

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**REVISED PUBLIC NOTICE**

**REGARDING PROPOSED MODIFICATION AND ADDITION TO:  
LOCAL RULES SECTIONS 83.5 & 83.6**

The United States District Court for the District of Massachusetts is considering, and is publishing for comment a modification and addition to Local Rule (LR) 83.5 Admission to the District Bar and LR 83.6 Rules of Professional Conduct. The modifications and additions to LR 83.5 and LR 83.6 constitute a complete replacement of the existing sections.

Copies of the proposed local rules are available for inspection in the offices of the Clerk in courthouses in Boston, Worcester and Springfield. This public notice and the proposed local rules also have been posted to the “Announcements” page of the court’s web site at:

[www.mad.uscourts.gov](http://www.mad.uscourts.gov)

Members of the bar and the public are invited to comment as to the proposed amendments and new local rules. Comments should be received no later than May 23, 2014 and may be addressed to:

Honorable F. Dennis Saylor IV  
Chairman, Rules Committee  
c/o Robert M. Farrell, Clerk of Court  
United States Courthouse  
1 Courthouse Way, Suite 2300  
Boston, MA 02210

or by email to: [rules@mad.uscourts.gov](mailto:rules@mad.uscourts.gov)

April 28, 2014

Robert M. Farrell  
Clerk of Court

**UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS ADVISORY  
COMMITTEE ON LOCAL RULES ATTORNEY ADMISSION AND DISCIPLINE  
SUBCOMMITTEE**

**Draft Proposal – March 2014**  
*[As revised through March 27, 2014]*

**Rule 83.5.1 - Admission to the District Bar**

- (a) **Eligibility for Admission.** An attorney is eligible for admission to the bar of this district if the attorney:
- (1) is a member of the bar in good standing in Massachusetts;
  - (2) is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice; and
  - (3) is not the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar.
- (b) **Procedure for Admission.**
- (1) **Application.** All applicants for admission to the bar of this district must:
    - (A) complete, verify, and file an application for admission on an official form provided by the clerk;
    - (B) provide a Certificate of Good Standing from the Supreme Judicial Court of Massachusetts; and
    - (C) read and agree to comply with the Local Rules of the United States District Court for the District of Massachusetts.
  - (2) **Review by Clerk.** The clerk shall examine the application and Certificate of Good Standing to determine whether the application is in order. If the application is in order, the clerk shall place the name of the applicant on the list for the first available admission ceremony. If the clerk questions whether the documents satisfy the requirements, the clerk shall transmit the documents to the United States Attorney for review.
  - (3) **Review by United States Attorney.** The United States Attorney shall make a recommendation on the application within 21 days after transmittal of the application. If the United States Attorney recommends that the application should

be granted, he or she shall return the application to the clerk with such recommendation in writing. The clerk shall place the name of the applicant on the list for the first available admission ceremony. If the United States Attorney recommends that the application should not be granted, he or she shall return the application to the clerk with written objection. The clerk shall deny the application without prejudice and send a notice of the denial to the applicant together with a copy of the objection from the United States Attorney.

(4) ***Motion to Approve after Denial.*** Any applicant denied admission may file a motion seeking to approve the application. The motion shall be served on the United States Attorney and presented to the Miscellaneous Business Docket (MBD) judge. The United States Attorney shall file any objection within 14 days of service. If the court approves the application, the clerk shall place the name of the applicant on the list for the first available admission ceremony.

(5) ***Oath or Affirmation.*** Approved applicants must make the following oath or affirmation before a district judge:

I solemnly swear (or affirm) that I shall conduct myself as a member of the bar of the United States District Court for the District of Massachusetts fairly and ethically and in accordance with the Constitution of the United States, the law of this district, and the local rules of this court.

(6) ***Registration and Fee.*** Approved applicants must also sign the register of attorneys and pay the approved attorney admission fee to the clerk.

### Rule 83.5.2 - Appearances

- (a) **Appearances Generally.** The filing of an appearance or any other pleading signed on behalf of a party constitutes an entry of appearance for that party. All pleadings shall contain the name, bar admission number, address, telephone number, and e-mail address of the attorney entering an appearance.
- (b) **Appearances by Law Firms.** When a party is represented by a law firm, the appearance must include the name and the signature of at least one individual attorney. When a party is represented by more than one attorney from the same or different law firms, the attorney entering the appearance must designate the individual attorney who is authorized to receive all notices in the case. Any notice sent to an attorney so designated shall be deemed to be proper notice unless the court finds that notice was not properly sent.
- (c) **Withdrawal of Appearance.** An attorney may withdraw an appearance of behalf of a party by either of the following procedures.
  - (1) ***Appearance of Successor Counsel.*** An attorney may file a notice of withdrawal of appearance that is either preceded or accompanied by the appearance of successor counsel; provided, however, that leave of court must be obtained if:
    - (A) motions are pending in the case;
    - (B) a trial date has been set;
    - (C) an evidentiary hearing has been set; or
    - (D) any reports, written or oral, are due.
  - (2) ***Leave of Court.*** An attorney may seek leave of court to withdraw his or her appearance for good cause shown.
- (d) **Notice of Withdrawal.** Any notice or motion to withdraw an appearance must be served on the party whom the attorney represents and all other parties to the case. Any objections to the withdrawal shall be filed within 14 days after service, unless the court shortens the period for good cause shown.

