

suspension or disbarment  
Grievance Commission  
National Trend  
bankruptcy courts

# The New Attorney Discipline Rule

## Adopted by the United States District Court for the Eastern District of Michigan

By Hon. Steven W. Rhodes

Effective October 1, 2005, the United States District Court for the Eastern District of Michigan adopted a local rules amendment establishing for the first time its own procedure for suspension or disbarment from membership in the bar of the court. The new rule firmly vindicates the authority of the federal district court to regulate the practice of law before it.<sup>1</sup> This article will summarize the new rule in the Eastern District of Michigan and compare it to the attorney discipline rule adopted in the Western District of Michigan.

### The New Local Rule on Attorney Discipline in the Eastern District of Michigan

The new rule in the Eastern District of Michigan states that when misconduct warranting discipline comes to the attention of a judicial officer, including a magistrate or bankruptcy judge, the judicial officer may refer the matter to the Chief United States District Judge for the institution of proceedings by the court.<sup>2</sup> The chief judge then assigns the matter to a three-judge panel to hear and determine the matter.<sup>3</sup> The three-judge panel is randomly se-

lected, except that the judge who made the referral may not serve on the panel.<sup>4</sup> The panel must have at least one district judge and, if the matter relates to conduct in the bankruptcy court, at least one member of the panel must be a bankruptcy judge.<sup>5</sup> Similarly, if the matter relates to conduct before a magistrate judge, at least one member of the panel must be a magistrate judge.<sup>6</sup>

The panel determines whether to issue an order to show cause.<sup>7</sup> If so, the order identifies the specific facts that give rise to the proposed discipline, including the date, place, and nature of the misconduct, and the names of all persons involved.<sup>8</sup> The clerk mails a copy of the order and any supporting documentation to the attorney.<sup>9</sup>

The respondent is then required to file a written response within 20 days after the order is entered.<sup>10</sup> The response must admit or deny each factual allegation in the order and must state other specific facts on which the respondent relies.<sup>11</sup> The respondent must also furnish other supporting documents or other evidence not previously filed with the order.<sup>12</sup>

The court will give the respondent 20 days' notice of the hearing and a notice of procedural rights.<sup>13</sup> The panel may order

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prehearing discovery for good cause shown.<sup>14</sup> The chief judge appoints an attorney to present the evidence that supports the allegations in the order.<sup>15</sup> At the hearing, the respondent has a right to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.<sup>16</sup> The presiding judge may authorize the issuance of subpoenas for good cause shown.<sup>17</sup> Witnesses testify under oath, and the judicial officer who made the referral may be called as a witness at the discretion of the hearing panel.<sup>18</sup>

The conduct giving rise to the request for discipline must be established by a preponderance of the evidence.<sup>19</sup> The respondent's failure to appear at the hearing is itself grounds for discipline.<sup>20</sup> The hearing is recorded and is confidential.<sup>21</sup>

Decision is by a majority of the panel.<sup>22</sup> The panel may order disbarment, suspension, or any other remedy or sanction that it deems appropriate, including costs and attorney fees.<sup>23</sup> The panel prepares a written order with its findings and disposition, which is mailed to the respondent and the complainant.<sup>24</sup> The order is public.<sup>25</sup>

If the respondent is suspended or disbarred, within seven days, the respondent must send a copy of the order to the Michigan Attorney Grievance Commission, the licensing authority of every other state in which the respondent is licensed, and every other federal court in which the respondent is admitted to practice.<sup>26</sup> By the same deadline, the respondent must make several important disclosures to clients.<sup>27</sup> The respondent is also required to send a copy of the order to the parties in all litigation in which the respondent represents a client.<sup>28</sup> Finally, the respondent is required to file an affidavit of compliance with these disclosure requirements.<sup>29</sup>

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## Comparing the Attorney Discipline Rules in the Eastern and Western Districts

The new rule in the Eastern District of Michigan is modeled in part on a similar rule adopted by the United States District Court for the Western District of Michigan.<sup>30</sup> There are, however, several important differences in the Western District procedure:

- The Western District procedure does not appear to restrict the initiation of disciplinary proceedings to judicial officers; in the Eastern District, only judicial officers may initiate a referral.

