

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF )  
LOCAL RULES OF PRACTICE )

GENERAL ORDER 2006-1

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ORDER ADOPTING AMENDMENTS TO D.C.COLO.LCivR 83.3E, D.C.COLO.LCivR 83.5, D.C.COLO.LCrR 57.5E and D.C.COLO.LCrR 57.7

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Pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P 83, and Fed. R. Crim. P. 57, it is

ORDERED that Local Rules D.C.COLO.CivR 83.3E, D.C.COLO.LCivR 83.5, D.C.COLO.L.CrR 57.5E and D.C.COLO.LCrR 57.7 are adopted and become effective immediately.

**D.C.COLO.LCivR 83.3E  
MEMBER IN GOOD STANDING**

**E. Member in Good Standing.** An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. Upon notice to this court of lack of good standing from the suspending or disbaring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been suspended or disbarred for any reason by any court, the disciplined attorney shall, within 10 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the date of that court's action. This notice shall be provided regardless of any notification that is provided to this court by the court imposing the discipline.
2. *Separate Violation.* Failure to self-report or to cease practicing before the bar of this court as required by this rule are themselves separate causes for disciplinary action, except that failure to self-report administrative

suspensions for failure to pay an annual registration fee or to comply with mandatory continuing legal education requirements shall not be cause for further disciplinary action by this court.

3. *Reinstatement or Readmission.* Reinstatement following administrative suspension for failure to pay an annual fee or to comply with mandatory continuing legal education requirements shall be automatic upon receipt by this court of written proof of reinstatement by the original suspending jurisdiction. Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar of this court for any other reason shall be made in accordance with the terms of D.C.COLO.LCivR 83.5I.

**D.C.COLO.LCivR 83.5**  
**ATTORNEY DISCIPLINE**

- A. Disciplinary Panel.** The Chief Judge shall appoint a panel of three district judges to constitute the Disciplinary Panel (the "Panel"). The Panel shall have jurisdiction over all judicial proceedings involving disbarment, suspension, censure, or other lawyer discipline. The Chief Judge at any time may designate additional judges to serve as alternates on the Panel.
- B. Committee on Conduct.** The court has established a standing Committee on Conduct (the "Committee") consisting of 12 members of this court's bar, each appointed for three years and until his or her successor is appointed. Any member appointed to fill a vacancy shall serve the unexpired term of his or her predecessor. Where a member holds over after expiration of the term for which appointed, the time of additional service shall be deemed part of the successor member's term. The court shall designate a chairperson of the Committee and a vice-chairperson who shall act during the chairperson's absence or disability. Members of the Committee shall serve without compensation, but, insofar as possible, their necessary expenses shall be paid by the clerk from the fund in which admission and annual registration fees paid by members of the bar are deposited. No member of the Committee shall serve more than two consecutive terms.
- C. Duties of the Committee.** The Committee shall receive, investigate, consider, and act upon complaints against members of the bar, applications for reinstatement or readmission, allegations that a member of this court's bar is incapable of practicing law due to physical or mental disability or substance abuse, and other similar matters concerning attorneys. The Committee

chairperson shall appoint one or more members to present and prosecute charges and to prepare and present orders and judgments as directed by the Panel. The Committee is authorized and directed to report its findings concerning any disciplinary action to the grievance committee of any other bar or court of which the attorney in question may be a member. Additionally, the Committee is authorized to reveal such information to any other court-authorized grievance body as the Committee deems appropriate and consistent with the objectives of this rule. The Committee also may perform any additional duties implied by these rules or assigned by order of the Panel. All requests for investigation submitted to the court or Committee and all complaints filed with the Committee shall be privileged, and no lawsuit may be predicated thereon. Persons performing official duties under this rule, including but not limited to members of the Committee, staff, and members of the bar or others working under the Committee's direction, shall be immune from suit for all acts and omissions occurring in the course of their official duties. All proceedings of the Committee shall be confidential.

