

APPENDIX II

ATTORNEY DISCIPLINE PROCEDURES IN BANKRUPTCY COURT (General Order No. 96-05)

(a) APPLICABILITY

This general order establishes a process for court wide discipline of attorneys in the bankruptcy court.

These procedures shall apply when any judge of this court wishes to challenge the right of an attorney to practice before this court or recommends the imposition of attorney discipline intended to apply in all bankruptcy cases in this court.

Nothing in this general order is intended to limit or restrict the authority of any judge to impose sanctions on any attorney in any case or cases assigned to that judge.

- (1) Initiation of Disciplinary Proceedings. If a bankruptcy judge wishes to initiate disciplinary proceedings under this general order, the judge shall prepare and file with the Clerk of Court a written Statement of Cause setting forth the judge's basis for recommending discipline and a description of the discipline the referring judge believes is appropriate.

The clerk shall open a case file, assign a miscellaneous case number, initiate a docket for the file, select three bankruptcy judges of this district at random (excluding the judge who filed the Statement of Cause) to serve on the Hearing Panel (the "Panel") which will determine whether the attorney shall be disciplined and, if so, the type and extent of discipline. The most senior judge assigned to the Panel shall be the Presiding Judge. The clerk shall prepare a Designation of Hearing Panel and Presiding Judge which shall include a signature line for each of the designated judges. The signature of each judge shall certify his or her acceptance of assignment to the Panel. Should any judge decline to serve, the clerk shall select another judge to serve on the Panel, give written notice thereof to the other judges on the Panel and issue a Supplemental Designation of Hearing Panel, which shall contain a signature line for the newly appointed judge to accept the assignment.

Once the clerk has obtained the acceptance of three judges to serve on the Panel, the clerk shall prepare a Notice of Assignment of Hearing Panel, which the clerk will serve on the attorney named in the Statement of Cause ("the attorney") and on the local Office of the United States Trustee, along with a copy of the Statement of Cause and a copy of

this general order. The attorney may file a motion for recusal as to any of the judges assigned to the Panel within ten days of the service of the Notice of the Assignment of Hearing Panel and serve the motion on the Office of the United States Trustee. That motion may be heard by any judge other than the referring judge, any judge assigned to the Panel, or any judge who has declined to serve on the Panel. The assignment of the recusal motion to a judge shall be made at random by the clerk, who shall give notice of the recusal hearing to the attorney and to the Office of the United States Trustee at least 10 calendar days before the hearing date.

Once the period for bringing a recusal motion has terminated, or after disposition of any recusal motion, the Presiding Judge shall advise the clerk of the date, time, and place for the Disciplinary Hearing, whereupon the clerk shall prepare a Notice of Disciplinary Hearing and mail the notice to the attorney and to the Office of the United States Trustee at least 21 calendar days before the hearing date.

- (2) Hearing Procedures. The attorney may appear at the Disciplinary Hearing with legal counsel and may present evidence:
- (A) Refuting the statements contained in the Statement of Cause,
 - (B) Mitigating the discipline (i.e., that notwithstanding the validity of the statements in the Statement of Cause the attorney should not be disciplined), and
 - (C) Bearing on the type and extent of disciplinary action appropriate under the circumstances.

The Federal Rules of Evidence shall apply to the presentation of evidence at the Disciplinary Hearing, and an official record of the proceedings shall be maintained as though the Disciplinary Hearing were a contested matter as that term is defined in the Federal Rules of Bankruptcy Procedure. The United States Trustee for the district may appear at the hearing in person or by counsel and may participate in the presentation of evidence as though she or he were a party to the proceeding. If the United States Trustee wishes to appear at the hearing, she or he must file a Notice of Intent to Appear, setting forth the purposes for the appearance, and serve that notice on the attorney at least 11 days before the hearing. The Panel may disregard written statements or declarations of innocence or in mitigation of the attorney's conduct unless they are filed with the court with copies delivered promptly thereafter to the chambers of each member of the Panel at least five court days prior to the hearing. Written statements presented to the Panel for consideration as evidence may be disregarded by the Panel if the declarant is unavailable at the hearing for cross-examination and for examination by the Panel.

- (3) Ruling. At the conclusion of the Disciplinary Hearing, the judges of the Panel will adjourn to a private session to consider the matter. The ruling of the Panel will be made by majority vote of the judges on the Panel. The Presiding Judge will assign to a judge in the majority the task of drafting the Panel's Memorandum of Decision setting forth the majority's decision and its reasons. Any member of the Panel may issue a concurring or dissenting opinion which will be made a part of the Memorandum of Decision.