**Rule 83.5.3 - Practice by Attorneys Not Admitted as Members of the Bar of the District Court**

- (a) **Generally.** An attorney who is not a member of the bar of this district may appear and practice in this court as set forth in this rule.
- (b) **Requirement of Good Standing.** Except as provided in paragraph (e)(5) of this rule, no attorney may appear and practice if he or she:
  - (1) is not a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice; or
  - (2) is the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar.
- (c) **Attorneys for the United States.** An attorney who is employed by the United States or any of its departments or agencies may appear and practice as an attorney for the United States, any department or agency of the United States, or any officer or employee of the United States.
- (d) **Federal Defenders.** An attorney employed in the Federal Defender's Office in this District may appear and practice as an attorney pursuant to a court appointment or on behalf of his or her office.
- (e) **Procedural Requirements for Admission.**
  - (1) ***Leave of Court Required.*** An attorney who is a member of the bar of any United States District Court or the bar of the highest court of any state may appear and practice in this court in a particular case by leave of court.
  - (2) ***Motion by Local Counsel.*** An application for leave to practice in this court shall be made by motion of a member of the bar of this court, who shall also file an appearance.
  - (3) ***Certification by Attorney.*** Any attorney seeking admission under this rule shall file a signed certification that the attorney:
    - (A) is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice;
    - (B) is not the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar; and
    - (C) has read and agrees to comply with the Local Rules of the United States

District Court for the District of Massachusetts.

- (4) ***Payment of Fee.*** An attorney seeking admission under this rule shall pay the appropriate fee to the clerk of court.
- (5) ***Attorney Subject to Pending Disciplinary Proceedings.*** An attorney who otherwise satisfies the requirements of this rule, but who is the subject of disciplinary proceedings pending in another jurisdiction that have not yet been resolved, may seek to appear and practice in this court by providing, in lieu of the certification required by paragraph (e)(3) of this rule, a full explanation of the nature of the proceedings and the alleged underlying conduct. Such an applicant may not be permitted to appear and practice in this court unless the judicial officer concludes that the proceeding is not reasonably likely to result in disbarment or suspension or other serious attorney disciplinary action.
- (f) ***Attorneys in Removed Cases.*** An attorney who is a member of the Massachusetts bar who represents a party in a case that has been removed to this court, and who filed an appearance in that case prior to its removal, may appear and practice in this court in that case upon payment of the fee and the filing of the certification required by paragraph (e)(3) of this rule.
- (g) ***Attorneys in Multidistrict Litigation Cases.*** An attorney who represents a party in a case transferred to this district by the Judicial Panel on Multidistrict Litigation, and who filed an appearance in that case prior to its transfer, may appear and practice in this court in that case under such circumstances as the assigned judge may by order provide.
- (h) ***Attorneys in Other Transferred Cases.*** An attorney who represents a party in a case transferred to this district from another federal district, other than an MDL case, and who filed an appearance in that case prior to its transfer, shall seek admission under this rule within 21 days of the transfer to this court. The court may waive the requirement of local counsel for good cause shown.
- (i) ***Emergency Filings.*** An attorney who is not a member of the bar of this district may sign a complaint, answer, or other pleading reasonably necessary to prevent the expiration of a period of limitations or an entry of default; provided, however, that any such pleading is accompanied by a motion for admission under this subsection, or such a motion is filed no later than 7 days thereafter.

### Rule 83.5.4 - Practice by Law Students

- (a) **Generally.** A qualified law student may appear and practice in this court as set forth in this rule.
- (b) **Academic and Character Requirements.**
- (1) **Generally.** In order to appear and practice in this court, a student must:
- (A) be a third-year law student, or equivalent, at an ABA-accredited law school;
  - (B) have successfully completed a course for credit, or be currently enrolled in a course for credit, in evidence or trial practice; and
  - (C) otherwise have the appropriate character, legal ability, and training, as certified by the dean of the student's law school as set forth in this rule.
- (2) **Criminal Cases.** A student may not appear in a criminal case unless the student has also successfully completed a course for credit in criminal procedure.
- (3) **Civil Cases.** A student may not appear in a civil case unless the student has also successfully completed a course for credit in civil procedure.
- (4) **Second-Year Students in Clinical Programs.** Notwithstanding the requirements of paragraph (b)(1)(A) of this rule, a second-year law student, or equivalent, at an accredited law school may appear in a civil case if the student is currently enrolled in a law school clinical instruction program.
- (c) **Certification Requirements.** No student may practice under this rule until the following requirements have been met.
- (1) **Certification by Student.** The student must sign a written certification that the student has read and will abide by the rules of professional conduct followed by this court and its local rules.
- (2) **Certification by Law School Dean.** The dean of the student's law school must sign a written certification that the academic and character requirements of subdivision (b) of this rule have been met.
- (3) **Filing with Clerk; Duration.** Both certifications must be filed with the clerk. The certifications shall be in effect, unless withdrawn earlier, in any matter handled by the student until the date of the student's graduation from law school.