- D. Complaints.** Any complaint against a member of this court's bar for any conduct which may justify any disciplinary action (not limited to suspension or disbarment) shall be filed in writing under oath, except that complaints filed by a judicial officer of this court need not be under oath. Complaints shall be filed with or referred to the Committee. The Committee shall admonish all persons concerned with any complaint, investigation, or inquiry that absolute confidentiality must be maintained and that violation of this rule will be deemed contempt of this court.
- E. Investigation of Complaints.** When a complaint is received, it shall be referred by the chairperson of the Committee to a Subcommittee consisting of three Committee members designated by the chairperson who shall appoint one of them as Subcommittee chairperson. The chairperson or vice-chairperson of the Committee may be designated as a member of a Subcommittee.
1. *Service of Complaint and Answer.* The Subcommittee shall investigate complaints referred to it by the chairperson of the Committee. A copy of the complaint shall be served on the member of the bar against whom the complaint has been made (the "respondent") by certified mail, return receipt requested, addressed to his or her most current address on file with the clerk. No answer shall be required unless specifically requested of the respondent by the Subcommittee investigating the complaint. If an answer is requested by the Subcommittee, the respondent shall file an answer under oath with the Subcommittee within 20 days of the date of

the request or such later date as agreed upon by a majority of the Subcommittee.

2. *Hearings, Witnesses, and Documents.* A Subcommittee may hold hearings upon reasonable notice to the complainant and respondent. The chairperson of the Subcommittee conducting the inquiry shall serve as a master with authority to order issuance of subpoenas commanding the presence of witnesses and/or production of designated books, papers, documents, or other tangibles at the times and places stated in the subpoena. The Subcommittee chairperson, as master, is authorized to administer oaths. The name of any witness who fails or refuses to attend or testify under oath may be certified to the Panel, which may initiate contempt proceedings and impose appropriate punishment.

**F. Resolution of the Complaint by the Committee on Conduct.** Upon completion of its investigation, the Subcommittee shall report its recommendations to the full Committee. The Committee may, by a vote of a majority of the Committee in attendance, instruct the Subcommittee in any one of the following ways:

1. *Dismissal of the Complaint.* If the Committee concludes that the complaint is without merit, the Committee shall instruct the Subcommittee to prepare a letter so advising the complainant and the respondent, to be signed by the chairperson or vice-chairperson of the Committee.
2. *Letter of Admonition.* If the Committee concludes, based on the report of the Subcommittee, that the misconduct or, in the case of alleged disability or substance abuse, the cause for concern, is sufficiently significant that the complaint should not be dismissed as without merit, but it does not warrant submitting charges to the Panel, the Committee may issue a letter of admonition to the respondent, with a copy to the complainant. An attorney receiving a letter of admonition shall be advised of the right to request in writing, within 20 days after receiving the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the admonition is based. Upon timely filing of such a request, the letter of admonition shall be vacated and the Subcommittee shall proceed to prepare charges in accordance with the formal procedures provided in these rules.
3. *Submission of Charges to the Court.* The Committee may instruct the Subcommittee to prepare charges and submit them to the Panel or, with or without preparing charges, may refer the matter to Colorado Attorney

Regulation Counsel or another court-authorized grievance body. If charges are prepared and submitted to the Panel, and thereafter the Panel orders the charges filed, the clerk shall file them and forthwith issue a summons commanding the respondent to answer. Except as hereinafter provided, the summons and a copy of the charges shall be served by a United States marshal. A respondent who cannot be served in Colorado may be served by filing a copy of the summons and charges with the clerk, who shall in turn send a copy of the summons and charges by certified mail, return receipt requested, to the last office address the respondent filed with the clerk. The respondent shall answer the charges within 30 days from the date of service. Absent a timely answer, the charges may be taken as confessed and hearing may be held ex parte at a time set by the Panel.

