RULE CHANGE 2021(07)

COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION

Rules 241, 242, 242.1, 242.2, 242.3, 242.4, 242.5, 242.6, 242.7, 242.8, 242.9, 242.10, 242.11, 242.12, 242.13, 242.14, 242.15, 242.16, 242.17, 242.18, 242.19, 242.20, 242.21, 242.22, 242.23, 242.24, 242.25, 242.26, 242.27, 242.28, 242.29, 242.30, 242.31, 242.32, 242.33, 242.34, 242.35, 242.36, 242.37, 242.38, 242.39, 242.40, 242.41, 242.42, 242.43, 243, 243.1, 243.2, 243.3, 243.4, 243.5, 243.6, 243.7, 243.8, 243.9, 243.10, 243.11, 243.12, 243.13, 244, 244.1, 244.2, 244.3, 244.4, 251, 251.2, 251.3, 251.4, 251.5, 251.6, 251.7, 251.8, 251.8.5, 251.8.6, 251.9, 251.10, 251.11, 251.12, 251.13, 251.14, 251.15, 251.16, 251.17, 251.18, 251.19, 251.20, 251.21, 251.22, 251.23, 251.27, 251.28, 251.29, 251.30, 251.31, 251.32, 251.33, 251.34, and 253
AND Rules 250.3, 250.7, 254, and 255

~~CHAPTER 20. COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION, AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION~~

CHAPTER 20: RULES GOVERNING LAWYER DISCIPLINE AND DISABILITY PROCEEDINGS, PROTECTIVE APPOINTMENT OF COUNSEL, CONTINUING LEGAL AND JUDICIAL EDUCATION, ATTORNEYS' FUND FOR CLIENT PROTECTION, AND LAWYER ASSISTANCE PROGRAMS

Rule 241. Terminology

For purposes of C.R.C.P. 242 through C.R.C.P. 244, the following definitions apply:

"Administrative fee" is an amount equal to the civil filing fee in Colorado district courts, which is assessed to defray the costs of proceedings under C.R.C.P. 242.

"Advisory Committee" refers to the Supreme Court Advisory Committee on the Practice of Law, as identified in C.R.C.P. 242.3.

"Complaining witness" means a person who submits a request for investigation to the Regulation Counsel under C.R.C.P. 242.13(a)(1).

"Conviction" refers to any determination in a criminal matter, including at a federal, state, municipal, or other level, that a person is guilty, whether the determination rests on a verdict of guilty, a judicial finding of guilt, a plea of guilty, an Alford plea, or a plea of nolo contendere, irrespective of (1) whether entry of judgment or imposition of the sentence is suspended or deferred by the court, (2) whether the person is appealing the determination, and (3) whether sentencing has occurred.

"Costs" are those costs made available in civil cases, and may include travel expenses incurred by Hearing Board members and witnesses, fees for court reporters, fees for expert witnesses, and fees for independent medical examinations. "Costs" may also include expenses incurred during an investigation.

"Crime" refers to any offense that is punishable by imprisonment.

"Disciplinary proceeding" means any investigative or judicial proceeding under C.R.C.P. 242 except (1) preliminary investigations under C.R.C.P. 242.13 and (2) proceedings involving nondisciplinary suspensions under C.R.C.P. 242.23 and C.R.C.P. 242.24.

"Expunge" and "expungement" refer to the destruction of all files, records, and other items of any type in a given proceeding.

"Final decision" means an order entered or opinion issued under C.R.C.P. 242.23 (decision on petition for or reinstatement from nondisciplinary suspension based on noncompliance with child support or paternity order), C.R.C.P. 242.31 (disciplinary opinion), C.R.C.P. 242.39 (opinion on petition for disciplinary reinstatement or readmission), C.R.C.P. 243.6 (decision on transfer to disability inactive status), or C.R.C.P. 243.10 (decision on petition for reinstatement from disability inactive status), or a dispositive order entered by the Presiding Disciplinary Judge under C.R.C.P. 12 or 56 that imposes a sanction or dismisses a disciplinary or disability proceeding.

"Including" means including but not limited to.

