

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

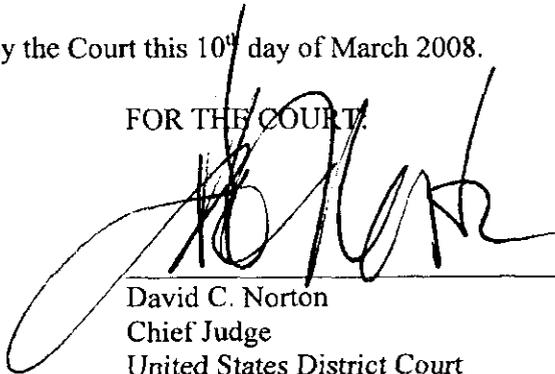
IN RE:)
)
Amended Rules of Disciplinary)
Enforcement and Related Rules)
_____)

ORDER

Pursuant to Title 28 U.S.C. § 270(e) and Rule 83, Federal Rules of Civil Procedure, proper public notice of a proposed amendment to the Rules of Disciplinary Enforcement (RDE) and Local Civil Rule 83.I.02 and Local Civil Rule 83.IX.02 and an opportunity for comment were given. The date for receiving said comments having expired and upon due consideration of all comments by the Court, these amended Local Civil Rules, in the form appended hereto, are hereby adopted and promulgated by the Court effective March 10, 2008.

DONE AND ORDERED by the Court this 10th day of March 2008.

FOR THE COURT



David C. Norton
Chief Judge
United States District Court
District of South Carolina

Charleston, South Carolina

RULES BY DISTRICT COURT
ATTORNEYS AND STUDENT PRACTICE

83.1.01: *Roll of Attorneys.*

- (A) The Bar of this Court consists of those attorneys heretofore admitted and those attorneys hereafter admitted as prescribed by Local Civil Rule 83.1.01-.03.

- (B) Admission to practice before the District Court is a prerequisite to practice in the Bankruptcy Division. Any prohibition or limitation on the right to practice shall apply in both divisions absent express limitation in the controlling order. This rule does not preclude the Bankruptcy Division from imposing additional knowledge requirements (e.g., Bankruptcy Rules and statutes) for practice in that Division or requiring additional training as a condition for authorization to file electronically.

83.1.02: *Eligibility.* A member in good standing of the Bar of the Supreme Court of South Carolina is eligible for admission to the Bar of this Court. Suspension or revocation of the right to practice by the Supreme Court of South Carolina shall automatically effect the same suspension or revocation of the right to practice in this Court subject to this Court's reservation of the right to impose greater discipline. *See infra* RDE II(G).

* * *

83.1.08: *Rules of Disciplinary Enforcement ("RDE").*

- (A) All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (*pro hac vice*) shall be admitted subject to the following rules, conditions, and provisions.

- (B) For purposes of these Rules, "this Court" includes the Bankruptcy Division of the District of South Carolina unless otherwise indicated. All duties imposed on or notices required to be provided to the Clerk of Court refer to the Clerk of the District Court. The Clerk of the District Court shall ensure that notices of suspension or reinstatement, or other notices respecting an attorney's right to practice in this Court, are promptly forwarded to the Clerk of the Bankruptcy Division.

RDE RULE 1
ATTORNEYS CONVICTED OF CRIMES

- (A) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, this Court may enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, this Court may set aside such order when it appears that the interests of justice require the same.
- (B) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a "serious crime."
- (C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based, in whole or in part, upon the conviction.
- (D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, this Court, in addition to suspending that attorney in accordance with the provisions of this Local Civil Rule, may also refer the matter to counsel for the institution of a disciplinary proceeding before this Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," this Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before this Court; provided, however, that this Court in its discretion may make no references with respect to convictions for minor offenses.
- (F) An attorney suspended under the provisions of this Rule will be immediately reinstated upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be

determined by this Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

RDE RULE II
DISCIPLINE IMPOSED BY OTHER COURTS

- (A) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, inform the Clerk of Court in writing within ten (10) days of such action. *See supra* LCR 83.I.08(B) (Clerk of District Court shall inform Clerk of Bankruptcy Division).

