

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

**James N. Hatten
District Court Executive
and Clerk of Court**

**2211 U.S. Courthouse
75 Ted Turner Drive, SW
Atlanta, Georgia 30303-3361**

404-215-1600

May 4, 2018



PUBLIC NOTICE AND REQUEST FOR COMMENT

The United States District Court for the Northern District of Georgia has approved revisions to Local Rule 83.1F and Appendix G, which are the rules addressing Attorney Discipline and the Rules Governing the Committee on Discipline, respectively.

The Court also has approved revisions to Local Patent Rule 2.1(d) regarding sealed filings.

A full copy of the proposed revisions to Local Rule 83.1F, Appendix G, and Local Patent Rule 2.1(d) is available at the public counter of each divisional office of the Court and on the Court's public website at: www.gand.uscourts.gov.

The Court is soliciting comments from the public and the bar on these rules.

Comments should be made in writing by June 4, 2018, to:

James N. Hatten
District Court Executive and Clerk of Court
Room 2217, U.S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303-3361

Clean Version of Proposed Changes to LR 83.1(F)

F. Attorney Discipline.

(1) **No Limitation on Inherent Authority.** Nothing in this rule limits the inherent authority of a judge to manage individual assigned cases, including the authority to impose monetary penalties, disqualify counsel, and impose any other appropriate penalties or sanctions; and nothing in this rule imposes additional procedural requirements before a judge may exercise that authority.

(2) **Reciprocal Discipline; Criminal Convictions; Duty to Disclose.** When an attorney admitted to practice in this court under LR 83.1(A) or (B) is: (a) suspended or disbarred from the practice of law by any court of competent jurisdiction or regulatory body with the authority to determine who may practice law in a particular jurisdiction or (b) convicted, in any court of competent jurisdiction, of a felony, a crime that required proof of a dishonest act or false statement, or any other crime involving moral turpitude, the attorney's right to practice in this court automatically is suspended; and the court will issue an order of suspension and serve it on the attorney. Unless within 30 days after service of the order the attorney, by motion, shows the court, under penalty of perjury, good cause for why the attorney should not be disbarred, the order automatically will become an order of disbarment. The attorney must notify the court within 10 days of a suspension, disbarment, or conviction under this paragraph, but any failure to do so will not affect the automatic suspension.

(3) **Complaints of Professional Misconduct.** Complaints alleging professional misconduct by an attorney admitted to practice in this court under LR 83.1(A) or (B), including those made by judges, must be submitted to the chief district judge in writing and must state with particularity the basis for the allegations. Complaints of professional misconduct must be under oath, except for those submitted by judges of this court and those submitted by counsel that are subject to Fed. R. Civ. P. 11. When the chief district judge makes the complaint of professional misconduct, he or she must designate another district judge to fulfill the duties of the chief district judge under this rule.

(4) Procedure Governing Complaints of Professional Misconduct.

(a) Upon receiving a complaint of professional misconduct made under Local Rule 83.1(F)(3), the chief district judge must determine:

(i) whether the complaint should be terminated because the allegations are unjustified, frivolous, unsupported, or insubstantial;

(ii) whether, for members of the State Bar of Georgia, the complaint should be referred to the State Disciplinary Board as a formal or informal complaint; this option may be selected in addition to (iii), (iv), or (v) below;

(iii) whether the complaint warrants discipline that does not affect the attorney's right to practice before the court, in which case the chief judge has discretion either to impose the discipline or to refer the complaint to a judge for disciplinary proceedings as set forth in paragraphs (6) through (10) below;

(iv) whether the complaint should be referred to a committee on discipline (described more fully in paragraph 12 below) for investigation and preparation of findings of fact, conclusions of law, and a recommendation to the chief judge; and

Note: An attorney authorized to practice in an individual case under LR 83.1(B) whose conduct is under review by a committee on discipline will not be admitted under LR 83.1(B) in any other cases while the review is pending.

(v) whether the complaint may warrant discipline affecting the attorney's right to practice before the court and therefore must be referred to a judge for disciplinary proceedings as set forth in paragraphs (6) through (10) below; a complaint may be referred to a judge without first being referred to a committee on discipline.

(b) Upon receipt of findings of fact, conclusions of law, and a recommendation from a committee on discipline, the chief district judge

must determine appropriate actions under 4(a)(i), 4(a)(ii), 4(a)(iii), and 4(a)(v) above.

(5) Written Notice. When the chief district judge determines that action is appropriate under 4(a)(ii) through 4(a)(v) above, the court must provide the attorney who is the subject of the complaint with a copy of the allegations.

(6) Designation of Judge to Conduct Disciplinary Proceedings. When the chief district judge determines under 4(a)(iii) or 4(a)(v) above that a complaint of professional misconduct should be referred to a judge for disciplinary proceedings, the chief district judge must designate a district or magistrate judge to hold disciplinary proceedings consistent with this rule and to recommend proposed discipline. A judge who makes a complaint under Local Rule 83.1(F)(3) cannot conduct any disciplinary proceedings arising from that complaint.

(7) Right to a Hearing. When it appears to the designated judge that discipline may be appropriate, he or she must provide the attorney whose conduct is at issue notice of the proposed discipline and at least 20 days from the date of notice to appear at a hearing to show good cause, under oath, why the discipline should not be imposed. The attorney may waive the right to a hearing. Discipline pursuant to paragraph (2) above, referral of a complaint to the State Disciplinary Board of the State Bar of Georgia for investigation, and discipline imposed by the chief district judge under 4(a)(iii) above do not constitute discipline that invokes the attorney's right to a hearing.