"Lawyer" means any person who is or has been (1) licensed to practice law or otherwise authorized to practice law in any jurisdiction in the United States; (2) a "foreign attorney" as defined in C.R.C.P. 205.5(1); or (3) a "foreign legal consultant" as defined in C.R.C.P. 204.2. The terms "lawyer" and "attorney" are used interchangeably.

"Law firm" refers to a partnership, professional company, sole proprietorship, or other entity through which any lawyer renders legal services; it also refers to a corporation, organization, or government office in which the lawyer renders legal services.

"Mail" and "mailing" mean the sending of a document or other item through the U.S. Postal Service, through a commercial delivery service, or by electronic means.

"Notice," "notify," and derivatives of those terms are addressed in C.R.C.P. 242.42(a).

"Proceeding," for purposes only of C.R.C.P. 242, means any investigative or judicial proceeding under C.R.C.P. 242, including preliminary investigations under C.R.C.P. 242.13 and matters involving nondisciplinary suspensions under C.R.C.P. 242.23 and C.R.C.P. 242.24.

"Regulation Committee" refers to the Legal Regulation Committee, as identified in C.R.C.P. 242.4.

"Regulation Counsel" refers to the Attorney Regulation Counsel, as identified in C.R.C.P. 242.5.

"Respondent" means a lawyer in a disciplinary proceeding under C.R.C.P. 242.

"Restitution" means the return of fees, money, or other things of value that were paid or entrusted to a lawyer.

"Rules Governing the Practice of Law" refers to Chapters 18 through 20 of the Colorado Rules of Civil Procedure.

"Serious crime" means any felony; any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of

justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; an attempt or conspiracy to commit such a crime; or solicitation of another to commit such a crime.

"Supreme court" refers to the Colorado Supreme Court.

"This part" means a grouping of several sections of a rule under a Roman numeral heading, for example "Part VIII. Appeals to the Supreme Court."

"This rule" means all sections of the broader rule in which the reference is found, for example C.R.C.P. 242 or C.R.C.P. 243.

"This section" means a single section of a rule, for example C.R.C.P. 242.1.

"This subsection" means a portion of a section, for example C.R.C.P. 242.1(a) or C.R.C.P. 242.1(a)(1).

"Tribunal" means a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when, after the party or parties are given the opportunity to present evidence or legal argument, a neutral official renders a binding legal judgment directly affecting a party's interests in a particular matter.

Rule 242. Rules Governing Lawyer Disciplinary Proceedings

Preamble

The supreme court regulates the practice of law to promote the public interest as stated in the Preamble to the Rules Governing the Practice of Law. The following rules establish the procedures to determine, in the public interest, the appropriate resolution when a lawyer is alleged to have violated the Colorado Rules of Professional Conduct or engaged in other conduct that constitutes grounds for discipline.

Part I. Jurisdiction

Rule 242.1. Jurisdiction and Standards of Conduct

(a) Jurisdiction. Jurisdiction under this rule exists over the following persons:

(1) A lawyer admitted, certified, or otherwise authorized to practice law in Colorado, regardless of where the lawyer's conduct occurs or where the lawyer resides; and

(2) A lawyer not admitted to practice law in Colorado who provides or offers to provide any legal services in Colorado, including a lawyer who practices in Colorado pursuant to federal or tribal law.

(b) Applicable Rules and Standards of Conduct. The persons identified in subsection (a) above are governed by the Rules Governing the Practice of Law, including the Colorado Rules of Professional Conduct.

COMMENT

C.R.C.P. 242.1(a)(2) is intended to confer regulatory jurisdiction over lawyers who are domiciled in Colorado, who maintain a law office in Colorado, or who hold themselves out as practicing law in Colorado by virtue of using a Colorado address. The phrase "any legal services in Colorado" is intended to refer broadly to the place where the legal services are rendered or where their effects are felt.

Part II. Entities Within the Legal Regulation System

Rule 242.2. Supreme Court

The Colorado Supreme Court (supreme court) exercises jurisdiction over all matters arising under the Rules Governing the Practice of Law. The supreme court has plenary power to review any determination made in a proceeding under this rule and to enter any order in such a proceeding. The supreme court also has appellate jurisdiction as set forth in C.R.C.P. 242.33.

Rule 242.3. Advisory Committee

(a) Permanent Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is a permanent committee of the supreme court.

