

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions [Not used.]

Rule 82. Jurisdiction and Venue Unaffected [Not used.]

Rule 83. Rules by Court of Federal Claims; Judge's Directives

- (a) **In General.** After giving public notice and an opportunity for comment, the United States Court of Federal Claims, acting by a majority of its judges, may adopt and amend rules governing its practice. Such rules, to the extent permitted by this court's jurisdiction, must be consistent with the Federal Rules of Civil Procedure and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A rule takes effect on the date specified by the court and remains in effect unless amended by the court. Copies of rules and amendments must, on their adoption, be furnished to the Administrative Office of the United States Courts and be made available to the public.
- (b) **Procedure When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law or rules adopted under 28 U.S.C. § 2072 or 2503(b). No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008.)

Rules Committee Notes 2002 Revision

RCFC 83 is modeled after FRCP 83. The rule recognizes the court's rule-making authority as set forth at 28 U.S.C. § 2503, as well as the assigned judge's authority to regulate practice in an individual case, so long as that practice is consistent with federal law and rules.

2008 Amendment

The language of RCFC 83 has been amended to conform to the general restyling of the FRCP.

Rule 83.1. Attorneys

(a) **Eligibility to Practice.**

- (1) **In General.** An attorney is eligible to practice before this court if the attorney:
- (A) is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia;
 - (B) is a member in good standing of the bar of this court; or
 - (C) was a member in good standing of the bar of this court's predecessor, the United States Court of Claims.
- (2) **Pro Hac Vice.** An attorney may participate *pro hac vice* in any proceeding before this court if:
- (A) the attorney is admitted to practice before the highest court of any U.S. state, territory, or possession or the District of Columbia; and
 - (B) the attorney of record for any party has requested such participation, either orally or by written motion, will be present for such participation, and has received the court's approval.
- (3) **Pro Se Litigants.** An individual who is not an attorney may represent oneself or a member of one's immediate family, but may not represent a corporation, an entity, or any other person in any proceeding before this court. The terms counsel, attorney, and attorney of record include such individuals appearing *pro se*.

(b) **Admission to Practice.**

- (1) **Qualifications.** Any person of good moral character who is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia may be admitted to practice before this court.
- (2) **Procedures.** An attorney may be admitted to practice before this court by oral motion or by verified application.

- (A) **By Oral Motion in an Admissions Proceeding.** A member of the bar of this court may make an oral motion to admit an applicant to the bar during the monthly attorney admissions proceeding held at the Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20439, at the times posted on the court's website at www.uscfc.uscourts.gov (generally on Thursday of the first full week in every month). Motions will be heard in a courtroom posted in the lobby of the courthouse on the day of the proceeding. Applicants for admission must check in with the clerk's office no later than 30 minutes before the start of the proceeding. At least one week in advance of the proceeding, applicants must submit electronically the following:
- (i) a "Form for Admission via Motion in Open Court" (available on the court's website);
 - (ii) a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of Columbia which has been issued within the last 30 days and states that the applicant is a member in good standing of the bar of such court; and
 - (iii) payment of the admission fee set forth in RCFC 83.1(b)(4);
- Applicants who for special reasons are unable to appear for admission on one of the posted dates should contact the clerk's office to make alternate arrangements.
- (B) **By Verified Application.** An attorney may seek admission to practice before this court without appearing in person by submitting electronically the following:
- (i) a verified application for admission (*see* Appendix of Forms, Form 1);
 - (ii) a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of Columbia which has been issued within the last 30 days and states that the applicant is a member in good standing of the bar of such court;
 - (iii) two letters or signed statements of members of the bar of this court or of the Supreme Court of the United States, not related to the applicant, affirming that the applicant is personally known to them, that the applicant possesses all of the qualifications required for admission to the bar of this court, that they have examined the application, and that the applicant's personal and professional character and standing are good;
 - (iv) an oath in the form prescribed in RCFC 83.1(b)(3) signed by the applicant and administered by an officer authorized to administer oaths in the U.S. state, territory, or possession or the District of Columbia where the oath is given, or as permitted by 28 U.S.C. § 1746; and
 - (v) payment of the admission fee set forth in RCFC 83.1(b)(4).
- (3) **Oath.** An applicant for admission to practice before this court must take the following oath, to be administered by the presiding judge or by the clerk:
- I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and that I will conduct myself in an upright manner as an attorney of this court.
- (4) **Fee.** Unless the applicant is employed by this court or is an attorney representing the United States before this court, the applicant must pay the admission fee in

accordance with the fee schedule posted on the court's website at www.uscfc.uscourts.gov. The admission fee includes \$100.00 above the amount prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1926(a). The clerk will deposit this additional sum in a fund to be used by the court for the benefit of the members of the bench and the bar in the administration of justice.

(5) **Notice to the Court.** An attorney admitted to the bar of this court must notify the clerk within 30 days of:

(A) any change in the attorney's address; and

(B) any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court is based. If the clerk receives notice that, for reasons not listed in RCFC 83.2, an attorney has withdrawn, resigned, or retired from such jurisdiction, failed to renew his or her admission to such jurisdiction, or is otherwise ineligible to practice law in such jurisdiction, the clerk will strike the attorney's name from the roll of members of the bar of this court.