- G. Disciplinary Panel Hearings and Orders.** A respondent against whom charges have been filed shall be entitled to be represented by counsel, at his or her own expense unless indigent. When the respondent has filed an answer, an evidentiary hearing shall be scheduled by the Panel. The Panel may ask the chairperson of the Committee to appoint one or more members of the Committee to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee in prosecuting the charges. If the charges are sustained by clear and convincing evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court and the judgment shall so recite. Any violation of the judgment shall be deemed a contempt of court.
- H. Rule Not to Deprive Court of Inherent Powers.** Nothing herein stated shall be deemed to negate or diminish this court's inherent disciplinary powers.
- I. Application for Reinstatement or Readmission.**
1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission

may be subject to conditions such as monitoring, reporting, testing, and education.

2. *Relationship to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney applying for reinstatement or readmission to this court following reinstatement or readmission by the original disciplining court who remains suspended or disbarred in a court other than the original disciplining court or this court is subject to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E requiring attorneys to be in good standing in all courts where admitted in order to be or remain admitted to the bar of this court. An attorney suspended or disbarred automatically in a court other than the original disciplining court or this court as a result of suspension or disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, stating appropriate grounds for such relief.

**J. Effect of Conviction or Resignation from Another Bar While Under Investigation, and Duty to Report Pendency of Criminal Offenses.**

1. *Attorney Subject to a Criminal Conviction.* Any member of this court's bar who is convicted of a crime punishable by a term of imprisonment of more than one year, shall, within 10 days of the conviction, give written notice to the clerk of this court of the conviction including the terms of the conviction, the court entering the conviction and the date of conviction. Upon notice to the court by the attorney or otherwise, the convicted attorney shall be suspended from practicing law in this court. Upon the conviction becoming final with no further right of appeal, the Panel shall disbar the attorney from practicing as a member of the bar of this court. For purposes of this rule, "conviction" shall include any ultimate finding of fact in a criminal proceedings that the individual is guilty of a crime punishable by a term of imprisonment of more than one year, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether the entry of judgment or imposition of sentence is suspended or deferred by the court.
2. *Attorney Under Investigation Resigning from Bar of Another Court.* Any member of this court's bar who resigns from the bar of any other federal or state court while an investigation into allegations of misconduct is pending shall, within 10 days of resigning, give written notice of such resignation to the clerk of this court. Upon receipt of notice of resignation

from the attorney or otherwise, the Panel shall disbar the attorney from practicing as a member of the bar of this court.

3. *Duty of Attorney to Notify Court of Pendency of Criminal Charges.* Any member of this court's bar who is charged in any court with a criminal offense that may subject the attorney to discipline in this court shall so notify the clerk in writing within ten days after the charge is filed.

**K. Mental or Physical Incompetence or Disability, or Substance Abuse.**

1. *Declaration of Mental Incompetence.* Upon receiving proof that a member of this court's bar judicially has been declared incompetent or involuntarily committed to a mental hospital, the Panel may order that the attorney be suspended from practicing law immediately and indefinitely until further order. A copy of the order shall be served upon the attorney, his or her guardian, and the director of the mental hospital.
2. *Role of the Committee on Conduct.* In matters involving an allegation that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Subcommittee assigned by the Chair of the Committee may take or direct whatever action it deems appropriate to determine whether the attorney is disabled or is adversely affected by substance abuse, including examination by such experts the Subcommittee shall designate. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall result in certification of the name of the attorney to the Panel, which may initiate contempt proceedings and impose appropriate punishment. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Committee for consideration along with all other evidence. If the Committee determines that the attorney is incapable of practicing law, the Committee shall petition the Panel for an order of suspension. As an alternative to examination an attorney may elect to go on disability inactive status, and the Committee shall advise the attorney of this option prior to ordering examination. Any attorney who makes such an election shall be required to apply for reinstatement pursuant to D.C.COLO.LCivR 83.5I and 83.5K.5 before practicing again in this court.
3. *Role of the Disciplinary Panel.* Upon petition by the Committee suggesting that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Panel