(b) Membership and Meeting Provisions.

(1) Members and Liaison Justices. Two supreme court justices serve as non-voting liaisons to the Advisory Committee. The Advisory Committee comprises up to 13 volunteer members, including a Chair and Vice-Chair. Members other than the Chair and Vice-Chair serve one term of up to seven years. The supreme court appoints the members. Diversity must be a consideration in making appointments. At least nine of the members must be lawyers admitted to practice in Colorado and at least two of the members must be nonlawyers. Members' terms should be staggered to provide, so far as possible, for the expiration each year of the term of at least one member. Members must include:

(A) The Chairs (or the annual designees) of the following committees: the Regulation Committee, the Law Committee, the Character and Fitness Committee, the Continuing Legal and Judicial Education Committee, and the Board of Trustees for the Colorado Attorneys' Fund for Client Protection;

(B) A member of the Colorado Bar Association's Ethics Committee;

(C) A member of the Standing Committee on the Rules of Professional Conduct; and

(D) A Colorado lawyer who has represented respondents in proceedings under this rule.

(2) Dismissal, Resignation, and Vacancy. Advisory Committee members serve at the pleasure of the supreme court, and the supreme court may dismiss them at any time. An Advisory Committee member may resign at any time. The supreme court will fill any vacancies.

(3) Chair and Vice-Chair. The supreme court appoints members of the Advisory Committee to serve as Chair and Vice-Chair. The Chair and Vice-Chair may serve in their respective roles for up to an additional seven years after their initial membership term, such that each may serve a total of 14 years on the Advisory Committee. The Chair and Vice-Chair must not represent a

party in a proceeding under this rule during the Chair's or Vice-Chair's term of service. The Chair and Vice-Chair serve at the pleasure of the supreme court.

(4) Quorum. A majority of the members of the Advisory Committee constitutes a quorum, and the action of a majority of those present and comprising a quorum constitutes the official action of the Advisory Committee.

(5) Reimbursement. Advisory Committee members are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Powers and Duties. The Advisory Committee is authorized and empowered to act in accordance with this rule, including by:

(1) Assisting the supreme court to make appointments under this rule, including appointments to the supreme court's permanent committees under the Rules Governing the Practice of Law and to the pool of Hearing Board members;

(2) Reviewing the productivity, effectiveness, efficiency, and resources of the legal regulation system, including the Office of the Presiding Disciplinary Judge, the Office of the Attorney Regulation Counsel, the Colorado Attorneys' Fund for Client Protection, the Colorado Lawyer Assistance Program, and the Colorado Attorney Mentoring Program, and to report findings and recommendations to the supreme court;

(3) Adopting practices needed to govern the internal operation of the Advisory Committee, subject to the supreme court's approval;

(4) Developing and overseeing programs consistent with the Preamble to the Rules Governing the Practice of Law;

(5) Periodically reporting to the supreme court on the operation of the Advisory Committee;

(6) Recommending to the supreme court proposed changes to the Rules Governing the Practice of Law and the CLJE Committee's Regulations Governing Mandatory Legal and Judicial Education, *see* C.R.C.P. 250.3(1);

(7) Recommending to the supreme court, under C.R.C.P. 253 and procedures adopted by the Advisory Committee, whether to approve lawyers' peer assistance programs; and

(8) Assisting in any matters the supreme court directs.

COMMENT

The Advisory Committee's powers and duties do not include making inquiries or providing oversight as to specific cases or matters. The Advisory Committee may develop protocols to govern other aspects of the legal regulation system. For example, the Advisory Committee has

protocols to govern the handling of complaints about the conduct of the Regulation Counsel and staff of the Regulation Counsel. The Advisory Committee's protocols may be found at the Regulation Counsel's website.

Rule 242.4. Legal Regulation Committee

(a) Permanent Committee. The Legal Regulation Committee (Regulation Committee) is a permanent committee of the supreme court.

(b) Membership and Meeting Provisions.

(1) Members. The Regulation Committee comprises at least nine members, including a Chair and Vice-Chair. At least six of the members must be lawyers admitted to practice in Colorado and at least two of the members must be nonlawyers. The supreme court appoints the members with the assistance of the Advisory Committee. Diversity must be a consideration in making appointments. Members serve one term of seven years. Members' terms should be staggered to provide, so far as possible, for the expiration each year of the term of at least one member. So far as possible, appointments should be made to ensure an odd number of members.

