

NOTICE TO THE BAR
PROPOSED AMENDMENTS
TO THE
DISTRICT OF NEW JERSEY LOCAL CIVIL RULES

The United States District Court for the District of New Jersey announces that the following proposed amendments to the Local Civil Rules are posted for public comment as required by 28 U.S.C. § 2071(b) at <http://www.njd.uscourts.gov>. The Court's proposed amendments are accompanied by explanatory *Comments* set forth below.

Amendments are proposed to the following Local Civil Rules:

- L. Civ. R. 11.1 & 101.1(c)(6) -- Clarifying Rule 11 obligations of attorneys admitted *pro hac vice*;
- L. Civ. R. 16.1(b)(1)(H) -- Adding requirement to address affidavit of merit issues at initial conference in cases asserting professional malpractice or negligence;
- L. Civ. R. 104.1 -- Amending various provisions of the Court's rule for attorney discipline to require self-reporting of criminal conviction and discipline imposed by another court; exempting from reciprocal discipline an attorney's excusable failure to pay fee to out-of-state client security fund; defining "public discipline"; allowing discretion to treat reciprocal discipline based on conviction of serious crime under the provision for discipline for conviction of a serious crime rather than provision for reciprocal discipline; and allowing compensation for associates and paralegals who assist court-appointed special counsel in disciplinary matters.
- L. Civ. R. 401.1(a) -- Amending restrictions upon broadcasting, photographing, video, and voice recording in all interior spaces of the courthouses, but not amending exception for investiture, naturalization, and ceremonial proceedings in subpart (b).

The proposed revisions below show new material underlined and deleted material ~~stricken~~.

L. Civ. R. 11.1 SIGNING OF PLEADINGS

In each case, the attorney of record who is a member of the bar of this Court shall ~~personally~~ sign all papers submitted to the Court or filed with the Clerk. Counsel admitted *pro hac vice* also are deemed responsible under Fed. R. Civ. P. 11(b) for filings with the Court, as provided in Local Civil Rule 101.1(c)(6).

L. Civ. R. 101.1 ADMISSION OF ATTORNEYS

. . . (c)(6) Any *pro hac vice* counsel admitted in the action is deemed to have certified under Fed. R. Civ. P. 11(b) to those pleadings, written motions or other papers that the *pro hac vice* counsel signs, files, submits or later advocates to the Court.

Comment: These related amendments reinforce that counsel admitted pro hac vice may be held responsible under Rule 11, Fed. R. Civ. P., for the submissions signed, filed, or advocated by that attorney to the Court. Ordinarily, Rule 11 sanctions will not be triggered against an attorney who has not participated in submitting or advocating the offending pleading, motion, or other paper.

L. Civ. R. 16.1(b) SCHEDULING AND CASE MANAGEMENT ORDERS

(1) At or after the initial conference, the Magistrate Judge shall, after consultation with counsel, enter a scheduling order which may include, but need not be limited to, the following:

- (A) dates by which parties must move to amend pleadings or add new parties;
- (B) dates for submission of experts' reports;
- (C) dates for completion of fact and expert discovery;
- (D) dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports);
- (E) a pretrial conference date;
- (F) any designation of the case for arbitration, mediation, appointment of a special master or other special procedure; ~~and~~
- (G) limitations on the scope of preservation, as well as on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs; and
- (H) in an action asserting professional malpractice or negligence,
 - (1) whether an affidavit of merit has been served, or is required to be served,
 - (2) the date by which an affidavit of merit must be served,
 - (3) if an affidavit has been served, whether the defendant has any objections to the adequacy of the affidavit, and
 - (4) if appropriate, dates for filing of summary judgment motions concerning the necessity or adequacy of the affidavit.

(2) Absent objection of a party or a form of order submitted on consent, either of which must be set forth in a proposed discovery plan submitted pursuant to Federal Rule of Civil Procedure 26(f)(2), a scheduling order entered pursuant to this subsection on or after September 30, 2016 shall be deemed to incorporate an order pursuant to Federal Rule of Evidence 502(d) that:

- (i) The production of materials, inadvertent or otherwise, shall not be deemed a waiver of attorney- client privilege or work product protection in this civil action or in any other federal or State proceeding.

(ii) Nothing in (i) above shall limit the right of a party or subpoenaed nonparty to conduct a reasonable review of materials for relevance or otherwise in response to a discovery request or requests.

~~(2) (deleted by order of 9/23/97)~~

(3) The Magistrate Judge shall advise each party of the provisions of L. Civ. R. 73.1(a).

