

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 97-2

January 7, 1997

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Richard A. Siegel, Acting Associate General Counsel

SUBJECT: Rules Governing Misconduct by Attorneys
or Party Representatives

The Board has recently published the attached revisions to its Rules and Regulations governing misconduct by attorneys and party representatives. These rule changes, which are effective January 13, 1997, consolidate the current misconduct rules applicable to unfair labor practice and representation proceedings into a single rule, clarify the standards of conduct, revise the current rules to cover such misconduct at any stage of an Agency proceeding, and set forth the procedures for processing allegations of misconduct. In addition, Section 102.21 of the Board's rules governing the filing of answers to unfair labor practice complaints has been modified to make that section's disciplinary provisions applicable to non-attorney party representatives as well as attorneys.

One of the major revisions to current practice under the revised rules is to allow the Board to take appropriate disciplinary action against attorneys or other representatives who have engaged in misconduct outside of hearings. Unlike the current rules, which only cover misconduct occurring during the course of a hearing, the new rules provide that misconduct by attorneys or party representatives will be subject to disciplinary sanction even if the misconduct occurs during the investigative, pre-hearing or compliance stage of the case.

The proposed rules retain the current standard for imposing suspension or disbarment as "misconduct of an aggravated nature." A provision has been inserted, however, which references the standards of ethical and/or professional conduct applicable to practitioners before the courts. The purpose of adding this provision is to codify the existing practice under the current rule and thereby make it clear that the Board will continue to be guided by such standards of ethical and/or professional conduct in applying the revised rules. By adding this provision, it is not the intent of the Board to change the standard for imposing discipline.

The revised rules also set forth the procedures for the processing of misconduct allegations. All such allegations will be investigated by the Associate General Counsel, Division of Operations-Management or his/her designee, who will have the usual investigatory powers under Section 11 of the Act. Following an investigation, a recommendation will be made to the General Counsel, who will make the determination whether to institute disciplinary proceedings against the attorney or party representative. The General Counsel's determination not to institute such proceedings will be final and nonreviewable. The rules also set forth the rights of the individual to receive notice and an opportunity to respond to the allegations prior to the issuance of any disciplinary complaint and to request a hearing. The procedures for conducting the hearing, where a hearing is found warranted, are also set forth.

Finally, the Board has revised Section 102.21 of its rules governing the filing of answers to unfair labor practice complaints. The current rule provides that the answer of a party represented by counsel shall be signed by at least one attorney of record; that the attorney's signature constitutes a certification by the attorney that he/she has read the answer, that there is good ground to support it to the best of his/her knowledge, information and belief, and it is not interposed for delay; and that the attorney may be subjected to appropriate disciplinary action for willful violations of the rule. Similar action may be taken if scandalous or indecent matter is inserted. Section 102.21 has been revised to make the foregoing provisions applicable to non-attorney party representatives as well as attorneys.

If you have any questions concerning this memorandum, please contact me or your Assistant General Counsel.

R.A.S.

Attachment

cc: NLRBU