(2) Dismissal, Resignation, and Vacancy. Regulation Committee members serve at the pleasure of the supreme court, and the supreme court may dismiss them at any time. A Regulation Committee member may resign at any time. The supreme court will fill any vacancies.

(3) Chair and Vice-Chair. With the assistance of the Advisory Committee, the supreme court appoints the Chair and Vice-Chair from the membership of the Regulation Committee. The Chair and Vice-Chair may serve in their respective roles for up to an additional seven years after their initial membership term, such that each may serve a total of 14 years on the Committee. The Chair and Vice-Chair serve at the pleasure of the supreme court.

(4) Quorum. A majority of the members of the Regulation Committee constitutes a quorum, and the action of a majority of those present and comprising a quorum constitutes the official action of the Regulation Committee.

(5) Reimbursement. Regulation Committee members are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Powers and Duties. The Regulation Committee is authorized and empowered to act in accordance with this rule, including by:

(1) Making determinations in accordance with C.R.C.P. 242.16;

(2) Adopting practices needed to govern the internal operation of the Regulation Committee, subject to the supreme court's approval;

(3) Periodically reporting to the Advisory Committee on the operation of the Regulation Committee; and

(4) Recommending to the Advisory Committee proposed changes to C.R.C.P. 242.

(d) Disqualification. A Regulation Committee member must refrain from making determinations under C.R.C.P. 242.16 or otherwise taking part in a disciplinary proceeding in which a judge, similarly situated, would be required to disqualify. A Regulation Committee member must also refrain from making determinations under C.R.C.P. 242.16 or otherwise taking part in a disciplinary proceeding in which a lawyer associated with the member's law firm is in any way connected with the matter pending before the Regulation Committee.

(e) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or assist with investigations and prosecutions in accordance with C.R.C.P. 242.5(d).

Rule 242.5. Regulation Counsel

(a) Regulation Counsel. The supreme court appoints an Attorney Regulation Counsel (Regulation Counsel) who serves at the pleasure of the supreme court and who represents the People of the State of Colorado in proceedings under this rule.

(b) Qualifications. The Regulation Counsel must be a lawyer admitted to practice in Colorado with at least five years of experience in the practice of law. The Regulation Counsel must not hold other public office or engage in the private practice of law while serving as the Regulation Counsel.

(c) Powers and Duties. The Regulation Counsel, under a budget approved by the supreme court, is authorized and empowered to act in accordance with this rule, including by:

(1) Maintaining and supervising a permanent, central office for the filing and processing of requests for investigation in disciplinary matters and claims in Colorado Attorneys' Fund for Client Protection matters;

(2) Hiring and supervising a staff to carry out the duties of the Regulation Counsel;

(3) Adopting practices needed to govern the internal operation of the Office of the Regulation Counsel;

(4) Periodically reporting to the supreme court on the operation of the Office of the Regulation Counsel;

(5) Conducting investigations, dismissing matters, offering diversion, and reporting to the Regulation Committee;

(6) Prosecuting disciplinary actions, including reciprocal discipline actions, as provided in this rule;

(7) Negotiating dispositions of proceedings as provided in this rule;

(8) Prosecuting interim and nondisciplinary suspension proceedings as provided in this rule;

(9) Prosecuting contempt proceedings for violations of orders directing lawyers to cease practicing law and prosecuting other contempt proceedings under this rule;

(10) Participating in and presenting recommendations reflecting the public interest in reinstatement and readmission proceedings under this rule;

(11) Maintaining records of matters before the Regulation Committee;

(12) Recommending to the Advisory Committee any proposed changes to the Rules Governing the Practice of Law; and

(13) Performing such other duties as the supreme court may direct.

(d) Special Counsel. Special counsel appointed under C.R.C.P. 242.4(e) must act in accordance with this rule. When a special counsel is appointed, the special counsel is empowered in that proceeding to take all actions that fall within the scope of the appointment and that are normally entrusted to the Regulation Counsel.