(8) Hearing Procedure. At the hearing, the attorney whose conduct is at issue must be afforded the opportunity to:

- (a) appear in person and/or by counsel;
- (b) present evidence, including testimony and documents;
- (c) compel the attendance of witnesses and the production of documents;
- (d) cross-examine witnesses; and

(e) present argument orally and in writing.

(9) Failure to Call Complaining Party. If the attorney whose conduct is at issue does not call the complaining party to appear at the hearing, the designated judge has discretion to do so.

(10) Recommendation to and Voting by the Full Court. Following the hearing, the attorney's waiver of a hearing, or the attorney's failure to respond timely, the designated judge must present findings of fact, conclusions of law, and a discipline recommendation to the chief district judge for presentation at the next district judges' meeting. A majority of the judges at the meeting will approve a final order setting forth the court's findings of fact and conclusions of law and identifying any discipline to be imposed as a result of the complaint of professional misconduct.

(11) Sanctions. Discipline may include disbarment, suspension from practice for a definite period, reprimand, or other discipline that the court deems proper.

(12) Committee on Discipline. The court may create a committee on discipline by appointing 5 members of the bar of this court. No committee member may serve for more than 3 years. The committee must at all times have at least 2 members from divisions other than the Atlanta division. The court will select one committee member to serve as chairperson. No committee member may serve as chairperson for more than 2 years.

The committee has the power to investigate all charges of professional misconduct referred to it by the court. At the request of the committee, the clerk is authorized to issue subpoenas and subpoenas *duces tecum* in connection with the investigation.

At the conclusion of the investigation, the committee must prepare and submit a written report to the chief judge that sets forth findings of fact, conclusions of law, and the discipline or other action recommended. All disciplinary proceedings will be *in camera* unless the court directs otherwise. The rules governing the committee on discipline are contained in Appendix G to these Local Rules.

(13) Contempt of Court. Disciplinary proceedings under this Local Rule neither affect nor may be affected by any proceeding for contempt under Title 18 of the United States Code or under Fed. R. Crim. P. 42.

(14) Unauthorized Practice. Any person not admitted to the bar of this court or any attorney disbarred or suspended by this court who exercises any of the privileges bestowed upon members of this court's bar or pretends to be entitled to such privileges will be adjudged guilty of contempt and may be subject to other discipline by the court.

(15) Reinstatement. Petitions for reinstatement must be made under penalty of perjury and filed with the clerk. Attorneys suspended indefinitely must satisfy all conditions of reinstatement imposed by the court at the time of suspension.

Redlined Version of Proposed Changes to LR 83.1(F)

FF. Attorney Discipline.

(1) No Limitation on Inherent Authority. Nothing in this rule limits the inherent authority of a judge to manage individual assigned cases, including the authority to impose monetary penalties, disqualify counsel, and impose any other appropriate penalties or sanctions; and nothing in this rule imposes additional procedural requirements before a judge may exercise that authority.

(12) Discipline by Other Courts Reciprocal Discipline; Criminal Convictions; Duty to Disclose. When ~~ever~~ an attorney admitted to practice in this court ~~it appears to the court that any member admitted to practice in this court generally~~ under LR 83.1(A) or (B) ~~specialy~~ under LR 83.1B ~~ih~~as: (a) ~~been~~ suspended or disbarred from the practice of law by any court of competent jurisdiction or regulatory body with the authority to determine who may practice law in a particular jurisdiction or (b) ~~by the Supreme Court of Georgia or by any other court of competent jurisdiction or has been~~ convicted, in any court of competent jurisdiction, of a felony, or any crime involving moral turpitude that required proof of a dishonest act or false statement, or any other crime involving moral turpitude in any court, the attorney's right to practice in this court automatically is suspended; and ~~t~~ such disbarment, suspension, or conviction shall operate as an automatic suspension of the attorney's right to practice in this court, ~~and he~~ court will issue an order of suspension and serve it on the attorney ~~shall be issued by the court.~~ Unless within 30 days after service of the order ~~t~~ An order of disbarment shall be issued thirty (30) days thereafter unless the attorney, by motion, has by motion shows the court, under penalty of perjury, ~~to the court shown~~ good cause as tofor why the attorney should not be disbarred ~~or that justice requires that disbarment not be imposed,~~ the order automatically will become an order of disbarment. The attorney must notify the court within 10 days of a suspension, disbarment, or conviction under this paragraph, but any failure to do so will not affect the automatic suspension.

(23) Complaints of Professional Misconduct. Complaints alleging of professional misconduct by an attorney admitted to practice in this court under LR 83.1(A) or (B), including those referred made by judges, must shall be submitted to the court chief district judge in writing and and shall must state with

particularity the ~~circumstances out of which the charges arose~~ basis for the allegations. ~~Complaints submitted by counsel are subject to the strictures of Fed. R. Civ. P. 11. C~~ All other complaints of professional misconduct must be under oath, except for those submitted by ~~judicial officers~~ judges of this court and those submitted by counsel that are subject to Fed. R. Civ. P. 11, shall be under oath. When the chief district judge makes the complaint of professional misconduct, he or she must designate another district judge to fulfill the duties of the chief district judge under this rule.

(4) Procedure Governing Complaints of Professional Misconduct.