- (d) **Cases in Which Qualified Students May Appear.** A student who is qualified under this rule may appear and practice as set forth below.
- (1) ***Representation of Government.*** A student may represent the United States, or any department or agency of the United States, under the supervision of an attorney who is duly authorized to represent the government.
  - (2) ***Representation of Indigent Criminal Defendants.*** A student may represent an indigent defendant in criminal proceedings, if the defendant consents as provided in subsection (g), under the supervision of an attorney who has been appointed by the court to represent the defendant.
  - (3) ***Representation of Indigent Civil Parties.*** A student may represent indigent parties in civil proceedings, if the party consents as provided in paragraph (g) of this rule, under the supervision of:
    - (A) a member of the district bar appointed by the court to represent the party;  
or
    - (B) a member of the district bar employed by a nonprofit program of legal aid or legal assistance or a law school clinical instruction program.
- (e) **Requirement of Supervision.** A supervising attorney must be in attendance at all times when a law student is appearing in court or meeting with a client pursuant to this rule.
- (f) **Requirement of Appearance by Supervising Attorney.** A supervising attorney must file a written appearance in any matter in which a law student appears under this rule.
- (g) **Requirement of Client Consent.** Before performing work for a client, other than the United States or a department or agency of the United States, the law student must:
- (1) disclose to the client the student's status as a law student;
  - (2) obtain from the client a signed document in which the client:
    - (A) acknowledges having been informed of the student's status; and
    - (B) authorizes the named student to appear for and represent the client in the litigation or proceedings identified in the document;
  - (3) have the document approved by the supervising attorney; and
  - (4) file the document with the clerk of court.



- (h) **No Compensation.** No student practicing under this rule may charge or receive any fee or other compensation from a client. A student may, however, receive a fixed compensation paid regularly by a governmental agency, legal aid or legal assistance program, or law school clinical instruction program acting as the employer of the student.
- (i) **Rules of Professional Conduct.** A student practicing under this rule shall comply with the rules of professional conduct of this court. The failure of a supervising attorney to provide proper training or supervision may be grounds for sanctions, disciplinary action, or revocation or restriction of the attorney's authority to supervise students.
- (j) **Client Communications.** Students practicing under this rule shall be treated as attorneys for purposes of applying the law and rules concerning attorney-client privilege, attorney work-product protection, and other rules concerning attorney-client communications.

### 83.5.5 - Practice by *Pro Se* Litigants

- (a) **Generally.** An individual who is not represented by counsel and who is a party in a pending proceeding may appear *pro se* and represent himself or herself in the proceeding.
- (b) **No Representation of Other Parties.** An individual appearing *pro se* may not represent any other party and may not authorize any other individual who is not a member of the bar of this district to appear on his or her behalf.
- (c) **Corporations and Other Entities.** A corporation, partnership, limited liability company, trust, estate, or other entity that is not an individual may not appear *pro se*. An individual officer, director, partner, member, trustee, administrator, or executor may not appear on behalf of an entity; provided, however, that if such an individual is also an attorney who is otherwise permitted to practice in this court, the attorney may represent the entity if the representation is otherwise appropriate under the circumstances. The court may strike any pleading filed on behalf of any entity that purports to appear *pro se*.
- (d) **Requirement to Follow Rules.** A *pro se* party is required to comply with these local rules.
- (e) **Requirement for Documents Filed with Court.** Any document requiring a signature that is filed by a party appearing *pro se* shall bear the words “*pro se*” following that party’s signature. Any such document shall also state the party’s mailing address, telephone number, and e-mail address, to the extent they are available.
- (f) **Requirement to Provide Mailing Address.** Any party who appears *pro se* must provide the clerk and all parties a mailing address at which service upon the *pro se* party can be made. Service of pleadings and other papers under Rule 5 of the Federal Rules of Civil Procedure and Local Rule 5.2 may be made on a *pro se* party by sending copies by regular mail to the party at the designated address.
- (g) **E-Mail Address.** Any party who appears *pro se* may also provide the clerk and all parties an e-mail address at which service upon that party may be made, and a signed written consent to be served electronically at that address. A *pro se* party may thereafter be served electronically at the designated e-mail address.
- (h) **Requirement to Update Addresses.** Every party appearing *pro se* shall inform the clerk and all parties in writing of any change of name, address, telephone number, or e-mail address within 14 days of the change. It is the responsibility of the *pro se* party to notify the clerk and the parties of any change. Any notice sent by the clerk or any party to a *pro se* party shall be deemed delivered and properly served if sent to the most recent address, fax number or e-mail address provided by the *pro se* party.