(e) Former Regulation Counsel. Former Regulation Counsel or a former member of the Regulation Counsel's staff must not represent anyone in a proceeding that was pending under the Rules Governing the Practice of Law during that person's term of service.

COMMENT

C.R.C.P. 242.5(e) is intended to have a broader reach than Colo. RPC 1.11(a).

Rule 242.6. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The supreme court appoints one or more Presiding Disciplinary Judges to serve at the pleasure of the supreme court.

(b) Qualifications. The Presiding Disciplinary Judge must be a lawyer admitted to practice law in Colorado with at least five years of experience in the practice of law. The Presiding Disciplinary Judge must not hold other public office while serving as Presiding Disciplinary Judge.

(c) Powers and Duties of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge, under a budget approved by the supreme court, is authorized and empowered to act in accordance with this rule, including by:

(1) Maintaining and supervising a permanent, central office;

(2) Hiring and supervising a staff to carry out the duties of the Presiding Disciplinary Judge;

(3) Presiding over disciplinary and other proceedings as provided in Chapters 18-20, including by ruling on legal and other issues consistent with the general authority conferred upon courts under the Colorado Rules of Civil Procedure, administering oaths and affirmations in proceedings, imposing disciplinary sanctions on lawyers as provided in this rule, and reinstating or readmitting lawyers to the practice of law;

(4) Adopting practices needed to govern the internal operation of the Office of the Presiding Disciplinary Judge;

(5) Periodically reporting to the Advisory Committee on the operation of the Office of the Presiding Disciplinary Judge;

(6) Recommending to the Advisory Committee any proposed changes to the Rules Governing the Practice of Law;

(7) Recommending to the Advisory Committee appointments to the pool of Hearing Board members;

(8) Where issuance of a subpoena for use in another jurisdiction's disciplinary or disability proceeding has been approved in that jurisdiction, issuing a subpoena governed by C.R.C.P. 45 to compel the attendance of a witness or the production of documents in the Colorado county where the witness resides, or is employed, or elsewhere as agreed by the witness; and

(9) Performing such other duties as the supreme court may direct.

(d) Disqualification. The Presiding Disciplinary Judge must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify. No lawyer currently affiliated by employment with the Presiding Disciplinary Judge may represent anyone in a proceeding under the Rules Governing the Practice of Law so long as the Presiding Disciplinary Judge is serving in that role. If the Presiding Disciplinary Judge has been disqualified, the clerk of the Presiding Disciplinary Judge will select a presiding officer from among the available Colorado lawyers in the Hearing Board pool. The presiding officer must act in accordance with this rule. When a presiding officer is selected to serve in a proceeding under this rule, the presiding officer is empowered in that proceeding to take all actions normally entrusted to the Presiding Disciplinary Judge.

(e) Former Presiding Disciplinary Judges. A former presiding disciplinary judge or a former member of that judge's staff is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 242.7. Hearing Boards

(a) Authority. Hearing Boards are empowered to act in accordance with this rule.

(b) Membership Provisions.

(1) Members. The supreme court, with the assistance of the Advisory Committee, will appoint a diverse pool of Colorado lawyers and nonlawyers to the Hearing Board pool. Appointees serve terms of six years. Terms should be staggered to provide, so far as possible, for the regular expiration of the terms of an equal number of members. Appointees may serve no more than two consecutive terms.

(2) Dismissal, Resignation, and Vacancy. Members of the Hearing Board pool serve at the pleasure of the supreme court. Members of the Hearing Board pool may resign at any time. The supreme court may fill any vacancies.

(3) Reimbursement. Members of Hearing Boards are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Hearings Before Hearing Boards. A Hearing Board in a disciplinary proceeding comprises the Presiding Disciplinary Judge and two other members, one of whom must be a Colorado lawyer, who are selected at random by the clerk of the Presiding Disciplinary Judge from among the available members of the Hearing Board pool. If the original Hearing Board is not available to decide an issue entrusted to it in a later phase of a proceeding, a Hearing Board consisting of the Presiding Disciplinary Judge and two members of the Hearing Board pool may decide the issue.