(a) ~~Upon receipt~~ receiving ~~of~~ a complaint of professional misconduct regarding the ~~made under Local Rule 83.1(F)(3)~~ professional conduct of an attorney in a proceeding before this court or when a complaint regarding an attorney's conduct in a proceeding in another court comes to the attention of this court, the district judge before whom the case is pending or to whom the alleged misconduct in another court has become known (or, in the district judge's discretion, the court) chief district judge must determine:

~~shall determine whether:~~

(ia) whether the inquiry complaint should be terminated because the ~~question raised is~~ allegations are unjustified, frivolous, unsupported, or insubstantial;

(ii) whether,

~~the alleged professional misconduct justifies further inquiry and,~~ for members of the State Bar of Georgia, the matter complaint should be referred to the State Disciplinary Board as a formal or informal complaint of the State Bar of Georgia for investigation and prosecution by that Board, if warranted; this option may be selected in addition to (iii), (iv), or (v) below;

(iii) whether the complaint warrants discipline that does not affect the attorney's right to practice before the court, in which case the chief judge has discretion either to impose the discipline or to refer

the complaint to a judge for disciplinary proceedings as set forth in paragraphs (6) through (10) below;

(ive) whether the alleged professional misconduct complaint should be referred to a ~~warrants consideration of prompt disciplinary action by this court regarding the attorney's right to practice before the court, and the matter should be referred to the court's C~~committee on ~~D~~discipline (described more fully in paragraph 12 below) for ~~investigation~~investigation and preparation of findings of fact, conclusions of law, and a recommendation to the chief judge; and

Note: An attorney authorized to practice in an individual case under LR 83.1(B) whose conduct is under review by a committee on discipline will not be admitted under LR 83.1(B) in any other cases while the review is pending.

(v) whether the complaint may warrant discipline affecting the attorney's right to practice before the court and therefore must be referred to a judge for disciplinary proceedings as set forth in paragraphs (6) through (10) below; a complaint may be referred to a judge without first being referred to a committee on discipline.

(b) Upon receipt of findings of fact, conclusions of law, and a recommendation from a committee on discipline, the chief district judge must determine appropriate actions under 4(a)(i), 4(a)(ii), 4(a)(iii), and 4(a)(v) above.

~~, notwithstanding concurrent reference of the matter to the State Disciplinary Board of the State Bar of Georgia;~~

(5) **Written Notice.** ~~(d)~~—the alleged professional misconduct of an attorney not a member of the State Bar of Georgia justifies further inquiry by the court and should be referred to a Committee on Discipline appointed by the court for investigation. Any attorney whose conduct in this court is under investigation by the Committee on Discipline shall not be specially admitted under LR 83.1B for participation in any other cases until the pending investigation is concluded.

~~—Whenever a judge determines~~ the chief district judge determines that action is appropriate under 4(a)(bii) through , (e), or 4(a)(dv); above, the court ~~shall~~ must

~~pprovide~~ the attorney ~~whose conduct~~ who is the subject of the complaint ~~with~~ a copy of the ~~written~~ allegations ~~against the attorney~~.

~~Nothing herein contained in this rule shall limit the right of an individual judge to manage the cases assigned to the district judge, which right shall include the authority to impose monetary penalties, to disqualify counsel from participation in a particular case, and to impose any other penalties or sanctions which may be appropriate in a particular case.~~

(6) Designation of Judge to Conduct Disciplinary Proceedings. ~~When the chief district judge determines under 4(a)(iii) or 4(a)(v) above that a complaint of professional misconduct should be referred to a judge for disciplinary proceedings, the chief district judge must designate a district or magistrate judge to hold disciplinary proceedings consistent with this rule and to recommend proposed discipline. A judge who makes a complaint under Local Rule 83.1(F)(3) cannot conduct any disciplinary proceedings arising from that complaint.~~

~~This rule shall not apply to sanctions, penalties, or other restrictions imposed by a judge which are applicable only to a particular case pending before the district judge.~~

(7) Right to a Hearing ~~Right to a Hearing.~~ ~~Except as provided in subsection (1) above, When it appears to the designated judge this court that discipline may be appropriate, he or she must provide shall not impose any disciplinary action affecting an attorney's right to practice before the court until after the attorney whose conduct is at issue notice of the proposed discipline and at least 20 days from the date of notice to appear at a hearing to show good cause, under oath, why the discipline should not be imposed a hearing on the matter has been held before the district judge to whom the case was assigned and upon a showing of good cause.~~ The attorney may waive the right to a hearing. ~~Discipline pursuant to paragraph (2) above, referral of a complaint to the State Disciplinary Board of the State Bar of Georgia for investigation, and discipline imposed by the chief district judge under 4(a)(iii) above do not constitute discipline that invokes the attorney's right to a hearing.~~

(8) Hearing Procedure. ~~At the hearing, the In those instances where the charge of misconduct was raised by a judge, the chief judge shall appoint another~~

~~judge to hear the matter. At the hearing, the attorney whose conduct is the subject of the complaint at issue must shall be afforded be afforded the an opportunity to~~;

(a) ~~a~~ appear in person and/or by counsel;

(b) ~~, to~~ present evidence, including testimony and documents;

(c) ~~oral and documentary evidence, to~~ compel the attendance of witnesses and~~or~~ the production of documents;

(d) ~~, to~~ ecross-examine witnesses; and

(e) ~~to~~ present argument orally and~~or~~ in writing.

