

of a state, or in another court of appeals or a district court is found, with minor variations, in the rules of ten circuits. The only other requirement in those circuits is that the applicant be of good moral and professional character. In the District of Columbia Circuit applicants other than members of the District of Columbia District bar or the Supreme Court bar must claim membership in the bar of the highest court of a state, territory or possession for three years prior to application for admission (D.C. Cir. Rule 7). Members of the District of Columbia District bar and the Supreme Court bar again excepted, applicants for admission to the District of Columbia Circuit bar must meet precisely defined prelaw and law school study requirements (D.C. Cir. Rule 7½).

A few circuits now require that application for admission be made by oral motion by a sponsor member in open court. The proposed rule permits both the application and the motion by the sponsor member to be in writing, and permits action on the motion without the appearance of the applicant or the sponsor, unless the court otherwise orders.

Subdivision (b). The provision respecting suspension or disbarment is uniform. Third Circuit Rule 8(3) is typical.

Subdivision (c). At present only Fourth Circuit Rule 36 contains an equivalent provision. The purpose of this provision is to make explicit the power of a court of appeals to impose sanctions less serious than suspension or disbarment for the breach of rules. It also affords some measure of control over attorneys who are not members of the bar of the court. Several circuits permit a non-member attorney to file briefs and motions, membership being required only at the time of oral argument. And several circuits permit argument pro hac vice by non-member attorneys.

NOTES OF ADVISORY COMMITTEE ON RULES—1986
AMENDMENT

The amendments to Rules 46(a) and (b) are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Rule 47. Local Rules by Courts of Appeals

(a) LOCAL RULES.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. §2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A court of appeals may regulate prac-

tice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

This rule continues the authority now vested in individual courts of appeals by 28 U.S.C. §2071 to make rules consistent with rules of practice and procedure promulgated by the Supreme Court.

NOTES OF ADVISORY COMMITTEE ON RULES—1995
AMENDMENT

Subdivision (a). This rule is amended to require that a generally applicable direction regarding practice before a court of appeals must be in a local rule rather than an internal operating procedure or some other general directive. It is the intent of this rule that a local rule may not bar any practice that these rules explicitly or implicitly permit. Subdivision (b) allows a court of appeals to regulate practice in an individual case by entry of an order in the case. The amendment also reflects the requirement that local rules be consistent not only with the national rules but also with Acts of Congress. The amendment also states that local rules should not repeat national rules and Acts of Congress.

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. The proscription of paragraph (2) is narrowly drawn—covering only violations that are not willful and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form.

Subdivision (b). This rule provides flexibility to the court in regulating practice in a particular case when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. §2072, and with the circuit's local rules.

The amendment to this rule disapproves imposing any sanction or other disadvantage on a person for non-compliance with such a directive, unless the alleged violator has been furnished in a particular case with actual notice of the requirement. There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language of the rule is amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Rule 48. Masters

(a) APPOINTMENT; POWERS. A court of appeals may appoint a special master to hold hearings,