(d) Disqualification. Members of Hearing Boards must refrain from taking part in a disciplinary proceeding in which a judge, similarly situated, would be required to disqualify. Hearing Board members must also refrain from taking part in a disciplinary proceeding where a lawyer associated with the member's law firm is in any way connected with the proceeding pending before the Hearing Board. Members of Hearing Boards must not represent a respondent in a proceeding under this rule during their term of service in the Hearing Board pool.

(e) Former Member of Hearing Board. A former Hearing Board member is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 242.8. Immunity

(a) Prohibition Against Lawsuit Based on Communication Under this Rule. A lawyer may not institute a civil lawsuit against any person based on a request for investigation, testimony in a proceeding under this rule, or other written or oral communications made in a proceeding under this rule to entities within the legal regulation system, those entities' members or employees, or persons acting on their behalf, including monitors and health care professionals.

(b) Immunity for Entities Within Legal Regulation System. All entities within the legal regulation system and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Part III. Scope

Rule 242.9. Grounds for Discipline

An act or omission that violates the Colorado Rules of Professional Conduct, this rule, or an order entered under this rule, or an act or omission that is grounds for discipline under rules in another jurisdiction, may constitute grounds for discipline.

Rule 242.10. Forms of Discipline and Other Dispositions

(a) Forms of Discipline. When grounds for discipline against a lawyer have been established, one of the following sanctions will be imposed in accordance with the American Bar Association Standards for Imposing Lawyer Sanctions, unless inconsistent with this rule:

(1) Disbarment. Disbarment is the revocation of a lawyer's license or authority to practice law in Colorado. A disbarred lawyer may not petition for readmission under C.R.C.P. 242.39 for at least eight years after the disbarment takes effect.

(2) Suspension. Suspension is the temporary removal of a lawyer's authority to practice law in Colorado, subject to the lawyer's reinstatement under C.R.C.P. 242.38 or C.R.C.P. 242.39. Suspension is imposed for a definite period of time not to exceed three years. A suspension may be stayed in whole or in part.

(3) Public Censure. Public censure is a published reprimand that declares a lawyer's conduct is grounds for discipline but that does not prohibit the lawyer from practicing law. Conditions may be attached to a public censure. Failure to comply with conditions constitutes grounds for discipline against the lawyer.

(4) Private Admonition. A private admonition is an unpublished reprimand that declares a lawyer's conduct is grounds for discipline but that does not prohibit the lawyer from practicing law. Conditions may be attached to a private admonition. Failure to comply with conditions constitutes grounds for discipline against the lawyer. Nothing in this rule precludes consideration and disclosure of the private admonition in a future disciplinary proceeding. A private admonition may be imposed in one of three ways:

(A) Admonition by Regulation Committee. The Regulation Committee may issue a letter privately admonishing a respondent under C.R.C.P. 242.16(a). When such a letter is issued, the proceeding, including the admonition, will remain confidential except as provided in C.R.C.P. 242.16(f).

(B) Admonition by Presiding Disciplinary Judge on Stipulation. The Presiding Disciplinary Judge may impose private admonition by approving a stipulation under C.R.C.P. 242.19. The stipulation is confidential. The Presiding Disciplinary Judge's order approving the stipulation and imposing the admonition is confidential. All other files and records relating to any phase of the proceeding are public, including the notice that the respondent was admonished, which must indicate whether any claims against the respondent were dismissed.

(C) Admonition in Opinion by Presiding Disciplinary Judge or Hearing Board. The Presiding Disciplinary Judge or a Hearing Board may impose private admonition by opinion after a hearing has been held. The opinion itself is confidential. All other files and records relating to any phase of the proceeding are public, including the notice that the respondent was admonished, which must indicate whether any claims against the respondent were dismissed.

(b) Other Dispositions Under this Rule. Other types of dispositions and orders under this rule include:

(1) Probation. A lawyer may be placed on probation in conjunction with a stayed suspension as provided in C.R.C.P. 242.18.

(2) Diversion. A lawyer may agree to participate in a diversion program under C.R.C.P. 242.17.

(3) Interim and Nondisciplinary Suspensions. A lawyer's license to practice law in Colorado may be suspended on a temporary basis as provided in C.R.C.P. 242.22 through C.R.C.P. 242.24.

(4) Restitution and Costs. A lawyer may be ordered to pay restitution and costs in conjunction with a disciplinary proceeding or a protective appointment of counsel proceeding.

