 3(a)	X		
02	N.D. N.Y.	Local Rule 83.4(j)		X	
02	E.D. N.Y.	Local Civil Rule 1.5(b)(5)	X		
02	S.D. N.Y.	Local Civil Rule 1.5(b)(5)	X		
02	W.D. N.Y.	Local Civil Rule 83.3(c)	X		
02	D. Vt.	Local Civil Rule 83.2(d)(4)	X		
03	D. Del.	Local Rule 83.6(d)		X	
03	D. N.J.	Local Civil Rules 103.1(a) & 104.1(d)	X		
03	E.D. Pa.	Local Civil Rule 83.6, Rule IV	X		
03	M.D. Pa.	Local Rule 83.23 & Appendix D: Code of Professional Conduct	X		
03	W.D. Pa.	Local Civil Rule 83.6.1	X		
03	D. V.I.	Local Civil Rules 83.2(a)(1) & (b)(4)		X	
04	D. Md.	Local Rule 704	X		
04	E.D. N.C.	Local Rule 2.10	X		
04	M.D. N.C.	Local Rule 505	X		
04	W.D. N.C.	General Local Rule 1 & Guidelines for Resolving Scheduling Conflicts Order			X
04	D. S.C.	Local Rule 83.I.09	X		
04	E.D. Va.	Local Rule 83.1 & Appendix B: Federal Rules of Disciplinary Enforcement, Rule IV	X		
04	W.D. Va.	Local Rules for W.D. Va., Federal Rules of Disciplinary Enforcement, Disciplinary Rule 4	X		
04	N.D. W.Va.	Local Rule of General Practice 3.01			X
04	S.D. W.Va.	Local Rule of General Practice 3.01			X
05	E.D. La.	Local Rule 83.2.4E	X		
05	M.D. La.	Local Rule 20.04M	X		
05	W.D. La.	Local Rule 20.04W	X		
05	N.D. Miss.	Local Rule 21	X		
05	S.D. Miss.	Local Rule 21	X		
05	E.D. Tex.	Local Rule AT-2(a)	X		
05	N.D. Tex.	Local Rule 83.8(e), Local Criminal Rule 57.8(e).	X		
05	S.D. Tex.	Local Rule 1(L) & Appendix A, Rule 1	X		
05	W.D. Tex.	Local Rule AT-4 & Appendix M: Texas Lawyer Creed			X
06	E.D. Ky.	Local Rule 83.3(c) & Local Criminal Rule 57.3(c)	X		
06	W.D. Ky.	Local Rule 83.3(c) & Local Criminal Rule 57.3(c)	X		
06	E.D. Mich.	Local Rule 83.22(d) & Civility Plan (includes Civility Principles based on the 7th Circuit model)	X		
06	W.D. Mich.	Local Rules 17 & 21(a)	X		
06	N.D. Ohio	Local Civil Rule 83.5(b) & Local Criminal Rule 57.5(b)	X		
06	S.D. Ohio	Local Rule 83.4(f) referencing Appendix of Court Orders, Order 81-1, Rule IV	X		

[1] The identification and categorization of each district's local rule is based upon the published local rule in effect on April 28, 1997.

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
06	E.D. Tenn.	Local Rules 83.6 & 83.7	X		
06	M.D. Tenn.	Local Rule 1(e)(4)		X	
06	W.D. Tenn.	Local Rule 83.1(e) & Guidelines for Professional Responsibility and Courtesy and Conduct of Memphis Bar Association adopted by the W.D. Tenn. (on file with clerk)	X		
07	C.D. Ill.	Local Rule 83.6(D)	X		
07	N.D. Ill.[2]	Local General Rule 3.52 incorporating Rules of Professional Conduct for the N.D. Ill., General Order of 10/29/91 with respect to adoption of the N.D. Ill. Rules & Seventh Circuit Standards of Professional Conduct			
07	S.D. Ill.	Local Rule 29(d)	X		
07	N.D. Ind.	Local Rule 83.5(f) & Seventh Circuit Standards of Professional Conduct	X		
07	S.D. Ind.	Local Rule 83.5(f), Rule IV of Rules of Disciplinary Enforcement & Seventh Circuit Standards of Professional Conduct	X		
07	E.D. Wis.	Local Rule 2.05(a)	X		
07	W.D. Wis.	no local rule			
08	E.D. Ark.	Local Rules for E. & W.D. Ark., Appendix: Model Federal Rules of Disciplinary Enforcement, Rule IV	X		
08	W.D. Ark.	Local Rules for E. & W.D. Ark., Appendix: Model Federal Rules of Disciplinary Enforcement, Rule IV	X		
08	N.D. Iowa	no local rule			
08	S.D. Iowa	no local rule			
08	D. Minn.	Local Rule 83.6(d)	X		
08	E.D. Mo.	Local Rule 12.02 & Rules of Disciplinary Enforcement, Rule IV	X		
08	W.D. Mo.	Local Rule 83.6	X		
08	D. Neb.	Local Rule 83.5(d)	X		
08	D. N.D.	no local rule			
08	D. S.D.	no local rule			
09	D. Alaska	Local Rule 83.1(h)	X		
09	D. Ariz.	Local Rule 1.6(d) & Standards for Professional Conduct adopted by D. Ariz.	X		
09	C.D. Cal.	Local Civil Rule 2.5	X		
09	E.D. Cal.	Local General Rule 180(e)			X
09	N.D. Cal.	Local Civil Rule 11-3(a)	X		
09	S.D. Cal.	Local Rule 83.5i			X
09	D. Haw.	Local Rule 110-3	X		
09	D. Idaho	Local Rule 83.5(a)	X		
09	D. Mont.	Local General Rule 110-3(a)		X	
09	D. Nev.	Local Rule IA 10-7(a)	X		
09	D. Or.	Local Civil Rule 110-3	X		
09	E.D. Wash.	Local Rule 83.3(a)(2)	X		
09	W.D. Wash.	Local General Rule 2(e)	X		
09	D. Guam	Local General Rule 22.3(b)			X
09	D. N.M.I.	Local Rule 1.5		X	
10	D. Colo.	Local Rule 83.6	X		
10	D. Kan.	Local Rule 83.6.1	X		
10	D. N.M.	Local Rule 83.9	X		
10	E.D. Okla.	Local Rule 83.3K	X		
10	N.D. Okla.	Local Rule 83.2	X		
10	W.D. Okla.	Local Rule 83.6(b)	X		
10	D. Utah	Local Rule 103-1(h)	X		
10	D. Wyo.	Local Rule 83.12.7	X		
11	M.D. Ala.	Local Rule 1(a)(4) (renumbered and amended to Local Rule 83.1(f) but no effective date			X

[2] The approach adopted by the N.D. Ill.'s local rule does not fit into any of the three approaches in the table because the N.D. Ill. has adopted a standard of conduct unique to their district which does not follow state standards nor any ABA Model.