(9) Failure to Call Complaining Party. If ~~not called by~~ the attorney whose conduct is being investigated at issue does not call the complaining party to appear at, the hearing, the designated judge ~~district judge~~ has discretionary authority ~~to call the complaining party to appear at the hearing to do so.~~

(10) Recommendation to and Voting by the Full Court. Following the hearing, the attorney's waiver of a hearing, or the attorney's failure to respond timely, the designated judge must present findings of fact, conclusions of law, and a discipline recommendation to the chief district judge for presentation at the next district judges' meeting. A majority of the judges at the meeting will approve a final order setting forth the court's findings of fact and conclusions of law and identifying any discipline to be imposed as a result of the complaint of professional misconduct.

~~This rule shall not apply to sanctions, penalties, or other restrictions imposed by a judge which are applicable only to a particular case pending before the district judge.~~

~~In those instances where the charge of misconduct was raised by a judge, the chief judge shall appoint another judge to hear the matter.~~

(114) Sanctions. Discipline ~~by this court~~ may include disbarment, suspension from practice for a definite time period, reprimand, or other discipline ~~which the court~~ that the court deems proper.

~~Referral of a complaint to the State Disciplinary Board of the State Bar of Georgia for investigation shall not constitute such discipline as to entitle the attorney to a hearing in this court on the propriety of the referral.~~

(125) Committee on Discipline. The court ~~shall~~ may ~~appoint~~ create a ~~C~~committee on ~~D~~discipline by appointing 5~~composed of five (5)~~ members of the bar of this court. ~~selected by the court from the Bar Council for the Northern District of Georgia.~~ No committee member ~~shall~~ may serve for more than ~~three (3)~~ years. The committee ~~shall~~ must at all times have at least ~~two (2)~~ members from divisions other than the Atlanta division. The court will select one committee member to serve as chairperson. No committee member may serve as chairperson for more than 2 years.

The committee ~~shall~~ have ~~has~~ the power to investigate all charges of professional misconduct referred to it by the court. At the request of the committee, the clerk is authorized to~~shall~~ issue subpoenas and subpoenas *duces tecum* ~~as may be required by~~ in connection with the investigation.

~~The committee shall~~ At the ~~close~~ conclusion of ~~the~~ the investigation, the committee must prepare and submit ~~make~~ a written report to the ~~court~~ chief judge that sets forth findings of fact, conclusions of law, and ~~stating~~ the discipline or other action recommended ~~by the committee.~~ All disciplinary proceedings ~~shall~~ will be *in-camera* unless the court ~~shall~~ directs otherwise. ~~A copy of~~ The rules governing the ~~committee's procedures~~ committee on discipline are ~~is attached~~ contained ~~as in~~ Appendix G to these Local Rules.

(136) Contempt of Court. ~~Disciplinary proceedings under this~~ Local Rule shall ~~neither~~ not affect nor ~~may~~ be affected by any proceeding for contempt under Title 18 of the United States Code or under Fed. R. Crim. P. 42.

(147) Unauthorized Practice. Any person ~~who before admission~~ not admitted to the bar of this court or any attorney ~~who while~~ disbarred or suspended from the bar of ~~by~~ this court who exercises any of the privileges bestowed upon members of this court's bar or ~~who~~ pretends to be entitled to such privileges ~~shall~~ will be adjudged guilty of contempt ~~of this court~~ and ~~shall~~ may be subject to ~~punishment therefor and shall be subject to any~~ other discipline by ~~which~~ the court may impose.

(158) Reinstatement. ~~Person~~Petitions for reinstatement must be made under penalty of perjury and filed with the clerks~~disbarred from practice before this court may not petition for reinstatement within three (3) years following disbarment or within two (2) years following an adverse decision upon a previous petition for reinstatement.~~ ~~Persons~~Attorneys suspended indefinitely must satisfy all conditions ~~of~~to reinstatement imposed by the court at the time of suspension.

F. Attorney Discipline.

(1) Discipline by Other Courts; Criminal Convictions. Whenever it appears to the court that any member admitted to practice in this court generally under LR 83.1A or specially under LR 83.1B has been suspended or disbarred from the practice of law by the Supreme Court of Georgia or by any other court of competent jurisdiction or has been convicted of a felony or any crime involving moral turpitude in any court, such disbarment, suspension, or conviction shall operate as an automatic suspension of the attorney's right to practice in this court, and an order of suspension shall be issued by the court. An order of disbarment shall be issued thirty (30) days thereafter unless the attorney has by motion to the court shown good cause as to why the attorney should not be disbarred or that justice requires that disbarment not be imposed.

(2) Misconduct. Complaints of professional misconduct, including those referred by judges, shall be submitted to the court in writing and shall state with particularity the circumstances out of which the charges arose. Complaints submitted by counsel are subject to the strictures of Fed.R.Civ.P. 11. All other complaints of professional misconduct, except those submitted by judicial officers of this court, shall be under oath.

