



ARKANSAS JUDICIARY

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## SECTION 17. SANCTIONS.

A. Grounds for Discipline. It shall be grounds for discipline for a lawyer to:

- (1) Violate or attempt to violate the Rules or any other rules of Arkansas regarding professional conduct of lawyers; or
- (2) Engage in conduct violating applicable rules of professional conduct of another jurisdiction in which the attorney is licensed or practices.

B. Serious Misconduct. Serious misconduct is conduct in violation of the Rules that would warrant a sanction terminating or restricting the lawyer's license to practice law. Conduct will be considered serious misconduct if any of the following considerations apply:

- (1) The misconduct involves the misappropriation of funds;
- (2) The misconduct results in, or is likely to result in, substantial prejudice to a client or other person;
- (3) The misconduct involves dishonesty, deceit, fraud, or misrepresentation by the attorney;
- (4) The misconduct is part of a pattern of similar misconduct;
- (5) The attorney's prior record of public sanctions demonstrates a substantial disregard of the attorney's professional duties and responsibilities; or
- (6) The misconduct constitutes a "Serious Crime," as defined in these Procedures.

C. Lesser Misconduct. Lesser misconduct is conduct in violation of the Rules that would not warrant a sanction terminating or restricting the lawyer's license to practice law.

D. Types of Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

- (1) **DISBARMENT:** The termination of the attorney's privilege to practice law and removal of the attorney's name from the list of licensed attorneys.
- (2) **SUSPENSION:** A limitation for a fixed period of time on the attorney's privilege to engage in the practice of law.
- (3) **INTERIM SUSPENSION:** A temporary suspension for an indeterminate period of time of the attorney's privilege to engage in the practice of law pending the final adjudication of a disciplinary matter.
- (4) **REPRIMAND:** A severe public censure issued against the attorney.
- (5) **CAUTION:** A public warning issued against the attorney.
- (6) **WARNING:** A non-public caution issued against the attorney.
- (7) **PROBATION:** Written conditions imposed for a fixed period of time, and with the attorney's consent, permitting the attorney to engage in the practice of law under the supervision of another attorney.

E. Imposition of Sanctions. When a panel of the Committee finds that an attorney has violated any provision of the Rules, the panel is authorized:

- (1) To cause a complaint for disbarment to be prepared and filed against the lawyer in accordance with Section 13. Disbarment proceedings are appropriate when

mandated

by Section 15(C) of the Procedures or upon a finding of "serious misconduct" for which a lesser

sanction would be inappropriate. A finding that a lawyer has committed acts against a client which constitute theft of property under Ark. Code Ann. ? 5-36-103 (or its replacement), regardless of whether the attorney has been criminally charged or convicted, shall result in the automatic filing of disbarment proceedings. Actions for disbarment address the overall fitness of

a lawyer to hold a license to practice law. The Committee's written notice to institute a disbarment proceeding need not state specific findings as to the misconduct or Rule violations.

(2) To suspend the lawyer's privilege to practice law for a fixed period of time not less than thirty (30) days and not in excess of five (5) years. Suspension is appropriate when

a panel of the Committee finds that the lawyer has engaged in "serious misconduct," and, consonant with the pertinent factors listed in Section 19, the nature and degree of such misconduct do not warrant disbarment.

(3) To temporarily suspend the lawyer's privilege to practice law pending final adjudication and disposition of a disciplinary matter. Interim suspension shall be appropriate in the following situations:

(a) Immediately on decision to initiate disbarment;

(b) Immediately upon proof that the attorney has been found guilty of a Serious Crime in any jurisdiction, notwithstanding pending post-conviction actions; and,

(c) When a panel of the Committee is in receipt of sufficient evidence demonstrating that the lawyer has engaged or is engaging in misconduct involving:

(i) Misappropriation of funds or property;

(ii) Abandonment of the practice of law; or,

(iii) Substantial threat of serious harm to the public or to the lawyer's clients.

(4) To issue the lawyer a letter of reprimand. A reprimand is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" that, by application of the factors listed in Section 19, warrants a sanction more severe than a caution. Additionally, in certain very limited circumstances, a panel of the Committee may find that a reprimand is appropriate for conduct otherwise falling within the definition of "serious misconduct" when application of the aforementioned factors substantially demonstrates clear and

compelling grounds for sanctions less severe than restriction of the privilege to practice law.

(5) To issue the lawyer a letter of caution. A caution is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" and application of the aforementioned factors does not warrant a reprimand.

(6) To issue a letter of warning. Prior to the preparation of an affidavit of complaint, or subsequent to a lawyer's affidavit of response but before a panel of the Committee

has issued a formal letter of disposition in a pending matter, the Executive Director, with the written consent of the attorney and with the approval of the chair of a panel, is authorized to issue a non-public letter of warning to the lawyer. Only in cases of "lesser misconduct" of a minor nature, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should a warning be imposed. A warning is not a sanction available to a panel of the Committee when issuing a formal order of disposition following public adjudication of the disciplinary matter.

(7) To impose probationary conditions. Before or after the filing of a formal

complaint, a panel of the Committee may, with the written consent of the lawyer, place the lawyer on probation for a period not exceeding two (2) years. Probation shall be used only in cases where there is little likelihood that the lawyer will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised. Probation may be utilized concurrently with imposition of other sanctions not restricting the privilege to practice law or may follow a period of suspension. The probationary conditions shall be in writing and acknowledged, in writing, by the lawyer. A lawyer amenable to probation shall be responsible for obtaining the agreement of another lawyer, acceptable to a panel of the Committee, to supervise, monitor, and assist the lawyer as required to fulfill the conditions of probation, or for obtaining a Monitoring Contract with the Arkansas Judges and Lawyers Assistance Program, acceptable to a panel of the Committee, to accomplish the same things. Assent to undertake supervision shall be acknowledged in writing to a panel of the Committee. Probation shall be terminated upon the filing of an affidavit by the lawyer showing compliance with the conditions and an affidavit by the supervising lawyer or an authorized representative of the Arkansas Judges and Lawyers Assistance Program stating probation is no longer necessary and summarizing the basis for that statement. Willful or unjustified non-compliance with the conditions of probation will terminate the probation and subject the lawyer to further disciplinary action, to include imposition of a more severe sanction which could have been imposed originally but for the agreement to probation. An attorney subjected to such further disciplinary action may only offer evidence or argument relating to the willful or unjustified nature of the non-compliance. Unsuccessful rehabilitation or non-completion of the probation conditions will subject the lawyer to further disciplinary proceedings consistent with these Procedures. Except as necessary to the Committee's discharge of its responsibilities, terms and conditions of probation and reports related thereto which involve the lawyer's mental, physical, or psychological condition shall be confidential.

**Associated Court Rules:**

Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

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