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
		known at present)			
11	N.D. Ala.	Local Civil Rule 83.1(f)			X
11	S.D. Ala.	Local Rule 1(A)(4) (renumbered and amended to Local Rule 83.5(f); effective 6/1/97)			X
11	M.D. Fla.	Local Rule 2.04(c)	X		
11	N.D. Fla.	Local General Rule 11.1(G)(1) & Addendum: Customary and Traditional Conduct and Decorum in the US District Court	X		
11	S.D. Fla.	Local General Rule 11.1(C) & Rules Governing Attorney Discipline, Rule IV			X
11	M.D. Ga.	Local Rule 13.1			X
11	N.D. Ga.	Local Rule 83.1C	X		
11	S.D. Ga.	Local Rule 83.5(d)		X	
DC	D. D.C.	Local Rule 706	X		

Table A-2

Components of Model Rule 4(B) in State-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
01	D. Me.	yes	yes	yes	no		
01	D. Mass.	yes	yes	yes	yes		
01	D. N.H.	yes	yes	yes	no		
01	D. R.I.	yes	no	no	no		
02	D. Conn.	yes	no	no	yes	D. Conn. adopted Rules of Professional Conduct of Conn. Superior Court as in effect on 10/1/86 except for Rules 3.6 (ethical standards governing public statements by counsel in a criminal case) & 3.7(b) (ethical standards governing participation as counsel in a case where either the attorney or another attorney in his or her firm may be a witness for both civil and criminal cases).	D. Conn. adopted Rules of Professional Conduct of Conn. Superior Court as in effect on 10/1/86 and only those subsequent changes expressly adopted by order of the District's judges. The interpretation of Rules of Professional Conduct of Conn. Superior Court by any authority other than the U.S. Supreme Court, the Second Circuit Court of Appeals and the D. Conn. shall not be binding on disciplinary proceedings initiated in the D. Conn.
02	E.D. N.Y.	yes	yes	yes	no		E.D. N.Y. adopted N.Y. State Lawyer's Code of Professional Responsibility as interpreted and applied by the U.S. Supreme Court, the Second Circuit Court of Appeals, and the E.D. N.Y.
02	S.D. N.Y.	yes	yes	yes	no		S.D. N.Y. adopted N.Y. State Lawyer's Code of Professional Responsibility as interpreted and applied by the U.S. Supreme Court, the Second Circuit Court of Appeals, and the S.D. N.Y.
02	W.D. N.Y.	no	no	no	no		
02	D. Vt.	yes	yes	yes	yes		
03	D. N.J.	yes	yes	yes	no	D.N.J. adopted ABA Rules of Professional Conduct as revised by N.J. Supreme Court, subject to such modifications as may be required or permitted by federal statute, regulation, court rule or decision of law.	
03	E.D. Pa.	yes	yes	yes	yes	E.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except that prior court approval as a condition to issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.	
03	M.D. Pa.	yes	yes	yes	yes	M.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except Rule 3.10 (prior court approval as a condition to issuance of a	

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
						subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.)	
03	W.D. Pa.	yes	yes	yes	yes	W.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except Rule 3.10 (prior court approval as a condition to issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required).	
04	D. Md.	no	no	no	no		
04	E.D. N.C.	no	no	yes	yes		
04	M.D. N.C.	yes	yes	yes	yes		
04	D. S.C.	no	no	yes	yes		
04	E.D. Va.	yes	yes	yes	yes	E.D. Va. adopted Va. Code of Professional Responsibility, except, contrary to Va. practice, prior court approval as condition to issuance of subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.	
04	W.D. Va.	yes	yes	yes	yes		
05	E.D. La.	no	no	yes	yes		
05	M.D. La.	no	no	no	yes		M.D. La. adopted Rules of Professional Conduct of La. State Bar Association in effect on 5/15/89; general court order is required for adoption of subsequently promulgated, or other rules of professional conduct.
05	W.D. La.	no	no	yes	yes		
05	N.D. Miss.	yes	yes	no	no		
05	S.D. Miss.	yes	yes	no	no		
05	E.D. Tex.	yes	yes	no	yes		E.D. Tex. adopted standards of professional conduct of State Bar of Tex. as well as requires familiarization with Tex. Disciplinary Rules of Professional Conduct, court decisions, statutes, and usages, customs, and practices of Bar of E.D. Tex.
05	N.D. Tex.	no	yes	no	no		
05	S.D. Tex.	yes	yes	no	yes		
06	E.D. Ky.	yes	yes	no	no		
06	W.D. Ky.	yes	yes	no	no		
06	E.D. Mich.	yes	yes	yes	no		
06	W.D. Mich.	yes	yes	no	yes		
06	N.D.	yes	no	no	yes	N.D. Ohio adopted ethical	