Upon receipt of a complaint regarding the professional conduct of an attorney in a proceeding before this court or when a complaint regarding an attorney's conduct in a proceeding in another court comes to the attention of this court, the district judge before whom the case is pending or to whom the alleged misconduct in another court has become known (or, in the district judge's discretion, the court) shall determine whether:

(a) the inquiry should be terminated because the question raised is unsupported or insubstantial;

(b) the alleged professional misconduct justifies further inquiry and, for members of the State Bar of Georgia, the matter should be referred to the State Disciplinary Board of the State Bar of Georgia for investigation and prosecution by that Board, if warranted;

(c) the alleged professional misconduct warrants consideration of prompt disciplinary action by this court regarding the attorney's right to practice before the court, and the matter should be referred to the court's Committee on Discipline for investigation, notwithstanding concurrent reference of the matter to the State Disciplinary Board of the State Bar of Georgia;

(d) the alleged professional misconduct of an attorney not a member of the State Bar of Georgia justifies further inquiry by the court and

should be referred to a Committee on Discipline appointed by the court for investigation. Any attorney whose conduct in this court is under investigation by the Committee on Discipline shall not be specially admitted under LR 83.1B for participation in any other cases until the pending investigation is concluded.

Whenever a judge determines that action is appropriate under (b), (c), or (d), above, the court shall provide the attorney whose conduct is the subject of the complaint a copy of the written allegations against the attorney.

Nothing herein contained in this rule shall limit the right of an individual judge to manage the cases assigned to the district judge, which right shall include the authority to impose monetary penalties, to disqualify counsel from participation in a particular case, and to impose any other penalties or sanctions which may be appropriate in a particular case.

(3) Right to a Hearing. Except as provided in subsection (1) above, this court shall not impose any disciplinary action affecting an attorney's right to practice before the court until after a hearing on the matter has been held before the district judge to whom the case was assigned and upon a showing of good cause. The attorney may waive the right to a hearing. In those instances where the charge of misconduct was raised by a judge, the chief judge shall appoint another judge to hear the matter. At the hearing, the attorney whose conduct is the subject of the complaint shall be afforded an opportunity to appear in person and/or by counsel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing. If not called by the attorney whose conduct is being investigated, the district judge has discretionary authority to call the complaining party to appear at the hearing. This rule shall not apply to sanctions, penalties, or other restrictions imposed by a judge which are applicable only to a particular case pending before the district judge.

(4) Sanctions. Discipline by this court may include disbarment, suspension from practice for a definite time, reprimand, or other discipline which the court deems proper. Referral of a complaint to the State Disciplinary Board of the State Bar of Georgia for investigation shall not constitute such discipline as to entitle the attorney to a hearing in this court on the propriety of the referral.

(5) Committee on Discipline. The court shall appoint a Committee on Discipline composed of five (5) members selected by the court from the Bar Council for the Northern District of Georgia. No committee member shall serve for more than three (3) years. The committee shall at all times have at least two (2) members from divisions other than the Atlanta division.

The committee shall have the power to investigate all charges of professional misconduct referred to it by the court. At the request of the committee, the clerk shall issue subpoenas and subpoenas *duces tecum* as may be required by the investigation.

The committee shall at the close of the investigation make a written report to the court stating the discipline or other action recommended by the committee. All disciplinary proceedings shall be in-camera unless the court shall direct otherwise. A copy of the rules governing the committee's procedures is attached as Appendix G.

(6) Contempt of Court. Disciplinary proceedings under this Rule shall not affect or be affected by any proceeding for contempt under Title 18 of the United States Code or under Fed.R.Crim.P. 42.

(7) Unauthorized Practice. Any person who before admission to the bar of this court or who while disbarred or suspended from the bar of this court exercises any of the privileges bestowed upon members of this bar or who pretends to be entitled to such privileges shall be guilty of contempt of this court and shall be subject to punishment therefor and shall be subject to any other discipline which the court may impose.

(8) Reinstatement. Persons disbarred from practice before this court may not petition for reinstatement within three (3) years following disbarment or within two (2) years following an adverse decision upon a previous petition for reinstatement. Persons suspended indefinitely must satisfy all conditions to reinstatement imposed by the court at the time of suspension.

Clean Version of Proposed Revisions to Appendix G

APPENDIX G

**RULES GOVERNING THE COMMITTEE ON DISCIPLINE
FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

Rules Governing the Committee on Discipline for the United States District Court, Northern District of Georgia

1. Procedures Upon Receipt of a Referral

Upon receipt of a referral of a complaint of professional misconduct made under Local Rule 83.1(F)(3), the chairperson of the Committee on Discipline (the “committee”) must notify the attorney who is the subject of the complaint (the “attorney”) and provide the attorney at least 20 days to respond in writing, under penalty of perjury, to the matters set forth in the referral. At any time, if the complaint pertains to the conduct of a member of the State Bar of Georgia, the chairperson may inquire as to any grievances before the State Bar of Georgia involving that member. Upon receipt of the response from the attorney or the expiration of time for the response, whichever occurs sooner, the chairperson must call a meeting to initiate an investigation.

2. Investigation

The chairperson must appoint one or two members of the committee to investigate the facts set forth in the referral and the response, if any, from the attorney. The investigating member(s) of the committee have the authority to interview witnesses, review documents, obtain service of subpoenas and subpoenas *duces tecum* issued by the clerk for witnesses and documents, and discuss the matter directly with the attorney or, if represented, the attorney’s counsel. At the conclusion of the investigation, the investigator(s) must prepare proposed findings of fact, conclusions of law, and a recommendation (the “findings”) and distribute them to the committee. The committee must review the findings and prepare the committee’s own findings and serve them on the attorney. The attorney will have 20 days to acquiesce in or object to the committee’s findings. If the attorney acquiesces or does not timely object, then the committee must forward its findings to the chief district judge and serve a copy on the attorney.