### **Rule 83.5.6 - Ongoing Obligations**

- (a) **Reporting Change of Address.** Each member of the bar of this district must promptly notify the clerk of any change in the attorney's name, law firm name, address, telephone number, or e-mail address. Any notice sent to a member of the bar of this district shall be deemed delivered if sent to the most recent address on file.
- (b) **Reporting Disciplinary Matters.** Each member of the bar of this district must promptly notify the clerk of the imposition of any professional discipline against the attorney by any court or body having disciplinary authority over attorneys that resulted in disbarment, suspension, or any other attorney disciplinary action. A temporary suspension for failure to pay bar dues, not exceeding 30 days in duration, need not be reported if no other professional discipline was imposed.
- (c) **Reporting Criminal Convictions.** Each member of the bar of this district must promptly notify the clerk of any criminal conviction against the attorney.

### **83.5.7 - Registration for Electronic Case Management/Electronic Case Files (CM/ECF)**

- (a) **Requirement to Register.** Attorneys who are members of the bar of this district or who are permitted to appear and practice under Local Rule 83.5.3 must register as filing users of the court's Case Management/ Electronic Case Filing System ("CM/ECF").
- (b) **Form of Registration.** An attorney who files an application for admission to the district bar under Local Rule 83.5.1 need not file a separate registration for electronic filing. All others must complete and submit an approved CM/ECF registration form before filing any documents electronically.
- (c) **Training and Participation in Program.** Attorneys who are members of the bar of this district must participate in the CM/ECF program and obtain the necessary training to qualify as a registered user of CM/ECF.
- (d) **Improper Use.** Any attorney who is a registered user of CM/ECF may be required by the clerk to undergo additional training, or may be suspended or terminated by the clerk from use of CM/ECF, based on misuse or improper use of CM/ECF.

### **Rule 83.6.1 - Rules of Professional Conduct**

- (a) **Rules of Professional Conduct.** The rules of professional conduct for attorneys appearing and practicing before this court shall be the Massachusetts Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court, as set forth as Rule 3:07 of that court, as of [*the effective date of these rules*], together with any subsequent amendments made pursuant to paragraph (b) of this rule.
- (b) **Amendments to Rules.** Any amendment to the Massachusetts Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court after [*the effective date of these rules*] shall be deemed adopted by this court as of the same date, unless this court affirmatively declines to adopt it by a majority vote of the full court or stays its adoption pending such a vote. This court may also modify its rules of professional conduct at any time according to its normal rulemaking procedures.
- (c) **Compliance with Rules Required.** All attorneys who are admitted or authorized to practice before this court shall comply with its rules of professional conduct in all matters they handle before this court.

### **Rule 83.6.2 - Jurisdiction for Disciplinary Matters**

All attorneys who are admitted or authorized to practice before this court are deemed to have consented to the jurisdiction of this court for any disciplinary proceedings arising out of any claims of misconduct arising under these rules.

### **Rule 83.6.3 - Forms of Misconduct**

An attorney may be disciplined pursuant to these rules for the following types of misconduct:

- (1) violation of the rules of professional conduct of this court;
- (2) willful, recurrent, or egregious violation of these local rules or any order of the court;
- (3) failure to notify the court promptly of a criminal conviction or disciplinary action as required by Local Rule 83.5.6(b);
- (4) conduct that resulted in disbarment, suspension, or any other attorney disciplinary action in another jurisdiction; and
- (5) a criminal conviction as provided in Local Rule 83.6.8.

### **Rule 83.6.4 - Forms of Discipline**

- (a) **Forms of Discipline Generally.** An attorney may be subject to the following types of discipline after a finding of misconduct pursuant to these rules:
- (1) disbarment or suspension of the attorney from practicing before this court;
  - (2) public or private reprimand or censure;
  - (3) monetary sanctions;
  - (4) restitution to victims of the misconduct; and
  - (5) such other disciplinary action as may be reasonable under the circumstances.
- (b) **Notice and Opportunity to Be Heard.** No discipline shall be imposed against an attorney pursuant to these rules without notice and an opportunity to be heard as to both the finding of misconduct and the form of the discipline.
- (c) **Other Sanctions.** Nothing in these rules shall limit the authority of a judge to impose any other sanctions otherwise permitted by law, including without limitation sanctions for contempt of court or for litigation misconduct. The imposition of such other sanctions shall not constitute the imposition of professional discipline within the meaning of these rules.