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
						(1) Rule 1.6 of Haw. Rules of Professional Conduct. In lieu thereof, ABA Model Rule 1.6 Confidentiality of Information shall apply; (2) Rule 8.4 of Haw. Rules of Professional Conduct. In lieu thereof, ABA Model Rule 8.4 Misconduct shall apply.	
09	D. Idaho	yes	yes	no	no		D. Idaho. adopted standards of professional conduct required of members of Idaho State Bar and decisions of any court applicable thereto.
09	D. Nev.	yes	yes	yes	yes		
09	D. Or.	yes	yes	no	no		
09	E.D. Wash.	yes	no	yes	no		
09	W.D. Wash.	yes	no	yes	yes		
10	D. Colo.	no	no	no	no		
10	D. Kan.	no	no	yes	yes		
10	D. N.M.	no	no	no	yes		
10	E.D. Okla.	yes	no	yes	no		
10	N.D. Okla.	yes	yes	no	no		N.D. Okla. adopted Okla. Rules of Professional Conduct, any interpretive decisions, applicable statutes, and the usages, customs, and practices of the Bar of Okla.
10	W.D. Okla.	no	no	yes	no		
10	D. Utah	yes	no	yes	yes		D. Utah adopted the Utah Rules of Professional Conduct, as revised and amended and interpreted by the D. Utah.
10	D. Wyo.	yes	yes	yes	yes		
11	M.D. Fla.	yes	no	no	no		
11	N.D. Fla.	yes	no	no	yes	N.D. Fla. adopted Rules of Professional Conduct regulating Fla. Bar, except where an act of Congress, federal rule of procedure, Judicial Conference Resolution or rule of court provides otherwise.	
11	N.D. Ga.	yes	no	no	yes		N.D. Ga. Adopted rules and regulations of State Bar of Ga and decisions of N.D. Ga. interpreting those rules and standards.
DC	D D.C.	yes	yes	no	yes		

Table A-3

Components of Model Rule 4(B) in Model Rule-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
01	D. P.R.	yes	yes	no	no		
02	N.D. N.Y.	no	no	no	no		
03	D. Del.	yes	yes	no	yes	D. Del. adopted the ABA Rules of Professional Conduct, subject to such modifications as may be required or permitted by Federal statute, court rule or decision of law.	
03	D. V.I.	yes	yes	no	yes	D. V.I. Adopted the ABA Rules of Professional Conduct, subject to such modifications as may be required or permitted by Federal statute, court rule or decision of law.	
06	M.D. Tenn.	yes	yes	no	no		
09	D. Mont.	yes	yes	no	no		
09	D. N.M.I.	yes	no	yes	no		
11	S.D. Ga.	yes	yes	no	no		

Table A-4

Components of Model Rule 4(B) in Combination Model Rule and State-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
04	W.D. N.C.	yes	no	no	no		
04	N.D. W. Va	yes	yes	no	no		
04	S.D. W.Va.	yes	yes	no	no		
05	W.D. Tex.	yes	yes	no	no		W.D. Tex. adopted ABA Code of Professional Responsibility and standards o f professional conduct required by Tex. State Bar contained in Tex. Disciplinary Rules of Professional Conduct and the decisions of any court applicable thereto.
09	E.D. Cal.	yes	yes	no	no		E.D. Cal. adopted ABA Model Code of Professional Responsibility and State Bar of Cal. Rules of Professional Conduct, and decisions of any court applicable thereto.
09	S.D. Cal.	yes	yes	no	no		S.D. Cal. adopted ABA Model Code of Professional Responsibility and standards of professional conduct required of State Bar of Cal., and decisions of any court applicable thereto.
09	D. Guam	yes	yes	yes	no		D. Guam adopted standards of professional conduct required by members of the state bar of Guam and ABA Model Rules as adopted on 8/12/69, and as hereinafter amended or judicially construed.
11	M.D. Ala.	yes	yes	no	no		
11	N.D. Ala.	yes	yes	no	yes	N.D. Ala. Adopted Ala. Rules of Professional Conduct, and to extent not inconsistent, ABA Model Rules, except Rule 3.8(f) (prosecutor's duty not to subpoena attorney in a criminal proceeding to present evidence about past or present client.)	
11	S.D. Ala.	yes	no	no	no		
11	S.D. Fla.	yes	yes	yes	yes		
11	M.D. Ga.	yes	yes	yes	yes		

Table A-5

Reported Changes in Source of Attorney Conduct Standards Adopted in the Federal District Courts

Circuit	District	Reported Change in Standards:
01	D. Me.	From ABA Code of Professional Responsibility (10/1/77) to Code of Professional Responsibility adopted by the Supreme Judicial Court of Maine (6/1/81).
02	E. & S.D. N.Y.	From ABA Code of Professional Responsibility and the N.Y. Bar Association Code of Professional Responsibility to N.Y. State Lawyer's Code of Professional Responsibility (4/15/97).
03	D. Del.	From Rules of Professional Conduct of Del. (1987) to ABA Model Rules.
04	M.D. N.C.	From ABA Canons of Professional Ethics and Canons of Ethics of the N.C. State Bar (1972) to Code of Professional Responsibility of the N.C. Supreme Court (1985).
04	N.D. W. Va.	From code as promulgated by W. Va. Supreme Court to ABA Rules of Professional Conduct, Model Federal Rules of Disciplinary Enforcement as adopted by the N.D. W.Va., and the rules of professional conduct as adopted by the W. Va. Supreme Court of Appeals (3/1/96).
05	M.D. La.	From current ABA Canons of Professional Ethics to the Rules of the La. State Bar Association (1989).
05	N.D. Tex.	From standards of highest court in which district sits (12/78) to no provision regarding applicable ethical standards (1987) to standards of professional conduct of attorneys authorized to practice law in the state of Tex. (1993).
06	E.D. Ky.	From no clearly adopted standard of conduct to Code of Conduct established by Ky. Supreme Court.
06	E.D. Mich.	From ABA Model Rules of Professional Responsibility (1981) to Rules of Professional Conduct adopted by the Mich. Supreme Court.
06	W.D. Tenn.	From ABA Code of Professional Responsibility to standards promulgated by the Tenn. Supreme Court and Memphis Bar Association (1/1/94).
07	N.D. Ill.	From ABA Model Code of Professional Responsibility to Rules of Professional Conduct for the Northern District of Illinois (10/29/91).
07	C.D. Ill.	From Code of Professional Responsibility as adopted by the Illinois Supreme Court (1980-1987) to no standards governing attorney conduct (1987-1989) to Rules of Professional Responsibility of Illinois Supreme Court (1989).
08	D. N.D.	From N.D. Rules of Professional Conduct to no specific standards governing attorney conduct.
09	E.D. Cal.	From Rules of Professional Conduct of State Bar of Cal. to Rules of Professional Conduct of State Bar of Cal. and the ABA Model Code of Professional Responsibility in absence of a Cal. standard.
10	D. Kan.	From no specific standards (1985) to Code adopted by Kan. Supreme Court (10/1/95).
10	E.D. Okla.	From ABA Code of Professional Conduct to Code of Professional Conduct of the Okla. Bar Association (10/1/96).
10	D. Utah	From Utah. Code of Professional Responsibility and Code of Professional Responsibility approved by the Judicial Conference of the U.S. (1980) to Utah. Rules of Professional Conduct and ABA Model Rules (1990) to Utah Rules of Professional Conduct (1991).