3. Objections

If the attorney objects to the committee’s findings, the attorney must serve the committee with a written objection made under penalty of perjury within 20 days. Upon receipt of the objection, the chairperson must call a meeting of the committee. The committee must determine whether the objection warrants additional investigation. If the committee determines that additional investigation

is not necessary, the committee must submit its findings and a copy of the attorney's objection to the chief district judge and serve copies on the attorney. If the committee determines that additional investigation is necessary, the chairperson must appoint one or two members of the committee to conduct a supplemental investigation. The member(s) chosen to conduct the supplemental investigation must not have participated in the original investigation. The member(s) conducting the supplemental investigation have the authority to interview witnesses, review documents, obtain service of subpoenas and subpoenas *duces tecum* issued by the clerk for witnesses and documents, and discuss the matter directly with the attorney or, if represented, the attorney's counsel. At the conclusion of the supplemental investigation, the supplemental investigator(s) must prepare proposed findings and distribute them to the committee. The committee must review the findings and prepare the committee's final findings and submit them and a copy of the attorney's objection to the chief district judge and serve the attorney.

4. Meetings and Quorum

Committee members may attend any meeting by telephone or video conference, and a quorum shall consist of at least 3 members.

5. Methods of Notification and Service

When these rules require notification or service to the attorney who is the subject of the complaint, such notification or service must be made by certified mail or hand delivery to the attorney who is the subject of the complaint or, if represented, the attorney's counsel, unless the attorney or the attorney's counsel has consented in writing (including via email) to a different method. Failure of the committee to employ a required method of service must not delay the proceedings when the committee demonstrates that the attorney or, if represented, the attorney's counsel, received actual notice.

6. Disclosure

The investigative activities of the committee must remain confidential, except as otherwise ordered by the court. Upon request, the committee is authorized to furnish a copy of its findings and any other information or materials

pertaining to its investigation to the disciplinary arm of any state bar association to which the attorney belongs.

7. Dissent

Any member of the committee who dissents from the majority view of the findings submitted to the chief district judge may, but is not required to, transmit a dissent to the judge and serve a copy on the attorney.

8. Immunity

The members of the committee are representatives of the court and enjoy all immunities while acting in their official capacities on behalf of the court.

APPENDIX G

**RULES GOVERNING THE COMMITTEE ON DISCIPLINE
FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

Rules Governing the Committee on Discipline for the United States District Court, Northern District of Georgia

1. Procedures Upon Receipt of a Referral

Upon receipt of a referral of a complaint of professional misconduct made under Local Rule 83.1(F)(3), the Chairperson of the Committee on Discipline (the “Committee;”) shall must notify the attorney who is the subject of the complaint (the “attorney”) and provide the attorney at least 20 days to respond in writing, under penalty of perjury, to the matters set forth in the referral. At any time, if the complaint pertains to the conduct of a member of the State Bar of Georgia, the chairperson may inquire as to any grievances before the State Bar of Georgia involving that member. ~~the members of the Committee of the referral and call a meeting of the Committee to determine whether there is probable cause to initiate an investigation. For purposes of this preliminary inquiry, the facts set forth in the referral shall be treated as prima facie evidence of the matters referred. If the referral involves a member of the State Bar of Georgia, the Chairperson may inquire as to the pending status of any grievances before the State Bar of Georgia and against the lawyer referenced in the referral and arising out of the referral. The Committee may determine that no actions are warranted by the matters set forth in the referral, in which case the Committee shall notify the Court and the lawyer referenced in the referral and the matter shall be closed unless the Court directs otherwise. The Committee may find probable cause to continue with an investigation, in which case the Chairperson shall notify the lawyer referenced in the referral, and the lawyer shall be given a reasonable period of time to respond in writing to the matters set forth in the referral. Upon the receipt of the response from the lawyer attorney referenced in the referral or the expiration of time for the response, whichever occurs sooner, the chairperson must call a meeting to initiate an investigation. Committee shall meet and determine whether to proceed with the investigation. If the Committee determines not to proceed with the investigation or suspends the investigation for any reason, including, but not limited to, the pendency of action involving the State Bar of Georgia on the matters referenced in the referral, it shall notify the Court and the lawyers referenced in the referral. If the Committee suspends its investigation, the lawyer referenced in the referral may request in writing that the Committee proceed with its investigation to conclusion, and the decision to proceed or remain in a suspended state of investigation shall be determined by the Committee unless the Court directs otherwise. If an investigation is suspended, the Committee may, at any time, determine to reactivate the investigation.~~