- (B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been subjected to public discipline by another court, this Court may impose reciprocal or other discipline pursuant to the procedures set forth below. Prior to imposing any discipline, the Court shall issue a notice directed to the attorney containing:
 - (1) A copy of the judgment or order from the other court; and
 - (2) An order to show cause directing that the attorney informs this Court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

- (C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

- (D) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
 - (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
 - (3) That the imposition of the same discipline by this Court would result in grave injustice; or

- (4) That the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.
- (E) In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.
- (F) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings or defend a respondent-attorney. *See infra* RDE V(A).
- (G) If an attorney admitted to practice before this Court is disbarred or suspended by the Supreme Court of South Carolina, such suspension or disbarment shall be immediately effective in this court. The nature and term of discipline shall be identical unless this Court determines that the misconduct justifies a more severe disciplinary action, in which case the attorney will be given notice and an opportunity to demonstrate that the imposition of a more severe disciplinary action is unwarranted.

*RDE RULE III
DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS*

- (A) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.
- (B) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

*RDE RULE IV
STANDARDS FOR PROFESSIONAL CONDUCT*

- (A) For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court for a definite time, fined, and/or reprimanded, either publicly or privately, or subjected to other disciplinary action as the circumstances may warrant.

- (B) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the Supreme Court of the State of South Carolina, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court.

RDE RULE V
DISCIPLINARY PROCEEDINGS

- (A) When misconduct or allegations of misconduct which, as substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, that judge shall petition the chief judge of the district court to (1) refer the matter to the appropriate state disciplinary authority for investigation or prosecution, or (2) refer the matter to the United States Attorney or other selected counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Nothing herein shall, however, preclude a judge from reporting an attorney's actions or inactions directly to the disciplinary authority for any state where the attorney is admitted to practice. The Chief Judge may also appoint defense counsel for an indigent attorney. Counsel appointed for prosecution or defense will be compensated according to the Court's plan for appointment of counsel in criminal cases, from the attorney admission fund in an amount to be determined by the Chief Judge. Should the Chief Judge be disqualified, the most senior active District Judge shall have the responsibility of enforcing this section. Should the matter be referred to a state disciplinary authority, or should there be a parallel state disciplinary proceeding, the Chief Judge may provide to such authority information and documents pertinent to the investigation, subject to the requirements of Rule 6(e), Federal Rules of Criminal Procedure, and an appropriate protective order.
- (B) Counsel appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, as well as the respondent-attorney, shall have the authority to issue subpoenas pursuant to Rule 17 of the Federal Rules of Criminal Procedure.
- (C) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is another proceeding pending against the respondent-attorney, the disposition of which in the judgment of counsel should be awaited before further action by this Court is considered, or for any other valid reason,

counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons for such recommendation.

- (D) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court, upon a showing of probable cause, requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally, or by mail, why the attorney should not be disciplined. The respondent-attorney shall have the right to be represented by counsel in these proceedings.
- (E) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the chief judge shall set the matter for prompt hearing before a panel of three judges of this Court ("Disciplinary Panel"). In the event the complaint relates to one or more bankruptcy division matters, at least one of the judges on the panel shall be a bankruptcy division judge. If the disciplinary proceeding is predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel. Mere forwarding or referral of a complaint made by a third party shall not, however, preclude a judge from serving on the Disciplinary Panel.
- (F) The senior judge of the three-judge Disciplinary Panel, within a reasonable time following the hearing, shall provide to the district court a written report which shall include a recommendation as well as a transcript of the hearing and all pleadings and evidence.
- (G) After receiving the report, the district court, sitting *en banc*, shall by written order make a final determination. In the event the complaint relates to one or more bankruptcy division matters, the judges of the bankruptcy division shall participate in the *en banc* review.
- (H) Misconduct, as the term is used herein, means any one or more of the following:
 - (1) Violation of any provision of the oath of office taken upon admission to practice of law;
 - (2) Violation of any provision of the South Carolina Rules of Professional Conduct as adopted by this Court;
 - (3) Commission of a crime involving moral turpitude;
 - (4) Conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute;
 - (5) Conduct demonstrating a lack of professional competence in the practice of law;