(6) **Foreign Attorneys.**

(A) **In General.** Any person qualified to practice in the highest court of any foreign state may be specially admitted to practice before this court but only for purposes limited to a particular case; such person may not serve as the attorney of record.

(B) **Procedures.** A member of the bar of this court must file with the clerk a written motion to admit the applicant at least 7 days prior to the court's consideration of the motion. In the case of such an admission, an oath and fee are not required.

(c) **Attorney of Record.**

(1) **In General.** A party may have only one attorney of record in a case at any one time and, with the exception of a *pro se* litigant appearing under RCFC

83.1(a)(3), must be represented by an attorney (not a firm) admitted to practice before this court. Any attorney assisting the attorney of record must be designated "of counsel."

(2) **Signing Filings.** All filings must be signed in the attorney of record's name. Any attorney who is admitted to practice before this court may sign a filing in the attorney of record's name by adding the following after the name of the attorney of record: "by [the signing attorney's full name]." Such authorization to sign filings does not relieve the attorney of record from the provisions of RCFC 11.

(3) **Entering an Appearance.**

(A) **By Parties Other Than the United States.** The attorney of record for any party other than the United States must include on the initial pleading or paper the attorney's name, address, electronic mail address, and telephone number.

(B) **By the United States.** After service of the complaint, the attorney of record for the United States must promptly file with the clerk and serve on all other parties a notice of appearance setting forth the attorney's name, address, electronic mail address, and telephone number.

(C) **Changes in Contact Information.** An attorney of record must promptly file with the clerk and serve on all other parties a notice of any change in the attorney's contact information.

(4) **Substituting Counsel.**

(A) **By Parties Other Than the United States.**

(i) **In General.** Any party other than the United States may seek leave of the court to substitute its attorney of record at any time by filing a motion signed by the party or by the newly designated attorney along with an affidavit of appointment by such attorney.

(I) **With the Consent of the Previous Attorney.** If the previous attorney's consent is annexed to or indicated in

the motion, the clerk will automatically enter the substitution on the docket.

(II) Without the Consent of the Previous Attorney. If the motion is filed without the consent of the previous attorney, the previous attorney must be served with the motion and will have 14 days to show cause why the motion should not be allowed.

(ii) Death of the Previous Attorney. In the event of the death of the attorney of record, the party must promptly notify the court and move to substitute another attorney admitted to practice before this court.

(B) By the United States. The United States may substitute its attorney of record at any time by filing with the clerk and serving on all other parties a notice of appearance of the new attorney.

(5) Withdrawing Counsel. An attorney of record for a party other than the United States may not withdraw the attorney's appearance except by leave of the court on motion and after notice is served on the attorney's client.

(d) Honorary Bar Membership. Upon nomination by the chief judge and with the approval of the other judges, the court may present an honorary membership in the bar of this court to a distinguished professional of the United States or of another nation who is knowledgeable in the affairs of law and government in his or her respective country. The candidate for honorary membership will be presented at the bar in person and will receive a certificate of honorary bar membership.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, July 15, 2011, July 1, 2019, Aug. 3, 2020.)

Rules Committee Notes 2002 Revision

RCFC 83.1 has no FRCP counterpart. Former RCFC 83.1, titled "Content of Briefs or Memoranda; Length of Briefs or Memoranda," has been renumbered as RCFC 5.2. The renumbering of RCFC 83.1 was intended to reflect its more logical placement in the organizational structure of this court's rules.

The substance of the rule reflects the text of former RCFC 81, as modified. Paragraph (2) of subdivision (c) (formerly paragraph (d)(2) of RCFC 81) was amended to formalize the court's practice of allowing joint filings to be signed by one counsel, on behalf of both counsel, when authorized to do so by opposing counsel. Also, subdivision (e) of former RCFC 81 (relating to attorneys' fees and expenses) was not retained as part of this rule but was, instead, incorporated into RCFC 54(d)(2).

In addition, former General Order No. 15, titled "Honorary Bar Membership," was slightly modified and moved to new subdivision 83.1(d).

2005 Amendment

RCFC 83.1(b)(4) (Fee for Admission) has been amended to set forth the practice, under guidelines approved by the Judicial Conference of the United States, of adding an amount to the admission fee set pursuant to 28 U.S.C. § 1926(a) for deposit into a fund to be used by the court for the benefit of the members of the bench and the bar in the administration of justice.

2006 Amendment

Subdivision 83.1(b)(2)(A) (Admission to Practice Upon Oral Motion) has been amended to provide some flexibility respecting when motions for admission to practice will be heard upon oral motion.

2008 Amendment

The language of RCFC 83.1 has been amended to conform to the general restyling of the FRCP.

2010 Amendment

RCFC 83.1 has been amended to restate the qualifications for admission to practice before the court (paragraph (b)(1)) and the procedures for admission, whether by oral motion or by verified application (paragraph (b)(2)). Specifically,

admission to the highest court of any U.S. state, territory, or possession or the District of Columbia will be recognized as the only acceptable qualification for admission to practice before this court and confirmation of an applicant's admission status will require submission of a current certificate of good standing prepared by the clerk of such court.