2. The Investigation

When the Committee determines to continue an investigation, ~~the~~ The ~~Chairperson shall~~ must appoint one or two members of the ~~Committee on behalf of the whole Committee~~ to investigate the underlying facts set forth in the matters referenced in the referral and the response, if any, from the lawyer attorney ~~referenced in the referral~~. The investigating member(s) of the ~~Committee~~ shall ~~behave the~~ authorized to interview witnesses, review documents, obtain the service of subpoenas and subpoenas *duces tecum* issued by the clerk for witnesses ~~or~~ and documents, and ~~to~~ discuss the matter directly with the lawyer referenced in the referral attorney ~~or, if represented, the his attorney's counsel~~. At the conclusion of the investigation, ~~by the investigating member of the Committee~~, the investigating member(s) of the Committee shall must recommend prepare proposed findings of fact, conclusions of law, and a conclusions of law recommendation (the "findings") and distribute them to ~~to~~ the ~~Committee~~. The ~~Committee~~ shall must review the findings recommendation of the investigating member and, prepare its the committee's own proposed findings of fact, conclusions of law and recommendation to be made to the Court and deliver a copy and serve them on the lawyer referenced in the referral attorney ~~or his attorney by certified mail or hand delivery~~. The lawyer referenced in the referral attorney will shall have twenty (20) days to acquiesce in or object to the proposed committee's findings of fact, conclusions of law and recommendation. If the lawyer referenced in the referral attorney acquiesces ~~in~~ or does not timely object to the proposed findings of fact, conclusions of law and recommendation, then they committee must forward its findings shall be forwarded to the Court chief district judge with the Committee's written report and serve a copy on the attorney, ~~with a copy to the lawyer referenced in the referral or his attorney by certified mail or hand delivery~~. Upon request, the Committee is ~~authorized to furnish a copy of said report or any other information or materials pertaining to said investigation or any hearing resulting therefrom to the disciplinary arm of any state bar association to which the referred lawyer belongs~~.

3. Hearing Objections

If the attorney lawyer referenced in the referral objects to the proposed committee's findings of fact, conclusions of law and recommendation, the attorney shall must notify the Committee and serve the ~~Committee~~ with his response to the proposed findings of fact, conclusions of law and recommendation a written objection made under penalty of perjury ~~within twenty (20) days of his receipt of~~

~~the proposed findings of fact, conclusions of law and recommendation.~~ Upon receipt of the objection, the chairperson must call a meeting of the committee. The committee must determine whether the objection warrants additional investigation. If the committee determines that additional investigation is not necessary, the committee must submit its findings and a copy of the attorney's objection to the chief district judge and serve copies on the attorney. If the committee determines that additional investigation is necessary, the chairperson must appoint one or two members of the committee to conduct a supplemental investigation. The member(s) chosen to conduct the supplemental investigation must not have participated in the original investigation. The member(s) conducting the supplemental investigation have the authority to interview witnesses, review documents, obtain service of subpoenas and subpoenas *duces tecum* issued by the clerk for witnesses and documents, and discuss the matter directly with the attorney or, if represented, the attorney's counsel. At the conclusion of the supplemental investigation, the supplemental investigator(s) must prepare proposed findings and distribute them to the committee. The committee must review the findings and prepare the committee's final findings and submit them and a copy of the attorney's objection to the chief district judge and serve the attorney.

~~The Chairperson shall set a hearing before the Committee. No continuances shall be granted except upon providential cause or the lack of a quorum. The burden of going forward on the contested issue of fact in the proposed findings of fact shall be upon the member of Committee who investigated the matter on behalf of the Committee. Except as may be otherwise decided by the Committee in the interest of justice or to prevent manifest injustice, the Federal Rules of Evidence shall apply in all hearings. At the conclusion of the hearing, the Committee shall review the evidence and the law and make a tentative recommendation as to the disposition of the matter referred to the Committee. One member of the Committee shall be assigned by the Chairperson to draft the findings of fact and conclusions of law and recommendations to the Court, and upon adoption by a majority of the members hearing the matter, the written findings of fact, conclusions of law and recommendations of the Committee shall be transmitted to the Court with a copy to the lawyer referenced in the referral or his attorney by certified mail or hand delivery. Any member of the Committee who participated in the hearing who dissents from the majority view may, but is not required to, transmit his dissent to the Court with a copy to the lawyer referenced in the referral or his attorney.~~

4. Meetings and Quorum

Committee Members may attend any meeting ~~or hearing~~ by telephone or video conference, and a quorum shall consist of at least ~~three (3)~~ members, ~~provided, however, that the member of the Committee who performed the investigation shall not count toward the quorum at the hearing specified in paragraph 3 above and provided further that the lawyer referenced in the referral may waive the requirement of a quorum.~~

5. Methods of Notification and Service

When these rules require notification or service to the attorney who is the subject of the complaint, such notification or service must be made by certified mail or hand delivery to the attorney who is the subject of the complaint or, if represented, the attorney's counsel, unless the attorney or the attorney's counsel has consented in writing (including via email) to a different method. Failure of the committee to employ a required method of service must not delay the proceedings when the committee demonstrates that the attorney or, if represented, the attorney's counsel, received actual notice.

6. Disclosure

The investigative activities of the committee must remain confidential, except as otherwise ordered by the court. Upon request, the committee is authorized to furnish a copy of its findings and any other information or materials pertaining to its investigation to the disciplinary arm of any state bar association to which the attorney belongs.

7. Dissent

Any member of the committee who dissents from the majority view of the findings submitted to the chief district judge may, but is not required to, transmit a dissent to the judge and serve a copy on the attorney.

8. Immunity

The members of the committee are representatives of the court and enjoy all immunities while acting in their official capacities on behalf of the court.