- (6) Conduct tending to obstruct the Court's disciplinary investigation;
 - (7) Conduct constituting a serious crime as defined in RDE Rule I(B);
 - (8) Conduct violating applicable rules of professional conduct of another jurisdiction.
- (I) Upon receipt of sufficient evidence demonstrating that an attorney poses a substantial threat of serious harm to the public or the administration of justice, and pursuant to the procedures set forth below, the attorney may be placed on interim suspension or may have other restrictions placed on his/her rights to practice in this Court pending a final determination in any proceeding under these Rules.
- (1) A petition for interim suspension/restrictions may be initiated by the investigating attorney, by any judge of the Court, or, on its own motion, by the Disciplinary Panel.
 - (2) The petition shall set forth the factual basis for the proposed suspension/restrictions and shall be served personally or by mail on the attorney who is the subject of the petition.
 - (3) The petition shall be forwarded to the Disciplinary Panel, if one has been assigned, or, if no Disciplinary Panel has been assigned or if exigent circumstances require a more immediate response, to the Chief Judge of the district court. If the Chief Judge is unavailable or if the petition or complaint was initiated by the Chief Judge, then the petition shall be forwarded to next most senior District Judge.
 - (4) The Disciplinary Panel or judge to whom the petition is forwarded pursuant to ¶(I)(3) above may enter an interim suspension based on such further proceedings as are consistent with due process including, if made necessary by exigent circumstances, without any further pre-suspension proceedings.
 - (5) An attorney placed on interim suspension/restrictions by a single judge may apply to the judge who entered the suspension/restrictions order for reconsideration. If the application is denied, the attorney may appeal to the Disciplinary Panel. Interim suspensions entered by the Disciplinary Panel may be appealed to the en banc Court.
 - (6) Any interim suspension/restrictions shall be set forth in an unsealed order stating only the fact and effective dates of the suspension/restrictions. All other documents and information relating to the suspension/restrictions shall be kept confidential pending completion of the proceedings except that a copy of all such documents may be provided to other entities with disciplinary authority.

*RDE RULE VI
DISBARMENT ON CONSENT WHILE UNDER
DISCIPLINARY INVESTIGATION OR PROSECUTION*

- (A) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:
- (1) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (2) The attorney is aware that there is a presently-pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;
 - (3) The attorney acknowledges that the material facts so alleged are true; and
 - (4) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.
- (B) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.
- (C) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

*RDE RULE VII
REINSTATEMENT*

- (A) *After disbarment or suspension.* An attorney suspended for less than a year may resume practice before this Court upon the expiration of the suspension ordered by the Supreme Court of South Carolina and this Court. An attorney disbarred or suspended for a year or more must reapply for admission and may not resume practice until reinstated by order of this Court.
- (B) *Time of application following disbarment.* A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment.

- (C) *Hearing on application.* Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the chief judge of this Court. Upon receipt of the petition, the chief judge shall assign the matter to a three-judge panel of this Court for review; provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel. The judges assigned to the matter may either accept a decision of the South Carolina Supreme Court reinstating the attorney or shall promptly, after referral, assign the matter to counsel and schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency, and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or to the administration of justice or subversive of the public interest. The senior judge of the three-judge panel, within a reasonable time following the hearing, shall provide all judges of this Court a written report which shall include a recommendation pursuant to subparagraph F of this section. After receiving the report, this Court, sitting *en banc*, shall by written order make a final determination and enter judgment pursuant to subparagraph F of this section.
- (D) *Duty of counsel.* In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.
- (E) *Deposit for costs of proceeding.* Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by this Court to cover anticipated costs of the reinstatement proceeding.
- (F) *Conditions of reinstatement.* If the petitioner is found unfit to resume the practice of law before this Court, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law before this Court, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. This Court may impose any conditions of reinstatement that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement. Provided further that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of this Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.
- (G) *Successive petitions.* No petition for reinstatement under this Rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