In addition, the time period of 3 days formerly set forth in RCFC 83.1(b)(5)(B) has been changed to 7 days in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

2011 Amendment

RCFC 83.1(a) has been amended to clarify that eligibility to practice before this court requires that an attorney be a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia as well as a member in good standing of this court's own bar.

In addition, subdivision (b) has been amended by adding a new paragraph (5) requiring an attorney admitted to practice before this court to provide the clerk with timely notice of any change in the attorney's address and any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court was based. To accommodate the addition of new paragraph (5), former paragraph (5) ("Foreign Attorneys") has been renumbered as paragraph (6).

Finally, subparagraphs (c)(3)(A) and (B) have been amended to require the inclusion of an electronic mail address by the attorney of record for any party.

2019 Amendment

RCFC 83.1(c)(3)(A) and (B) have been amended to eliminate the references to facsimile number.

2020 Amendment

RCFC 83.1(a)(2)(B) has been amended to clarify that the attorney of record for any party may request, either orally or by written motion, that an attorney be permitted to participate *pro hac vice*.

RCFC 83.1(b) has been amended to reflect that applications for admission to practice before

the court are submitted electronically. Item (b)(2)(A)(ii) ("By Oral Motion in a Proceeding Outside Washington, DC") has also been deleted as unnecessary.

In addition, RCFC 83.1(b)(5) has been amended to require that an attorney notify the clerk within 30 days of any change in the attorney's address and of any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court is based.

Finally, RCFC 83.1(b)(5)(B) has been expanded to authorize the clerk to automatically strike an attorney's name from the roll of members of the bar of this court if the clerk receives notice that, for reasons not listed in RCFC 83.2, the attorney has been ineligible to practice law in the jurisdiction upon which the attorney's admission to the bar of this court is based.

Rule 83.2. Attorney Discipline

(a) In General. The United States Court of Federal Claims, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following rule for attorney discipline.

(b) Definitions. For purposes of this rule, the following definitions apply:

(1) Another Court. Another court is defined as any court of the United States, the District of Columbia, or any U.S. state, territory, possession, or commonwealth.

(2) Serious Crime. A serious crime is defined as:

(A) any felony; or

(B) any lesser crime whose necessary elements, as determined by the statutory or common law definition of the crime in the jurisdiction where the conviction occurred, include:

(i) interference with the administration of justice;

(ii) false swearing;

(iii) misrepresentation;

(iv) fraud;

(v) willful failure to file an income tax return;

(vi) deceit;

(vii) bribery;

- (viii) extortion;
 - (ix) misappropriation;
 - (x) theft; or
 - (xi) an attempt, conspiracy, or solicitation of another to commit a serious crime.
- (c) **Grounds for Discipline.** An attorney admitted to practice before this court, including an attorney admitted for the purpose of a particular proceeding pursuant to RCFC 83.1(a)(2), may be disciplined under this rule on any of the following grounds:
- (1) the conviction by another court of a serious crime as defined in RCFC 83.2(b)(1) and (2);
 - (2) an act, omission, or impairment that results in the attorney's disbarment or suspension by another court;
 - (3) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending;
 - (4) failure to comply with the terms of this rule, including failure to notify the court in accordance with RCFC 83.2(e); or
 - (5) any conduct before the court that is unbecoming a member of the bar of this court.
- (d) **Types of Discipline.**
- (1) ***In General.*** An attorney disciplined for conduct identified in RCFC 83.2(c) may be:
 - (A) disbarred from the court;
 - (B) suspended from practice before the court;
 - (C) publicly or privately reprimanded;
 - (D) required to provide restitution or pay monetary sanctions; or
 - (E) subjected to other such disciplinary action as the circumstances may warrant.
 - (2) ***Sanctions Under Other Provisions.*** Assessment of damages, costs, expenses, or attorney fees under RCFC 11, 16, 37, or 45, 28 U.S.C. § 1927, or similar statutory provisions are not disciplinary sanctions within the meaning of this rule and are not governed by this rule.
- (e) **Attorney's Duty to Notify the Court of a Conviction or Discipline Imposed by Another Court.**
- (1) ***In General.*** An attorney admitted to practice before this court must notify the clerk in writing within 14 days of issuance of an order establishing the attorney's:
 - (A) conviction by another court of a serious crime;
 - (B) disbarment or suspension by another court; or
 - (C) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.
 - (2) ***Contents of Notification.*** The notification must include:
 - (A) the name of the court imposing the conviction or discipline;
 - (B) the date of the court's action;
 - (C) the docket number;
 - (D) the offense committed;
 - (E) the discipline imposed; and
 - (F) the attorney's current address.
- (f) **Standing Panel on Attorney Discipline.**
- (1) ***In General.*** All disciplinary matters will be referred to a Standing Panel on Attorney Discipline.
 - (2) ***Members.***
 - (A) ***Appointment.*** The chief judge will appoint three judges to the standing panel to serve staggered three-year terms, with the initial appointments being for one-, two-, and three-year terms and all subsequent appointments being for three-year terms.
 - (B) ***Eligibility for Reappointment.*** A judge who has served on the standing panel for three years will not be eligible for appointment to another term until three years after the termination of his or her last appointment.
 - (C) ***Chairperson.*** The standing panel will designate one of its members to serve as the chairperson.
 - (3) ***Unavailability of a Standing Panel Member.***

(A) **To Hear a Particular Matter.** If a member of the standing panel is unable or unavailable to hear a particular matter, the chief judge will appoint another judge to be a member of the panel for that matter.