may take or direct whatever action it deems appropriate to determine whether the attorney is disabled, including examination by medical experts the Panel shall designate if no such examination had been ordered previously by the Committee or if the Panel desires further examination. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall be prima facie evidence of disability. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Panel for consideration along with all other evidence. If the Panel concludes from the evidence that the attorney is incapable of practicing law competently, it shall order him or her suspended until further order. Prior to ordering suspension the Panel may, in its sole discretion, offer the attorney an opportunity to go on disability inactive status voluntarily. The Panel may provide respondent notice of the proceedings and may appoint an attorney to represent a respondent who is without representation. Any attorney who elects disability inactive status or is suspended because of mental or physical disability or substance abuse must apply for reinstatement pursuant to D.C.COLO.LCivR 83.5I and 83.5K.5 before practicing again in this court.

4. *Claim of Disability During Disciplinary Proceedings.* If during a disciplinary proceeding the respondent attorney asserts a disability by reason of mental or physical illness or substance abuse, rendering adequate defense impossible, the Panel shall order the respondent suspended from practicing law until there can be a determination pursuant to D.C.COLO.LCivR 83.5K.2 and 3 of his or her capacity to practice law.
5. *Attorney Placed on Disability Inactive Status by Other Courts.* A member of this court's bar who is placed on disability inactive status by any state or federal court is prohibited from practicing before this court during such status. Reinstatement upon termination of disability inactive status shall be in accordance with D.C.COLO.LCivR 83.5K.5. through K.9.
6. *Reinstatement After Disability Inactive Status or Suspension Because of Disability.*
  - a. An attorney who has elected to go on disability inactive status or who has been suspended for mental or physical disability or substance abuse may apply to the Panel for reinstatement not more than once a year, or more frequently if the Panel so directs. The application shall be granted upon a showing by clear and



convincing evidence that the attorney no longer is disabled and is fit to practice law. The Panel, or the Committee if the Panel chooses to delegate initial consideration of the application for reinstatement to the Committee pursuant to D.C.COLO.LCivR 83.5I, may take or direct such action as it deems appropriate to determine whether the attorney's disability has been remedied, including examination by such medical experts as the Panel or Committee may designate. The Panel or Committee may direct that any examination expenses be paid by the attorney.

b. An attorney suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital, who thereafter judicially is declared competent, may apply for reinstatement upon proper proof of the latter declaration, and reinstatement may be subject to such conditions as the Panel may require.

7. *Evidentiary Hearing.* If the Panel holds an evidentiary hearing to determine whether an attorney is disabled or to consider an application for reinstatement, the chairperson of the Committee shall appoint one or more members to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee.

8. *Waiver of Physician/Patient Privilege.* Filing an application for reinstatement constitutes waiver of any physician-patient privilege with respect to any related treatment of the attorney. The attorney shall disclose the name and address of every psychiatrist, psychologist, physician, hospital, or other health-care provider that has examined or treated him or her since three (3) years prior to his or her suspension and shall furnish the Panel or the Committee written consent to obtain from these sources information and records requested by the Panel or the Committee or its designated medical experts.

9. *Orders Transferring.* Orders transferring attorneys to or from disability inactive status are matters of public record.

**L. Complaint against Sitting Member of the Committee on Conduct.** If a complaint is lodged against a sitting member of the Committee, in lieu of investigation by any other sitting member of the Committee the court shall appoint a Special Subcommittee consisting of three members of the bar of the court who in the past have served on the Committee but not as co-members with the member against whom the complaint is lodged, or such other members of

the bar of the court as the court may choose. The court shall designate one of the three as chair of the Special Subcommittee. The Special Subcommittee shall follow the procedures set out in D.C.COLO.LCivR 83.5 E, F, and G, with the exception that the Special Subcommittee shall work directly with the Panel rather than the full Committee.