### Rule 83.6.5 - Disciplinary Proceedings

- (a) **Procedure Generally.** The following procedures shall be employed in matters of alleged attorney misconduct.
- (b) **Screening and Referral.** All complaints of alleged attorney misconduct shall be screened in the first instance by the judge who presided over the case or matter, if any, in which the misconduct occurred. If that judge is unavailable, or if the proper judge cannot be readily determined, the complaint shall be screened by the clerk. Any judge or the clerk may refer any matter of potential attorney misconduct to the presiding judge, as set forth below, for review and possible further action. If the allegations of attorney misconduct are reasonably plausible and potentially serious, the matter should be referred to the presiding judge.
- (c) **Presiding Judge.**
  - (1) **Generally.** After screening and referral, allegations of attorney misconduct shall be handled by the presiding judge.
  - (2) **Assignment of Presiding Judge.** The presiding judge shall not be the judge who referred the matter for review or a judge assigned to the case or matter, if any, in which the matter arose. For cases arising in the Eastern Division, the Miscellaneous Business Docket Judge shall be the presiding judge. For cases arising in the Central Division, the presiding judge shall be the judge assigned to the Western Division. For cases arising in the Western Division, the presiding judge shall be the judge assigned to the Central Division. If the presiding judge is disqualified under this rule, or recuses himself or herself, the matter will be referred to the Chief Judge or, if he or she is disqualified, to the next active district judge in order of seniority. Once a matter has been assigned to a particular judge as the presiding judge, that judge shall remain the presiding judge for that matter unless it is reassigned under Local Rule 40.1(I).
- (d) **Initial Review and Action by Presiding Judge.** The presiding judge shall conduct an initial review of the matter and shall take one or more of the following actions.
  - (1) **No Action.** If the presiding judge concludes that the allegations do not describe a disciplinary violation or otherwise are plainly without merit, the presiding judge may direct that no further action be taken.
  - (2) **Request for Explanation.** The presiding judge may provide written notice to the attorney specifying the alleged misconduct and affording the attorney an opportunity to explain, either on the record or in writing, why he or she believes that formal disciplinary proceedings should not be commenced. If the presiding judge is satisfied with the explanation, he or she may direct that no further action

be taken, or take such other steps consistent with these rules as may be appropriate.

- (3) ***Resolution by Consent.*** The presiding judge may take any action, or enter any order, consistent with these rules to permit a resolution of any disciplinary matter by settlement or consent.
- (4) ***Review by Special Counsel.*** The presiding judge may appoint special counsel to conduct an investigation, to make a report to the court, and to perform any other duty set forth in the order of appointment. If the matter proceeds to a formal disciplinary proceeding, the presiding judge may direct that special counsel may continue to act and may present evidence, examine witnesses, and otherwise participate in the proceeding.
- (5) ***Temporary Suspension.*** The presiding judge may suspend the attorney on a temporary basis pursuant to Local Rule 83.6.6.
- (6) ***Commencement of Formal Proceedings.*** The presiding judge may initiate formal proceedings against the attorney, as set forth below.
- (7) ***Other Action.*** The presiding judge may take any other action that is authorized by law, not inconsistent with these rules, and reasonably necessary to the exercise of his or her authority under these rules.

(e) **Referrals to Other Authorities.**

- (1) ***State Bar Disciplinary Authorities.*** The presiding judge may refer the matter to a state bar disciplinary authority with a request that the authority report its actions to the court.
- (2) ***Federal Authorities.*** In the case of an attorney for the United States or any department or agency of the United States, the presiding judge may refer the matter to the Department of Justice Office of Professional Responsibility, or to any other federal office or agency with supervisory or disciplinary authority over the attorney, with a request that the office or agency report its actions to the court.
- (3) ***Effect of Referral.*** The presiding judge may continue to conduct any review, investigation, or proceeding, and impose any discipline, notwithstanding the referral of a matter to an outside authority.
- (4) ***Notification to Clerk.*** The presiding judge shall notify the clerk of any referral to an outside authority, who shall keep a record of all such referrals.

(f) **Requirement of Cooperation.** Any attorney who is the subject of an investigation or

review, or a witness in such a matter, shall cooperate and shall reasonably and promptly respond to inquiries from the court and its agents; provided, however, that an attorney may make a valid assertion of his or her constitutional rights, any applicable privilege, or any other right provided by law. Any failure to cooperate under this rule may itself result in disciplinary action.