Table A-6

Federal District Courts Reporting Problems Caused by Ambiguous Language in their Attorney Conduct Rules

Circuit	District	Problems Reported as Resulting in Conflicts Between , or Confusion Over, Applicable Standards of Conduct for Attorneys Practicing Within the District:
02	E.D. N.Y.	• The rule prescribes multiple standards of conduct without indicating which controls.
04	E.D. N.C.	• Other: Pre-April 4, 1997 rules had an outdated reference to state bar ethical standards.
05	M.D. La.	• Other: M.D. La. refuses to adopt state rule on grand jury subpoenas to lawyers (although this exception is not made explicit is the local rule).
05	S.D. Tex.	• Other: S.D. Tex. is uncertain how to handle attorneys suspended or disbarred by the state, but have appeals pending concerning their discipline.
06	E.D. Mich.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
06	N.D. Ohio	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
08	E.D. Ark.	• Other: "Shall refer" in our local rule sounds mandatory when it clearly should be discretionary.
08	E.D. Mo.	• The rule adopts the standards of the highest state court but does not specify what those standards are • Other: Attorneys not admitted in Mo., but admitted in E.D. Mo., are subject to Mo. Standards of conduct, even for conduct occurring outside the district.
08	W.D. Mo.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • Other: Ambiguities exist in the language that sets forth the district's disciplinary procedures.
09	D. Mont.	• Other: Our rule adopts ABA Model Rules of Professional Conduct, but references the ABA Canons of Professional Ethics.
10	D. Colo.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule.
10	D. N.M.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
10	D. Utah	• The local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits. • The rule prescribes multiple standards of conduct without indicating which controls.

Table A-7

Federal District Courts Reporting Problems Resulting From Use of External Standards Not Explicit in the Districts' Attorney Conduct Rules

Circuit	District	Situations and Problems Reported as Resulting from Use of Standards Not Explicit in the District's Attorney Conduct Rules
02	E.D. N.Y.	• Other: In the past, federal cases have referred to a federal interest in interpreting the applicable rules of conduct which may result in interpretations and application different from that of the courts of NY state. This has now been made explicit in the E.D. N.Y.'s newly amended rule which makes interpretation by federal courts explicit.
04	E.D. N.C.	• The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
04	D. S.C.	• The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
05	N.D. Tex.	• Other. N.D. Tex.'s local rules define "ethical behavior" as conduct "that violates any code, rule, or standard of professional conduct or responsibility governing the conduct of attorneys authorized to practice law in the state of Tex." These codes, rules, or standards are external standards that are not explicitly set out in the rules themselves. In addition, standards adopted in Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988)(en banc) govern conduct of attorneys in ND. Tex. in civil cases
06	W.D. Ky.	• Other: W.D. Ky. refers to Ky Supreme Court Rules governing Ky. lawyers.
10	D. Colo.	• Other: D. Colo. felt that an example of utilization of external standards not explicit in their local rule was the presumption that disciplinary action of Colo. Supreme Court is appropriate with imposition of identical sanction in D. Colo. as result.
10	D. Utah	• Other. D. Utah lists as example the fact that their local rule does not mention circuit case decisions.

Table A-8

Federal District Courts Reporting Complaints of Lack of Due Process and Vagueness Resulting From Their Attorney Conduct Rules

Circuit	District	Brief description of nature and extent of due process and vagueness complaints reported by the district.
04	D. S.C.	• There is no provision for an attorney to receive and respond to the report and recommendation of a hearing judge.
05	S.D. Tx	• There is no consensus on whether to allow an attorney whose state suspension is on appeal to continue to practice in federal court.
06	W.D. Mich.	• W.D. Mich. has received some complaints concerning lack of express process in rules regarding attorney discipline and reinstatement after discipline.
08	W.D. Mo.	• Confusion exists over when, if at all, an attorney is entitled to a hearing on misconduct allegations or a hearing for reinstatement.
10	D. Colo.	• Questions surround our practice of imposing simultaneous and identical sanction as those imposed by Colo. Supreme Court.
10	D. N.M.	• D. N.M. feels that although its local rule is flexible, it is overly broad and vague and allows court to do whatever it feels is appropriate.

Table A-9

Federal District Courts Reporting Multiforum Problems Resulting From Their Attorney Conduct Rules

Circuit	District	Brief Description of Nature and Extent of Reported Attorney Conduct Problems Involving Multiple Venues
04	D. S.C.	•Although D. S.C. has generally deferred to the state disciplinary process, inconsistencies in the result in that venue has resulted in the district conducting its own disciplinary proceedings in several matters.
05	S.D. Tex.	•Many of the judges in the S.D. Tex. consider some state disciplinary action to be too harsh.
06	W.D. Mich.	•Although it has not arisen in a concrete manner in the W.D. Mich., the US Attorney has questioned whether state ethical rules governing prosecutors can be applied to him and his assistants.
08	E.D. Mo.	•E.D. Mo. has experienced conflict between state and federal standards regarding the effect of "any felony" conviction as grounds for disbarment.
08	W.D. Mo.	•Some conflict has arisen because the state court's application of standards is different than application that the W.D. Mo. would make for the same conduct.
10	D. Colo.	•There have been cases in which the D. Colo. disagreed with the sanction imposed by the state court.
10	D. Utah	•Differences between federal and state standards have caused some problems.