**D.C.COLO.LCrR 57.5E**  
**MEMBER IN GOOD STANDING**

- E. Member in Good Standing.** An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. Upon notice to this court of lack of good standing from the suspending or disbaring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.
1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been suspended or disbarred for any reason by any court, the disciplined attorney shall, within 10 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the date of that court's action. This notice shall be provided regardless of any notification that is provided to this court by the court imposing the discipline.
  2. *Separate Violation.* Failure to self-report or to cease practicing before the bar of this court as required by this rule are themselves separate causes for disciplinary action, except that failure to self-report administrative suspensions for failure to pay an annual registration fee or to comply with mandatory continuing legal education requirements shall not be cause for further disciplinary action by this court.
  3. *Reinstatement or Readmission.* Reinstatement following administrative suspension for failure to pay an annual fee or to comply with mandatory continuing legal education requirements shall be automatic upon receipt by this court of written proof of reinstatement by the original suspending jurisdiction. Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar of this

court for any other reason shall be made in accordance with the terms of D.C.COLO.LCrR 57.7I.

**D.C.COLO.LCrR 57.7**  
**ATTORNEY DISCIPLINE**

- A. Disciplinary Panel.** The Chief Judge shall appoint a panel of three district judges to constitute the Disciplinary Panel (the "Panel"). The Panel shall have jurisdiction over all judicial proceedings involving disbarment, suspension, censure, or other lawyer discipline. The Chief Judge at any time may designate additional judges to serve as alternates on the Panel.
- B. Committee on Conduct.** The court has established a standing Committee on Conduct (the "Committee") consisting of 12 members of this court's bar, each appointed for three years and until his or her successor is appointed. Any member appointed to fill a vacancy shall serve the unexpired term of his or her predecessor. Where a member holds over after expiration of the term for which appointed, the time of additional service shall be deemed part of the successor member's term. The court shall designate a chairperson of the Committee and a vice-chairperson who shall act during the chairperson's absence or disability. Members of the Committee shall serve without compensation, but, insofar as possible, their necessary expenses shall be paid by the clerk from the fund in which admission and annual registration fees paid by members of the bar are deposited. No member of the Committee shall serve more than two consecutive terms.
- C. Duties of the Committee.** The Committee shall receive, investigate, consider, and act upon complaints against members of the bar, applications for reinstatement or readmission, allegations that a member of this court's bar is incapable of practicing law due to physical or mental disability or substance abuse, and other similar matters concerning attorneys. The Committee chairperson shall appoint one or more members to present and prosecute charges and to prepare and present orders and judgments as directed by the Panel. The Committee is authorized and directed to report its findings concerning any disciplinary action to the grievance committee of any other bar or court of which the attorney in question may be a member. Additionally, the Committee is authorized to reveal such information to any other court-authorized grievance body as the Committee deems appropriate and consistent with the objectives of this rule. The Committee also may perform any additional duties implied by these rules or assigned by order of the Panel. All requests for

investigation submitted to the court or Committee and all complaints filed with the Committee shall be privileged, and no lawsuit may be predicated thereon. Persons performing official duties under this rule, including but not limited to members of the Committee, staff, and members of the bar or others working under the Committee's direction, shall be immune from suit for all acts and omissions occurring in the course of their official duties. All proceedings of the Committee shall be confidential.

**D. Complaints.** Any complaint against a member of this court's bar for any conduct which may justify any disciplinary action (not limited to suspension or disbarment) shall be filed in writing under oath, except that complaints filed by a judicial officer of this court need not be under oath. Complaints shall be filed with or referred to the Committee. The Committee shall admonish all persons concerned with any complaint, investigation, or inquiry that absolute confidentiality must be maintained and that violation of this rule will be deemed contempt of this court.