(B) **To Complete the Member's Term.** If a member of the standing panel is unable to complete the remainder of his or her term, the chief judge will appoint another judge to serve the remainder of the term.

(g) Referrals, Investigations, and Disciplinary Proceedings.

(1) **Docketing.** Consistent with RCFC 83.2(l), the clerk will maintain an attorney disciplinary docket and will assign a number to each matter at the time of referral to the standing panel.

(2) **Referring Matters to the Standing Panel.** The clerk must refer to the standing panel:

(A) any information received from another court concerning a member of this court's bar involving disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending; and

(B) any complaint regarding attorney misconduct received from:

(i) a judge or special master of the court; or

(ii) a member of the public.

(3) **Review by the Standing Panel.**

(A) Upon receiving information from another court or a member of the public pursuant to RCFC 83.2(g)(2), the standing panel will review the allegation and determine whether the matter merits further investigation. If the standing panel concludes that the allegation on its face is insufficient to warrant the imposition of any discipline, the standing panel will dismiss the matter without further proceedings by issuing a final order.

(B) Upon receiving information from a judge or special master of the court pursuant to RCFC 83.2(g)(2), the

standing panel will immediately open an investigation.

(4) **Notifying the Attorney.** When the standing panel determines an investigation is warranted pursuant to RCFC 83.2(g)(3), the clerk must provide written notice of the complaint.

(5) **Appointing Investigatory Counsel.**

(A) **In General.** The standing panel may appoint the court's staff attorney or other appropriate court personnel to investigate allegations of misconduct.

(B) **Role of Investigatory Counsel.** In conducting a disciplinary investigation, the investigatory counsel may:

(i) review the complaint and any relevant documents available at the court or provided by the complainant;

(ii) interview witnesses, including the complainant and the attorney subject to the proceeding;

(iii) provide to the standing panel, at the panel's request, a report detailing the investigatory counsel's findings; and

(iv) take any additional steps that are reasonably necessary to effectuate the investigation.

(C) **Outside Counsel.** In addition to, or as an alternative to, the procedure described in subparagraphs (A) and (B), at any stage of a proceeding the standing panel may, in its discretion, appoint outside counsel to investigate and/or prosecute allegations of misconduct under this rule.

(6) **Dismissal; Show Cause Order.**

(A) **Dismissal.** If the standing panel concludes that the finding of the investigation are insufficient to warrant further disciplinary proceedings, the panel will dismiss the matter by issuing a final order.

(B) **Issuing and Serving a Show Cause Order.** To initiate further disciplinary proceedings, the standing panel must:

- (vi) issue a show cause order describing the attorney's alleged misconduct and directing the attorney to show cause why a specific discipline should not be imposed or why a discipline to be determined at a later date should not be imposed; and
 - (vii) serve the order on the attorney in accordance with RCFC 83.2(m).
- (7) **Presumed Discipline.** Unless the standing panel concludes that a different discipline may be appropriate, the following discipline is presumed to apply and should be identified in the show cause order:
- (A) **For Conviction by Another Court of a Serious Crime.** Disbarment is the presumed discipline for the conviction by another court of a serious crime.
 - (B) **For Disbarment or Suspension by Another Court.** Reciprocal disbarment or suspension is the presumed discipline for an act, omission, or impairment that results in an attorney's disbarment or suspension by another court.
 - (C) **For Disbarment on Consent or Resignation From the Bar of Another Court.** Reciprocal disbarment is the presumed discipline for an attorney's disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.
 - (D) **For Conduct Unbecoming a Member of the Bar of this Court.** There is no presumed discipline for conduct that is unbecoming a member of the bar of this court; the standing panel will determine the appropriate discipline.
- (8) **Responding to a Show Cause Order.** Unless otherwise ordered, an attorney must file any response to a show cause order within 30 days after service of the order. Any request for a hearing must be included in the response.
- (h) **Proceedings Before the Standing Panel.**
- (1) **Representation by Counsel.** An attorney may be represented by counsel in any disciplinary proceeding before the standing panel.
 - (2) **Suspending an Attorney.** The standing panel will immediately suspend an attorney from practicing before the court upon notice that an attorney:
 - (A) has been convicted by another court of a serious crime; or
 - (B) has been disbarred, suspended, disbarred on consent, or resigned from the bar of another court while an investigation into an allegation of misconduct is pending,
 - (3) **Record of the Proceeding.**
 - (A) **Content.** The record will consist of the show cause order, the response to the order, all evidentiary materials, and all briefs submitted to or considered by the standing panel or the court.
 - (B) **Withholding Information.** Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation purposes.
 - (C) **Copying and Responding to Documents.** If the record includes documents in addition to the show cause order and the response, an attorney must be given the opportunity to inspect and copy the additional documents at his or her expense and, if the attorney contests the charge but has not requested a hearing, must be given the opportunity to file a supplemental response.
 - (4) **Issuing a Final Order in an Uncontested Matter.** If an attorney does not respond to a show cause order issued pursuant to RCFC 83.2(g)(6) or does not object to the imposition of discipline, the standing panel may issue a final order imposing such discipline.
 - (5) **Presumptions.**
 - (A) **For Conviction by Another Court of a Serious Crime.** When an attorney

has been convicted by another court of a serious crime, the standing panel:

- (i) will treat the conviction as conclusive evidence of the commission of that crime, 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; and
 - (ii) will limit further proceedings to a determination of the final discipline to be imposed.
- (B) For Disbarment, Suspension, Disbarment on Consent, or Resignation From the Bar of Another Court.** The standing panel will treat an attorney's disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending as conclusive evidence that the misconduct in fact occurred and that the discipline was appropriate unless the standing panel concludes that:
- (i) the procedure was so lacking in notice or an opportunity to be heard that it constituted a deprivation of due process;
 - (ii) there was such an infirmity of proof establishing the misconduct that this court could not, consistent with its duty, accept as final the conclusion on the matter;
 - (iii) the imposition of the same discipline by this court would result in grave injustice; or
 - (iv) the misconduct established is deemed to warrant substantially different discipline.
- (6) Conducting a Hearing in a Contested Matter.**
- (A) In General.** If an attorney requests a hearing in his or her response to a show cause order or in a supplemental response filed pursuant to RCFC 83.2(h)(3)(C), the standing

panel will schedule a hearing and will determine whether the submission of evidence, including the calling of witnesses, is appropriate.

- (B) Notice of Hearing.** An attorney must be given at least 30 days' notice of the time, date, and place of the hearing.
 - (C) Subpoena.** The standing panel may compel by subpoena:
 - (i) the attendance of witnesses, including the attorney subject to the proceeding; and
 - (ii) the production of documents.
 - (D) Cross-Examining Witnesses.** The attorney subject to the proceeding must be afforded an opportunity to cross-examine any witnesses called before the standing panel and to introduce evidence in defense or mitigation.
 - (E) Recording.** A hearing will be digitally recorded unless an attorney arranges to have a reporting service present at his or her own expense.
 - (F) Post-Hearing Brief.** The standing panel may order the filing of a post-hearing brief, which may include, at the panel's direction, either a statement of facts or proposed findings of fact. Post-hearing briefing is not a matter of right.
 - (G) Issuing a Final Order.** Following the conclusion of the disciplinary proceeding, the standing panel will issue a final order.
- (7) Reporting a Final Order.** The standing panel may:
- (A)** direct the attorney or the clerk to send a copy of the final order to all other courts before which the attorney is admitted; and
 - (B)** direct the clerk to notify the National Disciplinary Data Bank of the discipline imposed.
- (i) Disbarment on Consent While Disciplinary Proceeding Is Pending.**
- (1) In General.** At an attorney's request and upon receipt of the affidavit required under RCFC 83.2(i)(2), the standing

panel may cease any investigation or proceeding being conducted under this rule and may enter an order disbaring the attorney on consent.

(2) **Affidavit.** To initiate a disbarment on consent, an attorney must file an affidavit stating that:

(A) the attorney is aware that an investigation or proceeding involving allegations of the attorney's misconduct is currently pending, along with a statement setting forth the specifics of those allegations;

(B) the attorney acknowledges that the material facts so alleged are true;

(C) the attorney consents to disbarment;

(D) the attorney is freely and voluntarily rendering consent, is not being subjected to coercion or duress, and is fully aware of the implications of such consent; and

(E) the attorney consents to disbarment because the attorney knows that if charges were brought on the matters under investigation, the attorney could not present a successful defense.

(j) **Review of the Standing Panel's Final Order.**

(1) **A Petition for Rehearing.**

(A) **In General.** An attorney may seek review of the standing panel's final order either by:

(i) filing a petition for rehearing by the standing panel; or

(ii) filing a combined petition for rehearing by the standing panel and suggestion for rehearing by the active judges of the court.

(B) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the standing panel has overlooked or misapprehended.

(C) **Time for Filing.** Any petition for rehearing must be filed within 14 days after entry of the standing panel's final order.

(2) **By Order of the Court.** A majority of the active judges may order that a

disciplinary matter be reheard by the active judges of the court.

(3) **Limitations on Rehearing by the Active Judges of the Court.** A rehearing by the active judges of the court is not favored and will generally not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance.

(k) **Reinstatement.**

(1) **A Petition for Reinstatement.**

(A) **Contents.** A petition for reinstatement must include:

(i) clear and convincing evidence that the petitioner is a person of good moral character and is in good standing with the bar of the highest court of any U.S. state, territory or possession or the District of Columbia;

(ii) clear and convincing evidence that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest; and

(iii) a certificate of good standing from the disciplining jurisdiction, if the petitioner seeks reinstatement following discipline in a reciprocal matter.

If a hearing is requested, such request must be included in the petition.

(B) **Time for Filing.**

(i) **After Conviction by Another Court of a Serious Crime.** If disbarment by this court was imposed based on an attorney's conviction by another court of a serious crime, the attorney may file a petition for reinstatement only when the conviction is vacated or reversed.