Table A-10

Federal District Courts Reporting Problems With Federal Agencies Promulgating Their Own Attorney Conduct Rules

Circuit	District	Brief description of the nature and extent of the reported problem.
01	D. N.H.	•Although DOJ has claimed that its attorneys are not subject to the local disciplinary rules, the D. N.H. has informed the DOJ that its attorneys are subject to the rules of the D. N.H.
02	E.D. N.Y.	•The DOJ has taken a position with regard to the ability of prosecutors to speak to represented persons that is in conflict with local state court interpretations of the NY State Code.
04	D. S.C.	•DOJ policies on contact with represented persons have been in conflict with the SC Rules of Professional Conduct which are incorporated into local rules of D. S.C.
06	E.D. Ky.	•E.D. Ky. experienced a problem with ethical jurisdiction over out of state attorneys thus the district is revising our rule to require pro hac vice attorneys to submit themselves to jurisdiction of E.D. Ky. However, we are uncertain over whether this will help alleviate problems with DOJ attorneys.
07	N.D. Ill.	•DOJ does not view its attorneys to be bound by N.D. Ill. Rule 4.2 which corresponds to ABA Model Rule 4.2.
08	W.D. Mo.	•Potential problems with DOJ standards on contact with represented persons has been discussed, although no actual cases have arisen.
10	N.D. Okla.	•DOJ has objected to Okla. rules regarding the subpoena of a lawyer to present evidence about a client and regarding presentation of adverse facts in ex parte proceedings, and has recommended that N.D. Okla. except these rules from the adoption of the OK. Rules of Professional Conduct.
10	D. Utah	•We have experienced problems with the SEC and the Patent and Trademark Office.

Table A-11

Problems Experienced by the Federal Districts Due to Specific Ethical Standards

Circuit	District	Indicate Manner in Which Each Category of Ethics Standards Created a Problem in at Least One Specific Instance and Frequency with which These Problems Were Experienced Within the Past 2 Years:				
		Confidentiality	Communication with Represented Parties	Lawyers as Witnesses	Candor Towards the Tribunal	Conflict of Interest
01	D. P.R.	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(2 to 5 times)*
02	E.D. N.Y.		•being inconsistent with other standards of conduct •*(once)*			
02	S.D. N.Y.		•being too broad •*(no problems within past 2 years)*			
03	D. N.J.		•Other: There are conflicting decisions about propriety of one party conducting ex parte interviews with former employees of an adverse party. •*(5 to 10 times)*			
03	D. V.I.					•being unclear •*(frequency not provided)*
04	D. S.C.		•being inconsistent with other standards of conduct •*(frequency not provided)*			
06	E.D. Ky.				•Other: Out of state DOJ Attorneys not subject to Ky. Bar ethics jurisdiction. •*(no problems within past 2 years)*	
06	W.D. Mich.		•Other: Although conflict between state and DOJ interpretations of rule regarding federal prosecutors speaking to witnesses considered "represented parties" has arisen, W.D. Mich. hasn't had to deal with the issue formally either by rulemaking or in a particular case. •*(once)*			
06	S.D. Ohio		•not speaking to alleged unethical conduct •*(once)*			
07	N.D. Ill.		•being inconsistent with other standards of conduct •*(no problems within past 2 years)*			

Circuit	District	Indicate Manner in Which Each Category of Ethics Standards Created a Problem in at Least One Specific Instance and Frequency with which These Problems Were Experienced Within the Past 2 Years:				
		Confidentiality	Communication with Represented Parties	Lawyers as Witnesses	Candor Towards the Tribunal	Conflict of Interest
08	E.D. Ark.					•being inconsistent with other standards of conduct •*(once)*
08	W.D. Mo.		•being unclear •being too broad •*(once)*		•being too narrow •*(once)*	
08	D. S.D.				•being unclear •being too narrow •*(once)*	
10	D. Colo.		•Not speaking to alleged unethical conduct •Other: Problems with Assistant US Attorneys advising arrested suspects about sentencing guidelines before defense counsel is appointed. •*(frequency unknown)*		•Not speaking to alleged unethical conduct •being unclear •Other: Inadequate preparation and experience. •*(frequency unknown)*	•Being unclear •*(frequency unknown)*
10	N.D. Okla.	•Not speaking to alleged unethical conduct •being unclear •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	
10	D. Utah	•being too broad •*(2 to 5 times)*	•being too broad •being inconsistent with other standards of conduct •Other: In conflict with other court decisions. •*(10 or more times)*	•Being too broad •*(2 to 5 times)*		•Not speaking to alleged unethical conduct •being unclear •being too broad •Other: Conflict with decisions of Supreme Court and Circuit Courts. •*(10 or more times)*
11	N.D. Ala.		•Being too broad •Other: Problems as to when communications with employees/former employees can be contacted or responded to at their initiative. •*(10 or more times)*			

Table A-12

National Uniformity of Standards Governing the Professional Conduct of Attorneys in the Federal District Courts

Circuit	District	YES, in support of national uniformity.	NO, not in support of national uniformity.	No Opinion.
01	D. Me.		X	
01	D. Mass.		X	
01	D. N.H.		X	
01	D. P.R	X		
01	D. R.I.		X	
02	D. Conn.		X	
02	E.D. N.Y.	X		
02	S.D. N.Y.			X
02	W.D. N.Y.	X		
02	D. Vt.		X	
03	D. N.J.		X	
03	E.D. Pa.		X	
03	M.D. Pa.		X	
03	D. V.I.	X		
04	D. Md.		X	
04	E.D. N.C.		X	
04	M.D. N.C.		X	
04	W.D. N.C.	X		
04	D. S.C.		X	
04	E.D. Va.		X	
04	W.D. Va.		X	
04	N.D. W. Va.		X	
05	E.D. La.		X	
05	M.D. La.		X	
05	W.D. La.		X	
05	N.D. Miss.	X		
05	S.D. Miss.		X	
05	E.D. Tex.		X	
05	N.D. Tex.		X	
05	S.D. Tex.		X	
05	W.D. Tex.		X	
06	E.D. Ky.		X	
06	W.D. Ky.		X	
06	E.D. Mich.	X		
06	W.D. Mich.		X	
06	N.D. Ohio	X		
06	S.D. Ohio	X		
06	E.D. Tenn.	X		
06	M.D. Tenn.	X		
06	W.D. Tenn.		X	
07	C.D. Ill.		X	
07	N.D. Ill.		X	
07	S.D. Ill.		X	
07	N.D. Ind.	X		
07	S.D. Ind.		X	
07	E.D. Wis.		X	
08	E.D. Ark.		X	
08	W.D. Ark.	X		
08	N.D. Iowa		X	
08	S.D. Iowa		X	
08	D. Minn.	X		
08	E.D. Mo.	X		
08	W.D. Mo.		X	
08	D. Neb.		X	
08	D. S.D.		X	
09	D. Alaska		X	
09	E.D. Cal.		X	
09	D. Haw.	X		
09	D. Idaho		X	