**(g) Formal Disciplinary Proceedings.**

- (1) *Show Cause Order.*** A formal disciplinary proceeding against an attorney shall commence by the issuance of a show-cause order by the presiding judge. The show-cause order shall direct the attorney to appear and show cause why disciplinary action should not be taken against the attorney for reasons stated in the order.
- (2) *Service of Notice.*** The order may be served upon the attorney by mailing a copy to him or her at the address provided by the attorney pursuant to these local rules or by any other means reasonably calculated to provide notice to the attorney.
- (3) *Special Counsel.*** If special counsel has not already been appointed, the presiding judge may appoint such counsel to present evidence and examine witnesses at any hearing and otherwise to participate in the proceeding.
- (4) *Written Response.*** The attorney shall file a written response to the show-cause order within 28 days after service. If the attorney requests a hearing to resolve any disputed issue of material fact raised in the response, or if the attorney does not dispute the misconduct but wishes to be heard on the issue of the appropriate form of discipline, the presiding judge shall set the matter for hearing.
- (5) *Hearing.*** The presiding judge shall hold a hearing as necessary and appropriate to resolve any disputed issues of material fact, to determine whether any attorney misconduct occurred, and to determine the appropriate form of discipline. The respondent attorney may present evidence and cross-examine witnesses and may be represented by counsel. Any factual predicate must be proved according to the standard of proof applied in attorney discipline matters in the courts of the Commonwealth of Massachusetts. The presiding judge shall make any factual findings on the record in open court or in a written order.
- (6) *Public Proceeding.*** Unless the presiding judge orders otherwise for good cause shown, any such hearing shall be open to the public.
- (7) *Findings.*** The presiding judge shall issue a written order setting forth its conclusions and the reasons therefor and the final disposition of the matter, including any discipline imposed on the attorney. The court may in appropriate circumstances enter judgment against the attorney under Fed. R. Civ. P. 54.

- (h) **Reference to Magistrate Judge.** The presiding judge may refer an attorney disciplinary matter to a magistrate judge.
- (1) ***Disqualification.*** The designated magistrate judge shall not be the judge who referred the matter for review or a judge assigned to the case or matter, if any, in which the matter arose.
  - (2) ***Preliminary Stage.*** If the matter is at the preliminary or informal stage, the magistrate judge may review the matter, make a report and recommendation to the court, or perform any other duty specified in the order of referral.
  - (3) ***Formal Disciplinary Proceedings.*** If the matter has proceeded to formal disciplinary proceedings, the magistrate judge shall make a written report and recommendation to the presiding judge, including proposed factual findings.
  - (4) ***Objections and District Judge Review.*** Any objections to a report and recommendation, and any review by the presiding judge, shall proceed in accordance with the requirements of 28 U.S.C. § 636(b)(1).
- (i) **Participation of Victims in Proceedings.** The court shall give due regard to the victims or potential victims of any attorney misconduct in the conduct of any proceedings and the issuance of any disciplinary order. The court shall endeavor to provide notice of any hearing to such persons and permit them to be heard as appropriate. The court shall also consider whether an order of restitution is appropriate in any disciplinary order.
- (j) **Appeal.** An appeal may be taken on behalf of the court by the special counsel who handled the proceeding, or by special counsel appointed for that purpose, if the court, by a majority vote of the full court, so directs. Any district judge, bankruptcy judge, or magistrate judge may request that the full court consider taking an appeal in a particular matter. The court may delay entry of judgment or take such other steps as may be reasonably necessary to preserve the right of appeal while the matter is under consideration.

### **Rule 83.6.6 - Temporary Suspension**

- (a) **Temporary Suspension Generally.** The presiding judge, in accordance with this rule, may enter a temporary restraining order or preliminary injunction under Fed. R. Civ. P. 65 immediately suspending an attorney’s right to practice law in this court or in the bankruptcy court of this district, pending the outcome of a disciplinary proceeding under these rules.
- (b) **No Temporary Suspension by Complaining Judge.** A complaint, referral, or report and recommendation seeking an order of temporary suspension shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c). An order of temporary suspension shall not be entered by a judge who presided over the case or matter, if any, in which the alleged misconduct occurred.
- (c) **Notice and Hearing.** No order of temporary suspension may be made without notice to the attorney and an opportunity to be heard.
- (d) **Standard for Temporary Suspension.** The presiding judge shall consider the following factors when determining whether to issue an order of temporary suspension:

  - (1) whether a disciplinary complaint has a substantial likelihood of success on the merits and is likely to result in an order of suspension or disbarment;
  - (2) whether the attorney’s continued practice of law in this court pending the outcome of any disciplinary proceedings presents a significant ongoing risk of harm to the public;
  - (3) whether the balance of equities, including a weighing of the ongoing risk of harm to the public against the harm to the attorney resulting from an immediate suspension, warrants suspension; and
  - (4) whether the public interest favors entry of the order.
- (e) **Written Report by District Judge.** If a district judge determines that an attorney should be the subject of an order of temporary suspension, the district judge shall issue an order to show cause why an attorney should not be immediately suspended from practice in the district court and a written report setting forth the basis of the judge’s belief. The order to show cause and written report shall be served on the attorney with a date by which the attorney should respond. The matter shall be immediately referred to the presiding judge, who shall consider it on an expedited basis.
- (f) **Report and Recommendation by Bankruptcy Judge or Magistrate Judge.** If a bankruptcy judge or magistrate judge believes that an attorney should be the subject of an order of temporary suspension, the bankruptcy judge or magistrate judge shall issue an

order to show cause why the attorney should not be immediately suspended from practice in the district court and a report and recommendation to the district court setting forth the facts warranting such relief. The order to show cause and report and recommendation shall be served on the attorney with a date by which the attorney should respond. The order to show cause and the report and recommendation shall be immediately referred to the presiding judge, who shall consider the matter on an expedited basis.