(ii) **After Disbarment or Suspension by Another Court.** If disbarment or suspension by this court was imposed reciprocally based on an attorney's disbarment or

suspension by another court, the attorney may file a petition for reinstatement only when the original discipline is lifted or expires.

(iii) **After Disbarment.** An attorney who has been disbarred as a result of conduct that is unbecoming a member of the bar of this court may file a petition for reinstatement any time after the expiration of three years from the effective date of the disbarment.

(iv) **After Suspension.**

(I) **When Reinstatement Is Not Automatic.** If the order suspending an attorney for conduct that is unbecoming a member of the bar of this court does not include an automatic right of reinstatement, such attorney may file a petition for reinstatement after the suspension period expires.

(II) **When Reinstatement Is Automatic.** If the original suspension order directs that reinstatement be automatic, the standing panel will issue an order reinstating the attorney within 14 days after receiving the attorney's affidavit of compliance with the suspension order.

(v) **Successive Petitions.** An attorney may not file a successive petition for reinstatement until the expiration of at least one year from the date of an adverse judgment on an earlier petition.

(C) **Fees and Costs.** The standing panel may direct that the petitioner provide an advance cost deposit in an amount set by the panel to cover anticipated costs of the reinstatement proceeding.

(2) **Conducting a Hearing.** The standing panel will conduct a hearing on a petition for reinstatement if:

(A) the petitioner requests such a hearing; and

(B) the panel is not satisfied based on the petition alone that reinstatement is appropriate.

(3) **Issuing a Final Order.** The standing panel will issue a final order, with or without a hearing, either:

(A) denying the petition for reinstatement; or

(B) granting the petition if the panel determines that the petitioner is fit to resume the practice of law and concludes, upon a showing of good cause, that it would be in the interest of justice to reinstate the petitioner.

(4) **Conditions of Reinstatement.**

(A) **In General.** Reinstatement may be conditioned on the payment of all or part of the costs of the reinstatement proceeding and on the making of partial or complete restitution to any parties harmed by the conduct that led to the petitioner's suspension or disbarment.

(B) **For Disbarment or Suspension of Five Years or More.** If the petitioner has been disbarred or suspended for five years or more, reinstatement may, in the discretion of the standing panel, additionally be conditioned on the furnishing of proof of competency and learning in law, including a certification by the bar examiners of a state or other jurisdiction of the petitioner's successful completion of an examination for admission to practice subsequent to the date of disbarment or suspension.

(I) **Access to Information.**

(1) **Confidentiality of an Ongoing Disciplinary Proceeding.** An ongoing disciplinary proceeding must be kept confidential unless:

(A) the attorney subject to the proceeding requests that the proceeding, including any hearing before the

standing panel and the record compiled in the matter pursuant to RCFC 83.2(h)(3), be open to the public; or

(B) the standing panel determines that it is appropriate to disclose the subject matter and status of proceeding where:

(i) the proceeding is based on the conviction by another court of a serious crime;

(ii) the proceeding is based on an allegation that has become generally known to the public; or

(iii) there is a need to notify a person or entity to protect the public, the legal profession, or the administration of justice.

(2) ***Confidentiality After Issuance of a Final Order.***

(A) ***When No Discipline or a Private Reprimand Is Imposed.*** If the final order imposes no discipline or imposes a private reprimand, the record of the proceeding compiled pursuant to RCFC 83.2(h)(3) must be kept confidential unless the attorney subject to the proceeding requests that it be made part of the public record.

(B) ***When an Attorney Is Disbarred on Consent.*** An order disbarring an attorney on consent must be made part of the public record, but the affidavit required under RCFC 83.2(i)(2) may not be publicly disclosed or made available for use in any other proceeding except on order of the standing panel.

(C) ***All Other Cases.*** If other discipline is imposed, the final order and the record of the proceeding must be made part of the public record at the time the final order is issued. The standing panel may, however, issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney subject to the proceeding.

(m) **Service.**

(1) ***Show Cause Order.*** A show cause order must be served in person or by registered or certified mail addressed to the attorney at the attorney's last known address. If service by registered or certified mail is ineffective, the standing panel must enter an order as appropriate to effect service.

(2) ***All Other Papers and Notices.*** Any other paper or notice is served by mailing the paper or notice to the attorney's last known address.

(n) **Retention of Authority.** Nothing contained in this rule should be construed to deny an individual judge the authority to maintain control over court proceedings, such as proceedings for contempt, issuance of public reprimands, or the imposition of fines of not more than \$1,000,000.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 13, 2009, July 15, 2011, Aug. 3, 2015, Aug. 1, 2017, Aug. 3, 2020.)

Rules Committee Notes

2002 Revision

Former RCFC 83.2 has been renumbered as RCFC 7.1. New RCFC 83.2 formerly appeared in these rules as Appendix F. The incorporation of former Appendix F into the main body of the court's rules reflects a more logical placement of its subject matter in the organizational structure of the court's rules.

2008 Amendment

The language of RCFC 83.2 has been amended to conform to the general restyling of the FRCP.