Circuit	District	YES, in support of national uniformity.	NO, not in support of national uniformity.	No Opinion.
09	D. Mont.	X		
09	D. Or.		X	
09	E.D. Wash.	X		
09	W.D. Wash.	X		
09	D. N.M.I.	X		
10	D. Colo.	X		
10	D. Kan.		X	
10	D. N.M.	X		
10	E.D. Okla.	X		
10	N.D. Okla.		X	
10	W.D. Okla.		X	
10	D. Utah		X	
10	D. Wyo.		X	
11	M.D. Ala.		X	
11	N.D. Ala.			X
11	S.D. Ala.		X	
11	M.D. Fla.	X		
11	N.D. Fla.		X	
11	M.D. Ga.		X	
11	S.D. Ga.		X	

Table A-13

Selective Uniformity of Standards Governing the Professional Conduct of Attorneys in the Federal District Courts

Circuit	District	Indicate whether district is in favor of uniformity for each category of ethical standards:				
		confidentiality	communication with represented parties	lawyers as witnesses	candor towards a tribunal	conflict of interest
03	D. N.J.			X	X	
03	M.D. Pa.	X			X	X
04	E.D. N.C.	X	X	X	X	X
04	M.D. N.C.	X	X	X	X	
04	D. S.C.	X	X	X	X	X
04	W.D. Va.				X	
05	E.D. La.	X	X	X	X	X
05	M.D. La.	X	X	X	X	X
05	W.D. La.	X	X		X	X
05	E.D. Tex.		X	X	X	X
05	W.D. Tex.	X	X	X	X	X
06	E.D. Ky.		X			
07	S.D. Ill.	X	X		X	
07	S.D. Ind.	X	X	X	X	X
08	N.D. Iowa	X	X		X	X
10	D. Utah			X	X	X
11	N.D. Fla.	X	X	X	X	X

Table A-14

Attorney Discipline Rules in the Federal District Courts

Circuit	District	Local Rule on Attorney Discipline	Group 1[1]	Group 2[2]	Group 3[3]
01	D. Me.	Local Rule 83.3	X		
01	D. Mass.	Local Rule 83.6	X		
01	D. N.H.	Local Rule 83.5 (DR-6)	X		
01	D. R.I.	Local Rule 4(e)	X		
01	D. P.R.	Local Rule 211.5 (renumbered as Local Rule 83.5; no effective date known at present)			X
02	D. Conn.	Local Rule 3(b)-(f)	X		
02	E.D. N.Y.	Local Rule 1.5			X
02	N.D. N.Y.	Local Rule 83.4			X
02	S.D. N.Y.	Local Rule 1.5			X
02	W.D. N.Y.	Local Rule 83.3(a)			X
02	D. Vt.	Local Rule 83.2(d)	X		
03	D. Del..	Local Rule 83.6			X
03	D. N.J.	Local Civil Rule 104.1	X		
03	E.D. Pa.	Local Rule 83.6	X		
03	M.D. Pa.	Local Rules 83.20 to 83.31	X		
03	W.D. Pa.	Local Civil Rule 83.6	X		
03	D. V.I.	Local Rule 83.2(b)	X		
04	D. Md.	Local Rule 705	X		
04	E.D. N.C.	Local rule 2.10 (informs that disciplinary procedures are on file with clerk and available on request; will be published as part of local rules in 9/97.)	X		
04	M.D. N.C.	Local Rules 501-513	X		
04	W.D. N.C.	no local rule	X		
04	D. S.C.	Local Rule 83.I.09	X		
04	E.D. Va.	Local Rule 83.1(L) & Appendix B: Federal Rules of Disciplinary Enforcement	X		
04	W.D. Va.	Local Rules for W.D. Va., Model Rules of Disciplinary Enforcement	X		
04	N.D. W.Va.	no local rule	X		
04	S.D. W.Va.	Local Rule General Practice 3.01 referencing Model Federal Rules of Disciplinary Enforcement (available from clerk's office)	X		
05	E.D. La.	Local Rule 83.2.10E	X		
05	M.D. La.	Local Rule 20.10M			X
05	W.D. La.	no local rule	X		
05	N.D. Miss.	Local Rule 1 (c)		X	
05	S.D. Miss.	Local Rule 1 (c)		X	
05	E.D. Tex.	Local Rule AT-2(d)			X
05	N.D. Tex.	Local Rule 83.8 & Local Criminal Rule 57.8			X
05	S.D. Tex.	Local Rules for S.D. Tex., Appendix A. Rules of Discipline, Rule 5			X
05	W.D. Tex.	Local Rule AT-1(I)			X
06	E.D. Ky.	Local Rule 83.3 & Local Criminal Rule 57.3			X
06	W.D. Ky.	Local Rule 83.3 & Local Criminal Rule 57.3			X
06	E.D. Mich.	Local Rule 83.22(e)		X	
06	W.D. Mich.	Local Rule 21			X
06	N.D. Ohio	Local Civil Rule 83.7 & Local Criminal Rule 57.7			X
06	S.D. Ohio	Local Rule 83.4(f) incorporating Appendix of Court Orders,	X		

[1] Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) and/or to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

[2] Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) **exclusively** to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

