

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; and
 - (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 and is 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.**

(A) **In General.** An attorney may be admitted to practice before this court by oral motion or by verified application.

(i) **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 10:00 a.m. 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 appear in the clerk's office no later than 9:30 a.m. to:

- (I) pay the admission fee set forth in RCFC 83.1(b)(4);
- (II) complete a "Form for Admission via Motion in Open Court" (available on the court's website); and
- (III) present 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 30

days and states that the applicant is a member in good standing of the bar of such court.

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.

(ii) **By Oral Motion in a Proceeding Outside Washington, DC.** A member of the bar of this court may make an oral motion to admit an applicant to the bar during a court proceeding before any judge of this court so long as the applicant:

- (I) provides the judge with a completed copy of a verified application for admission (see Appendix of Forms, Form 1); or
- (II) advises the judge of the applicant's qualifications as set forth in RCFC 83.1(b)(1), and represents that the applicant will promptly apply to the clerk for admission by verified application as provided in RCFC 83.1(b)(2)(a)(iii).

(iii) **By Verified Application.** An attorney may seek admission to practice before this court without appearing in person by presenting the clerk with a verified application for admission (see Appendix of Forms, Form 1) along with the following documentation:

- (I) 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 30 days and states that the applicant is a member in good standing of the bar of such court;
 - (II) 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; and
 - (III) 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.
- (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 provide the clerk with timely notice 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 was based.
 - (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, telephone number, and facsimile 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, telephone number, and facsimile 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.)

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.

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) or (b)(5), 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 or omission 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,