**E. Investigation of Complaints.** When a complaint is received, it shall be referred by the chairperson of the Committee to a Subcommittee consisting of three Committee members designated by the chairperson who shall appoint one of them as Subcommittee chairperson. The chairperson or vice-chairperson of the Committee may be designated as a member of a Subcommittee.

1. *Service of Complaint and Answer.* The Subcommittee shall investigate complaints referred to it by the chairperson of the Committee. A copy of the complaint shall be served on the member of the bar against whom the complaint has been made (the "respondent") by certified mail, return receipt requested, addressed to his or her most current address on file with the clerk. No answer shall be required unless specifically requested of the respondent by the Subcommittee investigating the complaint. If an answer is requested by the Subcommittee, the respondent shall file an answer under oath with the Subcommittee within 20 days of the date of the request or such later date as agreed upon by a majority of the Subcommittee.

2. *Hearings, Witnesses, and Documents.* A Subcommittee may hold hearings upon reasonable notice to the complainant and respondent. The chairperson of the Subcommittee conducting the inquiry shall serve as a master with authority to order issuance of subpoenas commanding the presence of witnesses and/or production of designated books, papers, documents, or other tangibles at the times and places stated in the subpoena. The Subcommittee chairperson, as master, is authorized to

administer oaths. The name of any witness who fails or refuses to attend or testify under oath may be certified to the Panel, which may initiate contempt proceedings and impose appropriate punishment.

**F. Resolution of the Complaint by the Committee on Conduct.** Upon completion of its investigation, the Subcommittee shall report its recommendations to the full Committee. The Committee may, by a vote of a majority of the Committee in attendance, instruct the Subcommittee in any one of the following ways:

1. *Dismissal of the Complaint.* If the Committee concludes that the complaint is without merit, the Committee shall instruct the Subcommittee to prepare a letter so advising the complainant and the respondent, to be signed by the chairperson or vice-chairperson of the Committee.
2. *Letter of Admonition.* If the Committee concludes, based on the report of the Subcommittee, that the misconduct or, in the case of alleged disability or substance abuse, the cause for concern, is sufficiently significant that the complaint should not be dismissed as without merit, but it does not warrant submitting charges to the Panel, the Committee may issue a letter of admonition to the respondent, with a copy to the complainant. An attorney receiving a letter of admonition shall be advised of the right to request in writing, within 20 days after receiving the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the admonition is based. Upon timely filing of such a request, the letter of admonition shall be vacated and the Subcommittee shall proceed to prepare charges in accordance with the formal procedures provided in these rules.
3. *Submission of Charges to the Court.* The Committee may instruct the Subcommittee to prepare charges and submit them to the Panel or, with or without preparing charges, may refer the matter to Colorado Attorney Regulation Counsel or another court-authorized grievance body. If charges are prepared and submitted to the Panel, and thereafter the Panel orders the charges filed, the clerk shall file them and forthwith issue a summons commanding the respondent to answer. Except as hereinafter provided, the summons and a copy of the charges shall be served by a United States marshal. A respondent who cannot be served in Colorado may be served by filing a copy of the summons and charges with the clerk, who shall in turn send a copy of the summons and charges by certified mail, return receipt requested, to the last office address the respondent filed with the clerk. The respondent shall answer the charges

within 30 days from the date of service. Absent a timely answer, the charges may be taken as confessed and hearing may be held ex parte at a time set by the Panel.

- G. Disciplinary Panel Hearings and Orders.** A respondent against whom charges have been filed shall be entitled to be represented by counsel, at his or her own expense unless indigent. When the respondent has filed an answer, an evidentiary hearing shall be scheduled by the Panel. The Panel may ask the chairperson of the Committee to appoint one or more members of the Committee to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee in prosecuting the charges. If the charges are sustained by clear and convincing evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court and the judgment shall so recite. Any violation of the judgment shall be deemed a contempt of court.
- H. Rule Not to Deprive Court of Inherent Powers.** Nothing herein stated shall be deemed to negate or diminish this court's inherent disciplinary powers.
- I. Application for Reinstatement or Readmission.**
1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission may be subject to conditions such as monitoring, reporting, testing, and education.
  2. *Relationship to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney applying for reinstatement or readmission to this court following reinstatement or readmission by the original disciplining court who remains suspended or disbarred in a court other than the original disciplining court or this court is subject to D.C.COLO.LCivR 83.3E and