[3] Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter **exclusively** to bodies or person(s) within the federal district court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Local Rule on Attorney Discipline	Group 1[1]	Group 2[2]	Group 3[3]
		Order 81-1			
06	E.D. Tenn.	Local Rule 83.7	X		
06	M.D. Tenn.	Local Rule 1(e)	X		
06	W.D. Tenn.	Local Rule 83.1(e)(1) referencing Order Adopting Rules of Disciplinary Enforcement (available from clerk's office)	X		
07	C.D. Ill.	Local Rule 83.6	X		
07	N.D. Ill.	Local Rules 3.50 to 3.79	X		
07	S.D. Ill.	Local Rule 29(e)			X
07	N.D. Ind.	Local Rule 83.6	X		
07	S.D. Ind.	Local Rules for S.D. Ind., Rules of Disciplinary Enforcement	X		
07	E.D. Wis.	Local Rule 2.05			X
07	W.D. Wis.	no local rule	X		
08	E.D. Ark.	Local Rules for E. & W.D. Ark., Appendix. Model Federal Rules of Disciplinary Enforcement	X		
08	W.D. Ark.	Local Rules for E. & W.D. Ark., Appendix. Model Federal Rules of Disciplinary Enforcement	X		
08	N.D. Iowa	Local Rule 83.2(g)			X
08	S.D. Iowa	Local Rule 83.2(g)			X
08	D. Minn.	Local Rule 83.6(e)	X		
08	E.D. Mo.	Local Rule 12.02 referencing Rules of Disciplinary Enforcement (available from clerk's office)	X		
08	W.D. Mo.	local Rule 83.6	X		
08	D. Neb.	Local Rule 83.5	X		
08	D. N.D.	Local Rule 79.1(E)	X		
08	D. S.D.	Local Rule 83.2(G)	X		
09	D. Alaska	no local rule Note: Local Rule 83.1(f) contains procedures for reciprocal discipline and reinstatement, but no procedures for allegations of attorney misconduct before the district court	X		
09	D. Ariz.	no local rule	X		
09	C.D. Cal.	Local Civil Rule 2.6			X
09	E.D. Cal.	Local General Rule 184	X		
09	N.D. Cal.	Local Civil Rule 11-6			X
09	S.D. Cal.	Local Rule 83.5j	X		
09	D. Haw.	Local Rule 110-4	X		
09	D. Idaho	Local Rule 83.5(b)	X		
09	D. Mont.	Local General Rules 110-3 & 110-5	X		
09	D. Nev.	Local Rule IA 10-7			X
09	D. Or.	Local Rule 110-6			X
09	E.D. Wash.	Local Rule 83.3(a)			X
09	W.D. Wash.	Local Rule 2(e)			X
09	D. Guam	Local General Rule 22.4	X		
09	D. N.M.I.	Local Rule 1.5: Appendix A Disciplinary Rules			X
10	D. Colo.	Local Rules 83.5 & 83.6	X		
10	D. Kan.	Local Rule 83.6	X		
10	D. N.M.	Local Rule 83.2(f) & 83.10			X
10	E.D. Okla.	Local Rules 1.3 & 83.3L	X		
10	N.D. Okla.	Local Civil Rule 1.4	X		
10	W.D. Okla.	Local Rule 83.6 (c)	X		
10	D. Utah	Local Rule 103-5	X		
10	D. Wyo.	Local Rules 83.12.1 to 83.12.15	X		
11	M.D. Ala.	Local Rule 2 (renumbered and amended to Local Rule 83.1; no effective date at present)			X
11	N.D. Ala.	Local Rule 83.1	X		
11	S.D. Ala.	Local Rule 3 (renumbered and amended to Local Rule 83.6; effective date 6/1/97)			X
11	M.D. Fla.	Local Rule 2.04	X		
11	N.D. Fla.	Local General Rule 11.1(G)			X
11	S.D. Fla.	Local Rules for S.D. Fla., Rules Governing Attorney Discipline, Prefatory Statement	X		
11	M.D. Ga.	Local Rule 13	X		
11	N.D. Ga.	Local Rule 83.1F	X		
11	S.D. Ga.	Local Rule 83.5			X
DC	D. D.C.	Local Rule 707	X		

Table A-15

Group 1 Districts[1]: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
01	D. Me.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
01	D. Mass.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.		
01	D. N.H.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.			
01	D. R.I.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.		
02	D. Conn.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
02	D. Vt.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.		
03	D. N.J.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
03	E.D. Pa.	•Refer to a panel or committee of judges in district	•Refer to a panel or committee of judges in district.		
03	M.D. Pa.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency	X	X

[1] Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) and/or to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		•Appoint an attorney to investigate and present to federal district court.	deems warranted.		
03	W.D. Pa.				
03	D. V.I.	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
04	D. Md.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer to a panel or committee of judges in district.		
04	E.D. N.C.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
04	M.D. N.C.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
04	D. S.C.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.	X	
04	E.D. Va.	•Handle another way: follow procedures in local rule depending on nature of discipline.	•Handle another way: follow procedures in local rule depending on nature of discipline.		
04	W.D. Va.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Handle another way: presiding judge deals with problem.	•Handle another way: presiding judge deals with problem.		
05	E.D. La.	•Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation. •Handle another way; Referred to court en banc before any discipline imposed.	•Handle another way: Referred to court en banc; attorney appointed to file formal complaint; judge makes recommendation to court en banc.		
05	S.D. Ohio	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
06	E.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
06	M.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
06	W.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
07	N.D. Ill.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
07	C.D. Ill.	•Refer to a panel or committee of judges in district.	•Refer to a panel or committee of judges in district.		
07	N.D. Ind.	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
07	S.D. Ind.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
07	E.D. Ark.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		X
08	W.D. Ark.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Handle another way: Handled by court as whole, through correspondence, conference calls and meetings.	•Handle another way: Handled by court as whole, through correspondence, conference calls and meetings.		
08	D. Minn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	X	X
08	E.D. Mo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.			
08	W.D. Mo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present	•Appoint an attorney to investigate and present to federal district court.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		to federal district court.			
08	D. Neb.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Handle another way. Suspension is imposed by active Article III judges as result of discipline imposed by Neb. Supreme Court.		
08	D. N.D.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	D. S.D.	•Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.		
08	E.D. Cal.	•Handle another way: Handled by judge before whom matter pending.	•Handle another way: Handled by judge before whom matter giving rise to misconduct is pending..		
09	S.D. Cal.				
09	D. Guam				
09	D. Haw.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	D. Idaho	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	D. Mont.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.		
10	D. Colo.	•Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
10	D. Kan.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
10	E.D. Okla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted., •Refer to a single judge in the district •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
10	N.D. Okla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to panel or committee of attorneys in	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		district for investigation and presentation to federal district court.			
10	W.D. Okla..	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
10	D. Utah	•Refer to a panel or committee of judges in district.	•Refer to a panel or committee of judges in district.	X	X
10	D. Wyo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	N.D. Ala.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district. •Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	M.D. Fla.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
11	S.D. Fla.				
11	M.D. Ga.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
11	N.D. Ga.				
DC	D. D.C.				