*RDE RULE VIII
SERVICE OF PAPERS AND OTHER NOTICES*

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the last address of record with the Clerk of Court. Service of any other papers or notices required by these Rules shall be deemed to have been made if delivered electronically through the court's electronic filing system or if such paper or notice is addressed to the respondent-attorney at the last address of record with the Clerk of Court; or to counsel for the respondent-attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

*RDE RULE IX
APPOINTMENT OF COUNSEL*

Whenever counsel other than the United States Attorney is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, this Court shall appoint as counsel one or more members of the Bar of this Court. The respondent-attorney may move to disqualify the United States Attorney or any other attorney so appointed on grounds of conflict of interest. Any motion for disqualification shall be determined by the chief judge or, should the chief judge be disqualified, the most senior active judge. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

*RDE RULE X
DUTIES OF THE CLERK OF COURT*

- (A) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of Court shall determine whether the clerk of court in which such conviction occurred has forwarded a certificate of such conviction to this Court or to the South Carolina Supreme Court or its disciplinary counsel. If a certificate has not been so forwarded, the Clerk of Court shall promptly obtain a certificate and file it with this Court.
- (B) Upon being informed that an attorney admitted to practice before this Court has been subjected to public discipline by another court, the Clerk of Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of Court shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.
- (C) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of Court, within ten (10) days of that conviction, disbarment, suspension, censure, or disbarment on consent, shall transmit to

the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

- (D) The Clerk of Court shall likewise promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.
- (E) The Clerk of Court shall be responsible for circulating all notices relating to disciplinary action to all judges of this Court, including all magistrate, bankruptcy and district judges, as well as the Clerk of the Bankruptcy Division.

*RDE RULE XI
JURISDICTION*

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for this Court to maintain control over proceedings conducted before it, including, but not limited to, the power to: impose sanctions including civil penalties or other action authorized by rule or statute; enjoin violations of the law; or institute proceedings for contempt.

*RDE RULE XII
EFFECTIVE DATE*

Any amendments to these disciplinary enforcement rules shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.

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BANKRUPTCY PRACTICE

- 83.IX.01: *Referral to Bankruptcy Judges.* Pursuant to 28 U.S.C. § 157(a), the Court hereby refers to the Bankruptcy Judges for this District all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11. *See* Procedures, 28 U.S.C. § 157.
- 83.IX.02: *Local Civil Rules of Bankruptcy Practice.* Pursuant to Bankruptcy Rule 9029, the Bankruptcy Judges of this District are hereby authorized to make such rules of practice and procedure as they may deem appropriate; provided, however, that in promulgating the rules governing the admission or eligibility to practice in the Bankruptcy Division, the Bankruptcy Judges

shall require District Court admission except for appearances *pro se* or for appearances pursuant to the student practice rules of this Court.

- (A) *Pro hac vice admission.* The Bankruptcy Judges, as judicial officers of the District Court, are hereby empowered to grant *pro hac vice* admission to the District Court for bankruptcy matters under rules identical to this Court's rules on such admission.
 - (B) *Exemption.* When appropriate, the Bankruptcy Judges may exempt certain filings such as the filing of claims from these requirements.3.IX.03: *Jury Trials by Bankruptcy Judges.* The United States District Court for the District of South Carolina hereby specially designates the Bankruptcy Judges of this District to conduct jury trials pursuant to 28 U.S.C. § 157(e).
- 83.IX.04: *Disciplinary Rules.* The Rules of Disciplinary Enforcement set forth at Local Civil Rule 83.I.08 apply in the Bankruptcy Division of the District Court.