### FAST FACTS:

Effective October 1, 2005, the United States District Court for the Eastern District of Michigan adopted a local rules amendment establishing for the first time its own procedure for suspension or disbarment from membership in the bar of the court.

The new rule is modeled in part on a similar rule adopted by the United States District Court for the Western District of Michigan, with several important differences.

The federal courts in Michigan are now fully prepared to independently address any attorney discipline issues that may arise.

- The Western District procedure permits the chief judge to dismiss a frivolous complaint; in the Eastern District, the three-judge panel decides whether to issue the order to show cause.
- Under the Western District procedure, a hearing is conducted only if the respondent makes a request; in the Eastern District, a request for a hearing is not required.
- In the Western District, the appointment of prosecuting counsel is discretionary with the presiding hearing officer; in the Eastern District, the chief judge must appoint prosecuting counsel.
- Unlike the Eastern District procedure, the Western District procedure includes no explicit notice and disclosure requirements upon suspension or disbarment, although presumably the hearing panel could include any such requirements in its order of discipline.

In all other respects, the procedures of the two Michigan federal courts are similar.

## Conclusion

The attorney discipline rules adopted by the federal courts in Michigan are part of a national trend recognizing that it is important for federal courts, including bankruptcy courts, to exercise their inherent authority to regulate the practice of law before them, and to do so independently of available state procedures when appropriate. Evidence of this trend is an August 2006 resolution adopted by the House of Delegates of the American Bar Association that recognizes the need to require district or bankruptcy courts to adopt and enforce their own local attorney disciplinary procedures, and specifically the need to clarify the authority of bankruptcy courts to impose attorney discipline.<sup>31</sup>

The Eastern District of Michigan adopted this new procedure after lengthy consultation with its local rules committee. The court's expectation is that this new procedure will rarely be invoked and that, when appropriate, referral to the Attorney Grievance Commission will remain the preferred process. Nevertheless, the federal courts in Michigan are now fully prepared to independently address any attorney discipline issues that may arise. ■

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*Judge Rhodes was appointed as a United States Bankruptcy Judge for the Eastern District of Michigan in 1985 and currently serves as the chief judge of the court.*

## FOOTNOTES

1. See *In re Snyder*, 472 US 634, 643 (1985) ("Courts have long recognized an inherent authority to suspend or disbar lawyers."); *Chambers v NASCO, Inc.*, 501 US 32, 43 (1991); *Stilley v Bell*, 155 Fed Appx 217 (CA 6, 2005); *Application of Mosser*, 25 F3d 397 (CA 6, 1994).
2. LR 83.22(c)(3). The full text of this local rule is available at the Eastern District's website at <<http://www.mied.uscourts.gov>> [accessed December 19, 2006].
3. LR 83.22(e)(1).
4. *Id.*
5. *Id.*
6. *Id.*
7. LR 83.22(e)(2).

8. *Id.*
9. *Id.*
10. LR 83.22(e)(3).
11. LR 83.22(e)(3)(A).
12. LR 83.22(e)(3)(B).
13. LR 83.22(e)(4).
14. LR 83.22(e)(5).
15. LR 83.22(e)(6)(A).
16. LR 83.22(e)(6)(B).
17. LR 83.22(e)(6)(C).
18. LR 83.22(e)(6)(D).
19. LR 83.22(e)(6)(E).
20. LR 83.22(e)(6)(F).
21. *Id.*
22. LR 83.22(e)(6)(H).
23. *Id.*
24. *Id.*
25. *Id.*
26. LR 83.22(e)(8)(A).
27. LR 83.22(e)(8)(B).
28. LR 83.22(e)(8)(C).
29. LR 83.22(e)(9).
30. See VWD Mi LR 83.1(k). The full text of this local rule is available at the Western District's website at <[www.miwd.uscourts.gov](http://www.miwd.uscourts.gov)> [accessed December 19, 2006].
31. This resolution, the report of the Task Force on Attorney Discipline that recommended the resolution, and its letter forwarding the resolution to the Bankruptcy Rules Committee of the Judicial Conference of the United States may be found at <<http://www.abanet.org/poladv/letters/exec/report117zilly-82206.pdf#search=%22ABA%20Task%20force%20attorney%20Discipline%202006%22>> [accessed December 19, 2006].