2009 Amendment

RCFC 83.2 has been rewritten in its entirety. The new rule is intended to simplify the court's procedures for the disposition of attorney discipline matters by providing for the appointment, by the chief judge, or a three-member standing panel of the court's judges to address all aspects of the disciplinary process, from the investigation of charges, to the conduct of hearings, to the determination of appropriate discipline.

2011 Amendment

RCFC 83.2(g)(3) has been expanded to include a subparagraph (C) authorizing the standing panel “in the event the court staff attorney or other appropriate court personnel is recused” to appoint outside counsel to investigate and/or prosecute allegations of misconduct.

In addition, subparagraph (h)(5)(E) has been clarified by changing the phrase “witnesses called by the standing panel” to read “witnesses called before the standing panel.”

2015 Amendment*

RCFC 83.2(e)(2) has been amended to require that the attorney’s notification to the court of a conviction or discipline include the attorney’s current address.

RCFC 83.2(g)(1) has been amended to clarify that the clerk will maintain a docket of a disciplinary proceeding from the time of referral to the standing panel.

A new RCFC 83.2(g)(3) has been added to distinguish—in the timing of the standing panel’s initiation of an investigation—between complaints arising outside the court and complaints arising within the court. A new paragraph (g)(4) has also been added to require that the attorney receive written notice of the complaint when the standing panel determines that an investigation is warranted.

Former RCFC 83.2(g)(3)(C) has been renumbered as subparagraph (g)(5)(C) and amended to provide that as an alternative to appointing a court staff attorney or other appropriate court personnel, the standing panel may appoint outside counsel to investigate and/or prosecute allegations of misconduct.

Former RCFC 83.2(g)(7) has been deleted as its substance has been incorporated into new paragraph (g)(3).

RCFC 83.2(h)(3)(A) has been amended to clarify that the record in a disciplinary proceeding does not include internal court communications. Additionally, former RCFC 83.2(h)(5)(C) (“Presumptions”) has been incorporated into new paragraph (h)(5) in recognition of the fact that the outlined presumptions apply more broadly than only in the context of hearings in contested matters.

RCFC 83.2(k)(1)(A) has been amended to specify that in reciprocal cases, a petition for

reinstatement must include a certificate of good standing from the disciplining jurisdiction.

*As corrected November 28, 2016.

2017 Amendment

RCFC 83.2(e)(1) has been amended to clarify that the 14-day deadline for notifying the court of an attorney’s conviction, disbarment, or suspension runs from the date of the court order imposing discipline.

The title of RCFC 83.2(g) has been amended to include the three distinct steps involved in an attorney discipline matter: a referral to the standing panel, an investigation by the standing panel, and further disciplinary proceedings conducted by the standing panel.

In addition, RCFC 83.2(g)(3)(A) and (B) have been amended to distinguish between disciplinary matters initiated in other courts or by members of the public and matters initiated by a judge or special master of the court.

Finally, RCFC 83.2(g)(6)(A) and (B) have been amended to establish that the standing panel has two options at the close of an investigation conducted pursuant to RCFC 83.2(g)(5): dismiss the matter or issue an order to show cause to initiate further proceedings before the standing panel.

2020 Amendment

RCFC 83.2(c)(2) and RCFC 83.2(g)(7)(B) have been amended to clarify that suspensions and disbarments on the basis of impairment are grounds for reciprocal discipline in this court.

Rule 83.3. Legal Assistance by a Law Student

(a) In General. A law student qualified under RCFC 83.3(b) may enter an appearance in this court on behalf of any party in a case provided that:

- (1) the party on whose behalf the student appears has consented in writing;
- (2) a supervising attorney, as defined in RCFC 83.3(d), has indicated approval in writing; and
- (3) the written consent and approval have been filed with the clerk.

(b) Eligibility. To make an appearance under this rule, a law student must:

- (1) be a student in good standing at a law school approved by the American Bar Association;
 - (2) have completed legal studies amounting to at least two semesters, or the equivalent thereof if the school operates on some basis other than a semester basis;
 - (3) have knowledge of the Rules of the United States Court of Federal Claims, the Federal Rules of Evidence, and the American Bar Association Model Rules of Professional Conduct;
 - (4) be enrolled for credit in a clinical program at an accredited law school that maintains malpractice insurance for its activities and conducts its activities under the direction of a faculty member of the law school;
 - (5) be certified by the dean of the law school as being of good character and of sufficient legal ability, and as being adequately trained in accordance with RCFC 83.3(b)(1)–(4) to fulfill the responsibilities of a legal intern to both the client and the court. Such certification must be filed with the clerk and may be withdrawn at any time by the dean upon written notice to the clerk;
 - (6) be certified by the chief judge to practice pursuant to this rule. Such certification may be withdrawn at any time by the chief judge or, in a given case, by the judge or special master before whom the law student has entered an appearance, without notice of hearing and without any showing of cause; and
 - (7) neither ask for nor receive any fee or compensation of any kind from the client on whose behalf service is rendered. This rule does not, however, prevent a lawyer, a legal aid bureau, a law school, or the government from paying compensation to an eligible law student or from making such charges for their services as may otherwise be proper, nor does it prevent any clinical program from receiving otherwise proper fees and expenses under RCFC 54(d)(2).
- (c) **Scope of Appearance.** A law student who has entered an appearance in a case may:
- (1) appear on the brief(s) and other written pleadings filed with the court, provided that the supervising attorney has read, approved, and co-signed all such documents;
 - (2) participate in all proceedings ordered by a judge or special master, including the taking of depositions, provided that the supervising attorney is present at all such proceedings;
 - (3) engage in all other activities on behalf of the client in all ways that a licensed attorney may, subject to the general direction of the supervising attorney; and
 - (4) make a binding commitment on behalf of the client provided that both the client and the supervising attorney have approved of such commitment.
- (d) **Supervising Attorney.** A supervising attorney under this rule will be deemed the attorney of record pursuant to RCFC 83.1(c) and must:
- (1) be a member in good standing of the bar of this court;
 - (2) be approved for such service by the dean of the law school at which the law student is enrolled;
 - (3) be certified by this court as a student supervisor;
 - (4) assist and counsel the student in activities allowed under this rule and review such activities with the student, to the extent appropriate under the circumstances, for the proper practical training of the student and the protection of the client;
 - (5) assist the student in the preparation of the case to the extent the supervising attorney considers necessary and be available for consultation with the client;
 - (6) be present with the student in all proceedings before a judge or special master;
 - (7) co-sign all pleadings and other documents filed with the court;
 - (8) supplement oral or written work of the student as necessary to ensure proper representation of the client;
 - (9) assume full professional responsibility for any guidance relating to any work undertaken by the student and for the quality of the student's work; and