Table A-16

Group 2[1] Districts: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
05	N.D. Miss.	•Refer to a single judge in the district. •Refer to a panel or committee of judges in district.	•Refer to a single judge in the district.		
05	S.D. Miss.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	E.D. Mich.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		

[1] Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) exclusively to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

Table A-17

Group 3[1] Districts: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
01	D. P.R.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	X
02	E.D. N.Y.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	X	
02	N.D. N.Y.	•	•		
02	S.D. N.Y.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of judges within district.		
02	W.D. N.Y.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
03	D. Dell.	•	•		
05	M.D. La.	•Refer to a single judge in the district.	•Refer to a single judge in the district.		
05	E.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court.	•Refer to a single judge in the district.		
05	N.D. Tex.	•Handle another way: attorney discipline is handled by judge before whom case is pending, subject right to appeal to Chief Judge.	•Handle another way: attorney discipline is handled by judge before whom case is pending, subject right to appeal to Chief Judge.		
05	W.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
05	S.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer to a single judge in the district.	X	X

[1] Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter exclusively to bodies or person(s) within the federal district (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
06	E.D. Ky.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Handle another way: referred matter to magistrate judge for report and recommendation which court adopted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	W.D. Ky.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	W.D. Mich.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of judges within district.	•Refer to a single judge in the district.		
06	N.D. Ohio	•Refer to panel or committee of judges within district.	•Refer to panel or committee of judges within district.		
07	S.D. Ill.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of judges within district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
07	E.D. Wis.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	N.D. Iowa	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	S.D. Iowa	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	C.D. Cal.	•	•		
09	N.D. Cal.	•	•		
09	D. Nev.	•	•		
09	D. Or.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	E.D. Wash.	•Refer to panel or committee of judges within district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of judges within district.		
09	W.D. Wash.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•		
09	D. N.M.I.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation		

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		•Appoint an attorney to investigate and present to federal district court.	to federal district court. •Appoint an attorney to investigate and present to federal district court.		
10	D. N.M.	•Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	
11	M.D. Ala.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	S.D. Ala.	•Refer to a single judge in the district.	•Refer to a single judge in the district.		
11	N.D. Fla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation. •Handle another way: used "order to show cause" to remove attorney from roster of attorneys authorized to practice within district without referring to state bar grievance process.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	S.D. Ga.	•Refer to a single judge in the district. •Refer to panel or committee of judges within district. •Refer to U.S. Attorney for investigation.	•Refer to a single judge in the district.		

Table A-18

Frequency of Attorney Misconduct Complaints in the Federal District Courts for Calendar Year 1996

Circuit	District	# Complaints Received in 1996	# Complaints Formal Action was Taken on in 1996:
01	D. Me.	1	1
01	D. Mass.	3-5	0
01	D. N.H.	0	0
01	D. R.I.	0	0
01	D. P.R.	4	4
02	D. Conn.	14	14
02	E.D. N.Y.	4-5	4-5
02	N.D. N.Y.	0	0
02	S.D. N.Y.	26	19
02	W.D. N.Y.	1	1
02	D. Vt.	0	0
03	D. Del.	1	1
03	D. N.J.	32	32
03	E.D. Pa.	0	0
03	M.D. Pa.	not available	
03	W.D. Pa.	14	14
03	D. V.I.	5-6	5-6
04	D. Md.	13	11
04	E.D. N.C.	16	16
04	M.D. N.C.	0	0
04	W.D. N.C.	0	0
04	D. S.C.	3	1
04	E.D. Va.	0	0
04	W.D. Va.	0	0
04	N.D. W.Va.	0	0
04	S.D. W.Va.	1	1
05	E.D. La.	21	18
05	M.D. La.	0	0
05	W.D. La.	7	7
05	N.D. Miss.	11	6
05	S.D. Miss.	1	1
05	E.D. Tex.	9	9
05	N.D. Tex.	1	1
05	S.D. Tex.	7	2
05	W.D. Tex.	1	1
06	E.D. Ky.	13	8
06	W.D. Ky.	1	1
06	E.D. Mich.	1	1
06	W.D. Mich.	5	5
06	N.D. Ohio	1	1
06	S.D. Ohio	0	0
06	E.D. Tenn.	0	0
06	M.D. Tenn.	not available	
06	W.D. Tenn.	unknown	
07	C.D. Ill.	1	1
07	N.D. Ill.	8	8
07	S.D. Ill.	0	0
07	N.D. Ind.	0	0
07	S.D. Ind.	0	0
07	E.D. Wis.	0	0
07	W.D. Wis.	not provided	
08	E.D. Ark.	0	0
08	W.D. Ark.	3	3
08	N.D. Iowa	0	0
08	S.D. Iowa	5	5
08	D. Minn.	0	0
08	E.D. Mo.	0	0
08	W.D. Mo.	9	9
08	D. Neb.	11	11

Circuit	District	# Complaints Received in 1996	# Complaints Formal Action was Taken on in 1996:
08	D. N.D.	0	0
08	D. S.D.	0	0
09	D. Alaska	not provided	
09	D. Ariz.	4	4
09	C.D. Cal.	1	1
09	E.D. Cal.	1	1
09	N.D. Cal.	3	unknown
09	S.D. Cal.	0	0
09	D. Haw.	18	11
09	D. Idaho	0	0
09	D. Mont.	0	0
09	D. Nev.	0	0
09	D. Or.	0	0
09	E.D. Wash.	2	2
09	W.D. Wash.	not provided	
09	D. Guam	0	0
09	D. N.M.I.	not provided	
10	D. Colo.	9	5
10	D. Kan.	0	0
10	D. N.M.	5	5
10	E.D. Okla.	0	0
10	N.D. Okla.	2	0
10	W.D. Okla.	5	5
10	D. Utah	5	4
10	D. Wyo.	4	4
11	M.D. Ala.	0	0
11	N.D. Ala.	0	0
11	S.D. Ala.	2	0
11	M.D. Fla.	4	3
11	N.D. Fla.	0	0
11	S.D. Fla.	not provided	
11	M.D. Ga.	0	0
11	N.D. Ga.	1	1
11	S.D. Ga.	2	2
DC	D. D.C.	29	16