APPENDIX G

**RULES GOVERNING THE COMMITTEE ON DISCIPLINE
FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

Committee on Discipline for the United States District Court Northern District of Georgia

1. Procedures Upon the Receipt of a Referral

Upon receipt of a referral, the Chairperson of the Committee on Discipline, the “Committee,” shall notify the members of the Committee of the referral and call a meeting of the Committee to determine whether there is probable cause to initiate an investigation. For purposes of this preliminary inquiry, the facts set forth in the referral shall be treated as prima facie evidence of the matters referred. If the referral involves a member of the State Bar of Georgia, the Chairperson may inquire as to the pending status of any grievances before the State Bar of Georgia and against the lawyer referenced in the referral and arising out of the referral. The Committee may determine that no actions are warranted by the matters set forth in the referral, in which case the Committee shall notify the Court and the lawyer referenced in the referral and the matter shall be closed unless the Court directs otherwise. The Committee may find probable cause to continue with an investigation, in which case the Chairperson shall notify the lawyer referenced in the referral, and the lawyer shall be given a reasonable period of time to respond in writing to the matters set forth in the referral. Upon the receipt of the response from the lawyer referenced in the referral or the expiration of time for a response, the Committee shall meet and determine whether to proceed with the investigation. If the Committee determines not to proceed with the investigation or suspends the investigation for any reason, including, but not limited to, the pendency of action involving the State Bar of Georgia on the matters referenced in the referral, it shall notify the Court and the lawyers referenced in the referral. If the Committee suspends its investigation, the lawyer referenced in the referral may request in writing that the Committee proceed with its investigation to conclusion, and the decision to proceed or remain in a suspended state of investigation shall be determined by the Committee unless the Court directs otherwise. If an investigation is suspended, the Committee may, at any time, determine to reactivate the investigation.

2. The Investigation

When the Committee determines to continue an investigation, the Chairperson shall appoint one member of the Committee on behalf of the whole Committee to investigate the underlying facts set forth in the matters referenced in the referral and the response, if any, from the lawyer referenced in the referral.

The investigating member of the Committee shall be authorized to interview witnesses, review documents, obtain the service of subpoenas and subpoenas duces tecum issued by the clerk for witnesses or documents, and to discuss the matter directly with the lawyer referenced in the referral or his attorney. At the conclusion of the investigation by the investigating member of the Committee, the investigating member of the Committee shall recommend proposed findings of fact and conclusions of law to the Committee. The Committee shall review the recommendation of the investigating member, prepare its proposed findings of fact, conclusions of law and recommendation to be made to the Court and deliver a copy to the lawyer referenced in the referral or his attorney by certified mail or hand delivery. The lawyer referenced in the referral shall have twenty (20) days to acquiesce in or object to the proposed findings of fact, conclusions of law and recommendation. If the lawyer referenced in the referral acquiesces in or does not timely object to the proposed findings of fact, conclusions of law and recommendation, then they shall be forwarded to the Court with the Committee's written report, with a copy to the lawyer referenced in the referral or his attorney by certified mail or hand delivery. Upon request, the Committee is authorized to furnish a copy of said report or any other information or materials pertaining to said investigation or any hearing resulting therefrom to the disciplinary arm of any state bar association to which the referred lawyer belongs.

3. Hearing

If the lawyer referenced in the referral objects to the proposed findings of fact, conclusions of law and recommendation, he shall notify the Committee and serve the Committee with his response to the proposed findings of fact, conclusions of law and recommendation within twenty (20) days of his receipt of the proposed findings of fact, conclusions of law and recommendation. The Chairperson shall set a hearing before the Committee. No continuances shall be granted except upon providential cause or the lack of a quorum. The burden of going forward on the contested issue of fact in the proposed findings of fact shall be upon the member of Committee who investigated the matter on behalf of the Committee. Except as may be otherwise decided by the Committee in the interest of justice or to prevent manifest injustice, the Federal Rules of Evidence shall apply in all hearings. At the conclusion of the hearing, the Committee shall review the evidence and the law and make a tentative recommendation as to the disposition of the matter referred to the Committee. One member of the Committee shall be assigned by the Chairperson to draft the findings of fact and conclusions of law and recommendations to the Court, and upon adoption by a majority of the members hearing the matter, the written findings of fact,

conclusions of law and recommendations of the Committee shall be transmitted to the Court with a copy to the lawyer referenced in the referral or his attorney by certified mail or hand delivery. Any member of the Committee who participated in the hearing who dissents from the majority view may, but is not required to, transmit his dissent to the Court with a copy to the lawyer referenced in the referral or his attorney.

4. Meetings and Quorum

Members may attend any meeting or hearing by teleconference, and a quorum shall consist of at least three (3) members, provided, however, that the member of the Committee who performed the investigation shall not count toward the quorum at the hearing specified in paragraph 3 above and provided further that the lawyer referenced in the referral may waive the requirement of a quorum.

CLEAN LPR 2.1(d)

LPR 2.1 Confidentiality Prior to Entry of Case Specific Protective Order.

(d) A party that desires to file documents containing or disclosing information protected by this rule must follow the procedures outlined in Appendix H to the Local Rules for filing documents under seal in civil cases.

REDLINE LPR 2.1(d)

LPR 2.1 Confidentiality Prior to Entry of Case Specific Protective Order.

 (d) ~~Documents filed with the clerk~~A party that desires to file documents containing or disclosing information protected by this rule ~~shall be filed~~must follow the procedures outlined in Appendix H to the Local Rules for filing documents under seal ~~with a notation that the pleading is not to be made available to members of the public.~~in civil cases.

CURRENT LPR 2.1(d)

LPR 2.1 Confidentiality Prior to Entry of Case Specific Protective Order.

(d) Documents filed with the clerk containing or disclosing information protected by this rule shall be filed under seal with a notation that the pleading is not to be made available to members of the public.