- (g) **Modification of Suspension.** After notice and hearing, and for good cause shown, the presiding judge may vacate or modify any order of temporary suspension issued under this rule.
- (h) **Formal Disciplinary Proceedings.** If a formal disciplinary proceeding has not yet been initiated under Local Rule 83.6.5(g) at the time the order of temporary suspension is requested or issued, such a proceeding shall be initiated reasonably promptly thereafter.

### **Rule 83.6.7 - Disbarment by Consent**

(a) **Consent to Disbarment Generally.** Any attorney admitted to practice before this court may consent to disbarment.

(b) **Procedure.** In order to consent to disbarment, the attorney must deliver an affidavit to the court stating that:

- (1) the attorney wishes to consent to disbarment;
- (2) the attorney's consent is freely and voluntarily given and not made under coercion or duress;
- (3) the attorney is fully aware of the implications of consenting to disbarment; and
- (4) the attorney is aware of the pending investigation or proceeding and that grounds exist for disciplinary action, the nature of which shall be specifically set forth.

The affidavit shall also identify all jurisdictions in which the attorney has been admitted to practice. Upon receipt of the required affidavit, the chief judge shall enter an order disbarring the attorney, and direct the clerk to send a copy of the order to all jurisdictions in which the disbarred attorney has been admitted to practice.

## Rule 83.6.8 - Discipline after Criminal Conviction

### (a) Effect of Criminal Conviction.

- (1) **Summary Suspension.** When an attorney who is a member of the bar of this district or who is permitted to practice in this court has been convicted of a serious crime, as defined in paragraph (b) of this rule, the attorney shall be summarily suspended from practicing before this court.
- (2) **Suspension Procedure.** The court shall enter an order immediately suspending an attorney from practicing before this court upon the filing of a certified copy of a judgment or other official court records reflecting a criminal conviction. A copy of such order shall immediately be served upon the attorney. The matter shall then be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for further review and action.
- (3) **Setting Aside Suspension.** Upon good cause shown, the presiding judge may set aside such order when it appears in the interest of justice to do so.
- (4) **Subsequent Disciplinary Proceeding.** In addition to suspending the attorney, the presiding judge shall commence a formal disciplinary proceeding against the attorney, provided, however, that the disciplinary proceeding so instituted shall not be brought to final hearing until all appeals from the conviction are concluded.

### (b) Definition of “Serious Crime.” The term “serious crime” shall be defined for purposes of this rule as follows.

- (1) **Types of Crime.** “Serious crime” shall include:
  - (A) any felony;
  - (B) any crime involving obstruction of justice, interference with the administration of justice, witness intimidation, perjury, or suborning perjury;
  - (C) any crime involving false statements, fraud, false swearing, false pretenses, misrepresentation, or deceit;
  - (D) any crime involving bribery, extortion, or unlawful payments to a government official;
  - (E) any crime involving misappropriation of property or embezzlement;
  - (F) any crime involving willful failure to file tax returns or filing false tax



returns; and

(G) any attempt, conspiracy, or solicitation of another to commit such crimes.

(2) **Jurisdictions.** A conviction for a “serious crime” shall qualify if it occurred in any court of the United States, any state, the District of Columbia, or any territory, commonwealth, or possession of the United States.

(c) **Definition of “Convicted.”** The term “convicted” shall be defined for purposes of this rule to include any disposition of a criminal matter by a finding of guilty, a plea of *nolo contendere*, or a continuance without a finding, whether or not that disposition has been appealed or is otherwise under court review.

(d) **Effect of Reversal of Conviction.** An attorney who was suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed. The reinstatement will not, however, automatically terminate any disciplinary proceeding then pending against the attorney arising out of the matters for which the attorney was prosecuted.

(e) **Effect of Other Crimes.** Evidence that an attorney committed a crime other than a “serious crime” as defined in this rule may form the basis for a disciplinary proceeding or other action against the attorney, even though it may not result in a summary suspension.