(4) In a civil action arising under 18 U.S.C. §§1961-1968, the Judge or Magistrate Judge may require a RICO case statement to be filed and served in the form set forth in Appendix O.

Comment: In cases where the applicable law may require an affidavit of merit to be served supporting a claim for professional malpractice or negligence, this amendment requires all counsel to address this topic as specified at the initial conference. The amendment is procedural and does not add to, or subtract from, the requirements of the law.

L. Civ. R. 104.1 DISCIPLINE OF ATTORNEYS

The Court, 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.

Table of Contents

SUBJECT HEADINGS	REFERENCE
Attorneys Convicted of Crimes	(a)
Discipline Imposed by other Courts	(b)
Disbarment on Consent or Resignation in other Courts	(c)
Standards for Professional Conduct.....	(d)
Disciplinary Proceedings	(e)
Disbarment on Consent While Under Disciplinary Investigation or Prosecution	(f)
Reinstatement.....	(g)
Attorneys Specially Admitted.....	(h)
Service of Papers and Other Notices	(i)
Appointment of Counsel.....	(j)
Payment of Fees and Costs	(k)
Duties of the Clerk	(l)
Jurisdiction.....	(m)

(a) Attorneys Convicted of Crimes

(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any

court of the United States, or the District of Columbia, or any state, territory, commonwealth or possession of the United States, of a serious crime as hereinafter defined, the Chief Judge shall immediately enter an order temporarily 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 of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when the interest of justice requires.

(2) 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 in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime."

(3) Any attorney admitted to practice before this Court shall, upon being convicted of a crime, in this Court or any other court of the United States or the District of Columbia, or by the court of any state, territory, commonwealth or possession of the United States, inform the Clerk and the Chief Judge in writing of such conviction within 20 days of the date of conviction (the earliest of the date of entry of a plea of guilty or *nolo contendere*, or verdict by a judge or jury, or sentencing). Failure to comply with this notice provision shall result in additional discipline in this Court, unless excused by the Court for good cause.

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

(5) ~~(4)~~ After the entry of the temporary suspension, the Court shall enter an Order to Show Cause as to why the temporary suspension should not be made permanent. If the suspended attorney does not contest the matter by the return date of the Order to Show Cause, the Court shall enter an Order of Disbarment barring the attorney from the practice of law before the Court. If the attorney does contest the matter, the Court can refer the matter to counsel in accordance with subsections ~~(5) and (6)~~ (6) and (7).

(6) ~~(5)~~ Where the conviction of an attorney is for a serious crime, the Court shall refer the matter to counsel, who will represent the interests of the Court, for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all direct appeals from the conviction are concluded. Counsel shall investigate and research the matter, and make a recommendation to the Court as to the appropriate sanction to be imposed in accordance with subsection (e)(4).

(7) ~~(6)~~ Where the conviction of an attorney is for a crime not constituting a serious crime, the Court may, in its discretion, refer the matter to counsel for a recommendation as to what action, if any, should be taken, including the institution of a disciplinary proceeding before the Court.

(8) ~~(7)~~ 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.

(b) Discipline Imposed by Other Courts

(1) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline (including but not limited to disbarment, temporary or permanent suspension, censure, reprimand or admonition) 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 and Chief Judge of this Court of such action within 20 days of the date of such order of discipline. Failure to comply with this notice provision shall result in the automatic imposition of the same discipline in this Court, unless excused by the Court for good cause.

(2) Upon receipt by the Court of such notice under L. Civ. R. 104.1(b)(1) or the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court, this Court, unless this Court determines that L. Civ. R. 104.1(a) governs, or unless this Court determines that the discipline resulted from an attorney's excusable failure to pay the annual fee to a court's client protection fund, shall forthwith issue a notice directed to the attorney containing:

(A) a copy of the judgment or order from the other court; and

(B) an order to show cause directing that 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 upon the grounds set forth in L. Civ. R. 104.1(b)(4), that the imposition of the identical discipline by the Court would be unwarranted, and the reasons therefor.

(3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(4) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of L. Civ. R. 104.1(b)(2), this Court shall impose the identical discipline unless the respondent-attorney demonstrates or this Court finds that, upon the face of the record upon which the discipline in another jurisdiction is predicated, it clearly appears:

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

(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 conclusion on that subject; or

(C) that the imposition of the same discipline by this Court would result in grave injustice; or

(D) that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate, provided that the attorney has also demonstrated that the attorney has complied with all rules for disciplined attorneys in the other court of the United States or the District of Columbia, or the court of any state, territory, commonwealth or possession of the United States in which the discipline was administered.

....