D.C.COLO.LCrR 57.5E requiring attorneys to be in good standing in all courts where admitted in order to be or remain admitted to the bar of this court. An attorney suspended or disbarred automatically in a court other than the original disciplining court or this court as a result of suspension or disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, stating appropriate grounds for such relief.

**J. Effect of Conviction or Resignation from Another Bar While Under Investigation, and Duty to Report Pendency of Criminal Offenses.**

1. *Attorney Subject to a Criminal Conviction.* Any member of this court's bar who is convicted of a crime punishable by a term of imprisonment of more than one year, shall, within 10 days of the conviction, give written notice to the clerk of this court of the conviction including the terms of the conviction, the court entering the conviction and the date of conviction. Upon notice to the court by the attorney or otherwise, the convicted attorney shall be suspended from practicing law in this court. Upon the conviction becoming final with no further right of appeal, the Panel shall disbar the attorney from practicing as a member of the bar of this court. For purposes of this rule, "conviction" shall include any ultimate finding of fact in a criminal proceedings that the individual is guilty of a crime punishable by a term of imprisonment of more than one year, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether the entry of judgment or imposition of sentence is suspended or deferred by the court.
2. *Attorney Under Investigation Resigning from Bar of Another Court.* Any member of this court's bar who resigns from the bar of any other federal or state court while an investigation into allegations of misconduct is pending shall, within 10 days of resigning, give written notice of such resignation to the clerk of this court. . Upon receipt of notice of resignation from the attorney or otherwise, the Panel shall disbar the attorney from practicing as a member of the bar of this court.
3. *Duty of Attorney to Notify Court of Pendency of Criminal Charges.* Any member of this court's bar who is charged in any court with a criminal offense that may subject the attorney to discipline in this court shall so notify the clerk in writing within ten days after the charge is filed.

**K. Mental or Physical Incompetence or Disability, or Substance Abuse.**

1. *Declaration of Mental Incompetence.* Upon receiving proof that a member of this court's bar judicially has been declared incompetent or involuntarily committed to a mental hospital, the Panel may order that the attorney be suspended from practicing law immediately and indefinitely until further order. A copy of the order shall be served upon the attorney, his or her guardian, and the director of the mental hospital.
  
2. *Role of the Committee on Conduct.* In matters involving an allegation that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Subcommittee assigned by the Chair of the Committee may take or direct whatever action it deems appropriate to determine whether the attorney is disabled or is adversely affected by substance abuse, including examination by such experts the Subcommittee shall designate. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall result in certification of the name of the attorney to the Panel, which may initiate contempt proceedings and impose appropriate punishment. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Committee for consideration along with all other evidence. If the Committee determines that the attorney is incapable of practicing law, the Committee shall petition the Panel for an order of suspension. As an alternative to examination an attorney may elect to go on disability inactive status, and the Committee shall advise the attorney of this option prior to ordering examination. Any attorney who makes such an election shall be required to apply for reinstatement pursuant to D.C.COLO.LCrR 57.7I and 57.7K.5 before practicing again in this court.
  
3. *Role of the Disciplinary Panel.* Upon petition by the Committee suggesting that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Panel may take or direct whatever action it deems appropriate to determine whether the attorney is disabled, including examination by medical experts the Panel shall designate if no such examination had been ordered previously by the Committee or if the Panel desires further examination. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall be prima facie evidence of disability. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Panel for consideration along with all other evidence. If the Panel concludes from



the evidence that the attorney is incapable of practicing law competently, it shall order him or her suspended until further order. Prior to ordering suspension the Panel may, in its sole discretion, offer the attorney an opportunity to go on disability inactive status voluntarily. The Panel may provide respondent notice of the proceedings and may appoint an attorney to represent a respondent who is without representation. Any attorney who elects disability inactive status or is suspended because of mental or physical disability or substance abuse must apply for reinstatement pursuant to D.C.COLO.LCrR 57.7I and 57.7K.5 before practicing again in this court.