(10) notify the dean of the law school at which the student is enrolled of any alleged failure on the part of the student to abide by the letter and spirit of this rule.

(e) **Retention of Authority.** Nothing in this rule should be construed to prevent a judge from establishing exceptions to the activities set forth in RCFC 83.3(c), or from limiting a student's participation in a particular case.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008.)

**Rules Committee Notes
2002 Revision**

RCFC 83.3 replaces former General Order No. 35, adopted on September 3, 1993. The only changes are stylistic or correct cross-references.

2008 Amendment

The language of RCFC 83.3 has been amended to conform to the general restyling of the FRCP.

Rule 83.4. Advisory Council

(a) **In General.** The United States Court of Federal Claims Advisory Council will advise the court on matters referred to it by the court or deemed relevant by the council's members pertaining to the administration of the court and the court's relationship to the bar and to the public.

(b) **Membership.** The council will consist of no fewer than 20 members, appointed by the chief judge to three-year terms, and must include representatives of all of the court's practice areas. The chief judge will designate one of these members as the chairperson and will additionally appoint one or more of the judges of the court as a liaison between the court and the council.

(c) **Organization.** The council will meet at such times and places as agreed to by its members. (The chief judge will provide facilities at the court to accommodate such meetings if necessary.) All members of the council, including the chief judge and the court's liaison judge[s], may attend meetings and participate in discussions, but only council members may vote on matters before the

council. Council members may designate officers and committees and take any other steps appropriate to conduct the council's business.

(d) **Recommendations.** The council may transmit its recommendations to the court informally or formally by letter to the chief judge. The court may consider any recommendation of the council and take such action as the court deems appropriate.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Aug. 3, 2015.)

**Rules Committee Notes
2002 Revision**

New RCFC 83.4 replaces General Order No. 7, which established the Advisory Council on April 5, 1983. In addition to minor stylistic and formatting changes, the new rule has increased the number of members allowed on the Council and makes the chief judge responsible for designating the chairperson.

2008 Amendment

The language of RCFC 83.4 has been amended to conform to the general restyling of FRCP.

2015 Amendment

RCFC 83.4(b) has been amended to delete the requirement limiting membership of the court's Advisory Council to members of the court's bar.

Rule 84. Forms [Abrogated in FRCP; retained in RCFC.]

Forms referenced in these rules are set forth in the Appendix of Forms.

(As revised and reissued May 1, 2002; as amended Aug. 1, 2016.)

**Rules Committee Note
2002 Revision**

RCFC 84 parallels in content its FRCP counterpart.

2016 Amendment

The title of RCFC 84 has been amended to reflect that its FRCP counterpart was abrogated, effective December 1, 2015.

Rule 85. Title

These rules may be cited as the Rules of the United States Court of Federal Claims.

(As revised and reissued May 1, 2002, as amended Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 85 has been changed to reflect the change in the court’s name.

2008 Amendment

The language of RCFC 85 has been amended to conform to the general restyling of the FRCP.

Rule 86. Effective Date

These rules and any subsequent amendments are applicable to all proceedings pending at the time of the adoption of the revision or amendment or thereafter filed, except to the extent that the court determines that their application to a pending action would not be feasible or would work injustice, in which event the former procedure applies.

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 86 reflects the effective date of the most recent revision to the court’s rules. In addition, the rule adopts the practice of the FRCP to presume application of rule changes to pending cases.

Future revisions to these rules will be posted on the court’s website at www.uscfc.uscourts.gov.

2006 Amendment

The second sentence of RCFC 86 has been rewritten to clarify the rule’s essential purpose: that amendments to the court’s rules apply to all pending proceedings unless the application of

such amendments would not be feasible or would work injustice.

2008 Amendment

The language of RCFC 86 has been amended to conform to the general restyling of the FRCP.