### Rule 83.6.9 - Reciprocal Discipline

- (a) **Generally.** When an attorney who is a member of the bar of this district or who is permitted to practice in this court has been disbarred or suspended or has received any other discipline in any other jurisdiction, the attorney may be subject to reciprocal discipline as set forth below.
- (b) **Notice and Show-Cause Order.** Upon the filing of a certified copy of a judgment, order, or other official record demonstrating that the attorney has been disciplined by another court, this court shall promptly issue a notice to the attorney with the following:
  - (1) a copy of the judgment or order or other official record; and
  - (2) an order to show cause, within 28 days after service of the order, why this court should not impose the identical discipline.
- (c) **Disciplinary Action or Referral.** If the attorney fails to respond within the 28-day period, or does not contest the matter, this court shall impose the identical discipline imposed by the other court. If the attorney responds within that period and contests the matter, the matter shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for further review and action.
- (d) **Effect of Stay.** In the event the action imposed in the other jurisdiction has been stayed there, any reciprocal action taken by this court shall be deferred until such stay expires.
- (e) **Effect of Decision by Other Court.**
  - (1) If, with respect to the action taken by the other court, the presiding judge finds:
    - (A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
    - (B) 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 other court's conclusion on that subject;
    - (C) that the imposition of substantially similar discipline or the making of the same finding by this court would result in grave injustice; or
    - (D) that the conduct at issue is deemed by the presiding judge to warrant substantially different disciplinary action,the presiding judge may enter such other orders as he or she deems appropriate under the circumstances.

- (2) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of any proceeding under this rule.
- (f) **Definition of “Court.”** The term “court” shall be defined for purposes of this rule as any court, or other governmental body having supervisory or disciplinary authority over attorneys, of the United States, any state, the District of Columbia, or any territory, commonwealth, or possession of the United States.

### Rule 83.6.10 - Reinstatement

- (a) **Reinstatement after Suspension.** An attorney who has been suspended shall be automatically reinstated at the end of the period of suspension upon the filing of an affidavit stating that:
- (1) the period of suspension has expired; and
  - (2) the attorney has complied with all requirements of any order of suspension.
- (b) **Reinstatement after Disbarment or Resignation.**
- (1) **Generally.** An individual who has ceased to be a member of the district bar for any reason, including disbarment or resignation, may apply for reinstatement.
  - (2) **Application Requirements.** An applicant for reinstatement shall:
    - (A) complete, verify, and file an application for reinstatement on an official form provided by the clerk;
    - (B) file an affidavit of compliance with any applicable court order imposing conditions as a part of attorney discipline; and
    - (C) pay the approved attorney reinstatement fee to the clerk.
  - (3) **Waiting Period.** An attorney who has been disbarred after hearing or by consent may not apply for reinstatement until at least 5 years after the effective date of disbarment.
  - (4) **Procedure on Application.** An application for reinstatement shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for review and further action.
    - (A) The presiding judge may designate a magistrate or bankruptcy judge to issue a report and recommendation as to whether or not the application should be approved.
    - (B) The presiding judge may appoint special counsel to conduct an investigation, to make a report to the court, and to perform any other duty set forth in the order of appointment.
    - (C) After notice, the presiding judge shall schedule a hearing on the application.

- (D) The presiding judge may refer the matter to a magistrate judge for report and recommendation pursuant to 28 U.S.C. § 636(b)(1).
- (5) ***Standard for Reinstatement.*** The applicant shall have the burden of demonstrating by clear and convincing evidence that he or she is qualified and fit to practice law before this court and that the applicant's resumption of the practice of law before this court will not adversely affect the interests of potential clients, public confidence in the integrity of the bar of this court, or the proper administration of justice.
- (6) ***Approval by District Court Required.*** If the presiding judge grants the application of an applicant who had been previously disbarred, the matter will be referred to the full district court. No order of reinstatement after an order of disbarment shall take effect except upon a majority vote of the judges of the court.

### Rule 83.6.11 - Public Access and Confidentiality

- (a) **Matters Presumed to Be Public.** All matters before the court concerning alleged attorney misconduct and discipline are presumptively public.
- (b) **Exceptions.** The court, on its own motion or on request, may redact or protect the following types of matters and file them under seal.
  - (1) ***Victim or Third-Party Privacy.*** Any matters reasonably necessary to protect the privacy of a victim of attorney misconduct or of any innocent third party.
  - (2) ***Privilege.*** Any matters reasonably necessary to protect information subject to a valid attorney-client or other privilege.
  - (3) ***Grand Jury or Criminal Investigation.*** Any matters reasonably necessary to protect information subject to grand jury secrecy or to protect an ongoing criminal investigation.
  - (4) ***Personal Privacy.*** Any matters of a highly personal or private nature; provided, however, that if the personal or private matter was the basis, at least in part, of a disciplinary action, a decision not to take disciplinary action, or a decision to mitigate discipline, public disclosure is required in sufficient detail to permit an informed public understanding of the court's decision.
  - (5) ***Exceptional Circumstances.*** Any other matters that, due to exceptional circumstances presented in the case, should not be disclosed in the interests of justice.

Any such redaction or protective order shall be in writing or made on the record and shall state the reasons for the order. The court, in fashioning such an order, shall give due regard to the need to protect the public from further attorney misconduct and to maintain public confidence in the integrity of the court.