(j) Appointment of Counsel

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court may appoint as counsel the disciplinary agency of the Supreme Court of New Jersey, 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 may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent in any matter. Counsel, appointed under this paragraph or paragraph (e)(12) above, may not resign without permission from the Court. Counsel may use reasonable services as needed to assist in the appointment such as an associate and/or paralegal in the firm and be compensated for reasonable services under 104.1(k).

....

Comment: The Court proposes to amend the attorney discipline rule, L. Civ. R. 104.1, in several respects.

In new L. Civ. R. 104.1(a)(3), an attorney will be required to inform the Clerk and the Chief Judge within 20 days of a criminal conviction by entry of a plea of guilty or nolo contendere, or verdict by a judge or jury, or sentencing, whichever occurs first.

For discipline imposed by other courts triggering reciprocal discipline in this Court, several amendments are proposed to L. Civ. R. 104.1(b). First, the phrase “public discipline” is defined, triggering the attorney’s duty to report such discipline to the Chief Judge and Clerk of Court, and the deadline for self-reporting is set at 20 days, in L. Civ. R. 104.1(b)(1).

An amendment to L. Civ. R. 104.1(b)(2) gives the Court discretion, where the other court’s discipline is based upon conviction for a serious crime, to treat the matter in accordance with the procedures of L. Civ. R. 104.1(a) pertaining to conviction for a serious crime including immediate suspension and entry of an order to show cause why such suspension should not be permanent.

Local Civ. R. 104.1(b)(2) is also amended to excuse an attorney from reciprocal discipline arising solely from the attorney’s excusable failure to pay the fees required by another court’s client protection fund. A member of this Court’s bar, however, must be current in payment of fees to the New Jersey Fund for Client Protection.

In L. Civ. R. 104.1(b)(4), an attorney may seek to avoid imposition of reciprocal discipline by clearly demonstrating that one of the four elements listed in subjects (A) - (D) is established. This amendment would also require the attorney to demonstrate that he or she has complied with the disciplinary process rules of the court imposing discipline. Thus, for example, an attorney who failed to comply with that court's disciplinary rules requiring appearance at a hearing could not successfully invoke subpart (b)(4)(A) to claim the procedure lacked an opportunity to be heard. Similarly, an attorney who refused to provide required documents to the disciplinary investigation could not successfully invoke subpart (b)(4)(B) claiming there was an infirmity of proof.

When counsel is appointed to investigate or prosecute disciplinary matters, the assignment may require assistance from an associate or paralegal. This amendment to L. Civ. R. 104.1(j) provides that appointed counsel may use such reasonable services of an associate or paralegal in counsel's same firm, and that those services will also be compensated as provided under L. Civ. R. 104.1(k).

L. Civ. R. 401.1 ~~MEDIA COVERAGE~~ RESTRICTIONS OF ALL BROADCASTING, PHOTOGRAPHING, VIDEO OR VOICE RECORDING

(a) ~~The taking of photographs and operation of audio or videotape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of and in connection with judicial proceedings, including proceedings before a Magistrate Judge, whether or not court is actually in session, All broadcasting, photographing and recording, both video and voice, by way of camera, cell phone or other device, is are prohibited throughout the interior of the United States Courthouses in Camden, Newark and Trenton. Environs of the courtroom shall include the entire United States Courthouses at Camden, Newark and Trenton, including all entrances to and exits from said buildings. This prohibition applies to all persons, whether or not they are engaged in radio, television or internet broadcasting, blogging or print media, for commercial gain or personal use, and whether or not the Court is in session. A Judge or Magistrate Judge may, however, permit the use of electronic or photographic means photographs, video or voice recordings for the presentation of evidence or the perpetuation of a record. Any exceptions to this rule must be requested in advance and written permission obtained by the presiding judge and/or tenant agency occupying the space where the exemption is requested.~~

Comment: The amendment to L. Civ. R. 401.1(a) clarifies that broadcasting, photographing, video, and voice recording are prohibited to all persons in the interior of each federal courthouse. A judicial officer may permit use of photographs, video, or voice recordings for presentation of evidence or perpetuation of a record. Otherwise, a person seeking an exception must apply in advance to the judicial officer for written permission. These prohibitions do not apply to court personnel. The broadcasting, photographing, and audio or video recording of investitures, naturalizations, and other ceremonies continue to be governed by L. Civ. R. 401.1(b), which is not modified.

Any comments must be received by the Clerk of Court by June 1, 2018. Comments should be addressed to:

William T. Walsh, Clerk of Court
United States District Court
Martin Luther King, Jr. Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

or by e-mail to: localrules@njd.uscourts.gov

April 30, 2018
Date

For the Court
Jose L. Linares
Chief Judge