If the Panel imposes discipline on an attorney, the Presiding Judge shall issue a Discipline Order based on the Panel's Memorandum of Decision. That order may provide for any appropriate discipline, including but not limited to revocation or suspension of the right to practice before all the judges of this court. The Discipline Order will become final 10 days after entry or, if a motion for rehearing is filed, 10 days after entry of an order denying the attorney's motion for rehearing. The same rule as to finality will apply to a new or revised Discipline Order, if one is issued by the Panel after rehearing.

The Discipline Order shall be sent by the clerk to the Clerk of the District Court. Should the Panel so order, a Discipline Order also may be transmitted by the clerk to the State Bar of California or published in designated periodicals, or both.

If an attorney's practice privileges have been revoked, modified, or suspended by final order of a Panel, the attorney may not appear before any of the judges of this court representing any other persons or entities except in compliance with the terms of the Discipline Order.

- (4) Reinstatement. An attorney whose privileges have been revoked, modified, or suspended under this general order may apply to the Chief Judge of this court for reinstatement of privileges on the following schedule:
- (A) If privileges were revoked without condition for an unlimited period of time, the attorney may apply for reinstatement after five years from the date the Discipline Order becomes final;
 - (B) If privileges were revoked or suspended with specified conditions precedent to reinstatement, the attorney may apply for reinstatement upon fulfillment of the conditions set forth in the Discipline Order; and
 - (C) If privileges were suspended for a specified period of time, the attorney may apply for reinstatement at the conclusion of the period of suspension or five years after the Discipline Order becomes final, whichever first occurs.

An Application for Reinstatement of Privileges must include a copy of the Discipline Order, proof that all conditions justifying reinstatement have been fulfilled, and proof that the applicant is in good standing before the United States District Court for the Central District of California and is a member in good standing of the State Bar of

California. If the attorney's privileges were revoked, or if the suspension was for a time in excess of five years and was without any conditions precedent to reinstatement, it shall be within the sole discretion of the Chief Judge whether to issue a reinstatement order. If the Chief Judge determines that the attorney is entitled to reinstatement of practice privileges, he or she may issue a Reinstatement Order. Upon entry of the Reinstatement Order, the attorney affected thereby shall be deemed eligible to practice before all the judges of this court except to the extent any judge of this court has issued an order, other than under this rule, denying that attorney the right to appear before that judge or to appear in a particular case.

Upon entry, the clerk shall transmit a copy to all judges of this court and to the attorney, the clerk of the District Court, and to the United States Trustee. In addition, if the Discipline Order was sent to the State Bar or published, the Clerk shall transmit the Reinstatement Order to the State Bar and publish it in the same publication, if possible. If the Chief Judge does not grant the Application for Reinstatement of Privileges, he or she shall issue an order denying the application together with a separate written statement of the reasons for his or her decision. That order will become final 10 days after entry.

If an attorney's Application for Reinstatement of Privileges is denied, he or she may reapply for reinstatement after one year from the date of entry of the order denying the previous application or within such other time or upon fulfillment of such conditions as may be set forth in the order denying reinstatement.

- (5) Maintenance of Discipline Files. The clerk will place in the court's file for each disciplinary proceeding all documents referred to above and others received or issued by this court relating thereto, and notations thereof shall be entered on the docket for that proceeding. Those files shall be maintained in accordance with applicable law and rules for maintenance of miscellaneous files of this court and shall be available for review and copying by members of the public unless, by order of the Chief Judge or the Presiding Judge of the Panel to which the matter was assigned, access to the file is restricted or prohibited.

The clerk shall close a disciplinary file 30 days after entry of a dispositive order (for example, an Order Re Revocation of Privileges or a Reinstatement Order) in that proceeding unless within that time the clerk receives a Notice of Appeal of any order rendered in the proceeding or other information justifying maintenance of the file in an open status. The clerk shall reopen a disciplinary file upon the request of the attorney, for the convenience of the court, or upon order of any judge of this court, whereupon the clerk shall advise the Chief Judge accordingly. So long as any disciplinary files remain open, the clerk shall provide the Chief Judge a quarterly status report of all such open files to which will be attached copies of their dockets. The Chief Judge may order any such files closed when he or she deems it appropriate, consistent with the provisions hereof and the status of any such matter.

- (6) Appeals. All orders issued pursuant to this rule shall be appealable to the extent permitted by applicable law and rules of court.