4. *Claim of Disability During Disciplinary Proceedings.* If during a disciplinary proceeding the respondent attorney asserts a disability by reason of mental or physical illness or substance abuse, rendering adequate defense impossible, the Panel shall order the respondent suspended from practicing law until there can be a determination pursuant to D.C.COLO.LCrR 57.7K.2 and 3 of his or her capacity to practice law.
5. *Attorney Placed on Disability Inactive Status by Other Courts.* A member of this court's bar who is placed on disability inactive status by any state or federal court is prohibited from practicing before this court during such status. Reinstatement upon termination of disability inactive status shall be in accordance with D.C.COLO.LCrR 57.7K.5. through K.9.
6. *Reinstatement After Disability Inactive Status or Suspension Because of Disability.*
  - a. An attorney who has elected to go on disability inactive status or who has been suspended for mental or physical disability or substance abuse may apply to the Panel for reinstatement not more than once a year, or more frequently if the Panel so directs. The application shall be granted upon a showing by clear and convincing evidence that the attorney no longer is disabled and is fit to practice law. The Panel, or the Committee if the Panel chooses to delegate initial consideration of the application for reinstatement to the Committee pursuant to D.C.COLO.LCrR 57.7I, may take or direct such action as it deems appropriate to determine whether the attorney's disability has been remedied, including examination by such medical experts as the Panel or Committee may designate. The Panel or Committee may direct that any examination expenses be paid by the attorney.

- b. An attorney suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital, who thereafter judicially is declared competent, may apply for reinstatement upon proper proof of the latter declaration, and reinstatement may be subject to such conditions as the Panel may require.
  - 7. *Evidentiary Hearing.* If the Panel holds an evidentiary hearing to determine whether an attorney is disabled or to consider an application for reinstatement, the chairperson of the Committee shall appoint one or more members to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee.
  - 8. *Waiver of Physician/Patient Privilege.* Filing an application for reinstatement constitutes waiver of any physician-patient privilege with respect to any related treatment of the attorney. The attorney shall disclose the name and address of every psychiatrist, psychologist, physician, hospital, or other health-care provider that has examined or treated him or her since three (3) years prior to his or her suspension and shall furnish the Panel or the Committee written consent to obtain from these sources information and records requested by the Panel or the Committee or its designated medical experts.
  - 9. *Orders Transferring.* Orders transferring attorneys to or from disability inactive status are matters of public record.
- L. Complaint against Sitting Member of the Committee on Conduct.** If a complaint is lodged against a sitting member of the Committee, in lieu of investigation by any other sitting member of the Committee the court shall appoint a Special Subcommittee consisting of three members of the bar of the court who in the past have served on the Committee but not as co-members with the member against whom the complaint is lodged, or such other members of the bar of the court as the court may choose. The court shall designate one of the three as chair of the Special Subcommittee. The Special Subcommittee shall follow the procedures set out in D.C.COLO.LCrR 57.7 E, F, and G, with the exception that the Special Subcommittee shall work directly with the Panel rather than the full Committee.

**General Order 2006-1**  
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Dated at Denver, Colorado this 13th day of January, 2006.

BY THE COURT:

/s

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Lewis T. Babcock, Chief Judge

/s

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Marcia S. Krieger, Judge

/s

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Edward W. Nottingham, Judge

/s

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Robert E. Blackburn, Judge

/s

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Wiley Y. Daniel, Judge

/s

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Phillip S. Figa, Judge

/s

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Walker D. Miller, Judge