(5) Readmission and Reinstatement. A lawyer may be readmitted from disbarment or reinstated from suspension as provided in C.R.C.P. 242.38 and C.R.C.P. 242.39.

(6) Contempt. A lawyer may be held in contempt as provided in C.R.C.P. 242.40.

(c) Disposition Under C.R.C.P. 232. A disbarred lawyer who is alleged to have violated a disbarment order may also be subject to a contempt proceeding under C.R.C.P. 232 (Rules Governing Unauthorized Practice of Law Proceedings).

COMMENT

A stayed suspension under this rule is imposed in conjunction with a period of probation. A lawyer is permitted to practice law during the "stayed" portion of a suspension. As an example, if a lawyer's license is suspended for one year, with three months served and nine months stayed upon completion of a two-year period of probation, the lawyer initially will be suspended for three months, then the lawyer normally will be reinstated subject to the conditions imposed for the two-year period of probation. If the lawyer is found to have violated a condition of probation during the two-year period of probation, the lawyer's license normally will be suspended for the

additional nine months under C.R.C.P. 242.18(f). A stayed suspension is an appropriate form of discipline only when the lawyer is eligible for probation under C.R.C.P. 242.18(b).

Rule 242.11. Duties to Report Misconduct and Convictions

(a) Judges' Reporting Duties. Judges' duties to report professional misconduct by a lawyer are governed by Rule 2.15 of the Colorado Code of Judicial Conduct. The clerk of any Colorado court in which a conviction was entered against a lawyer should transmit a certificate thereof to the Regulation Counsel within 14 days after the date of the conviction.

(b) Lawyers' Reporting Duties. Lawyers' duties to report professional misconduct by another lawyer or a judge are governed by Colo. RPC 8.3.

(c) Duty to Self-Report Charges and Convictions.

(1) Self-Reporting. A lawyer who is charged with a serious crime must notify the Regulation Counsel of the charges in writing within 14 days thereof. A lawyer who is convicted of a crime must notify the Regulation Counsel in writing of the conviction in writing within 14 days thereof.

(2) Traffic Offenses. The requirement to report convictions in subsection (c)(1) above does not apply to misdemeanor traffic offenses that do not involve the use of alcohol or drugs, or to traffic ordinance violations that do not involve the use of alcohol or drugs.

(d) Duty to Self-Report Discipline or Resignation in Another Jurisdiction. A lawyer subject to this rule who has been publicly disciplined in another jurisdiction, or who has resigned or otherwise voluntarily surrendered the lawyer's license to practice law in connection with a disciplinary proceeding in another jurisdiction, must notify the Regulation Counsel in writing of such action within 14 days of the order imposing public discipline or the resignation or surrender of license.

COMMENT

All judges who are lawyers, even those not subject to the Code of Judicial Conduct, have duties to report convictions under this rule, in addition to any duty set forth in the Colorado Rules of Judicial Discipline. See also CJC 1.1 with respect to judges. C.R.C.P. 242.11(d) is not intended to require reporting of reciprocal discipline by a lawyer who was reciprocally disciplined in another jurisdiction based on discipline originating in Colorado.

Rule 242.12. Rule of Limitation

Disciplinary sanctions or diversions may not be based on conduct reported more than five years after the date the conduct is discovered or reasonably should have been discovered. But there is

no rule of limitation where the allegations involve fraud, conversion, or conviction of a serious crime, or where the lawyer is alleged to have concealed the conduct.

Part IV. Investigation and Pre-Complaint Resolutions

Rule 242.13. Request for Investigation

(a) Requesting an Investigation. Requests for investigation, which cannot be made anonymously, may be made:

(1) By any person and directed to the Regulation Counsel;

(2) By a judge of any court of record and directed to the Regulation Counsel;

(3) By the Regulation Committee on its own motion and directed to the Regulation Counsel; or

(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the Regulation Committee.

(b) Preliminary Investigation.

(1) On receiving a request for investigation under subsection (a) above, the Regulation Counsel must conduct a preliminary investigation to decide:

(A) Whether the lawyer is subject to C.R.C.P. 242.1(a) and whether an allegation has been made that, if proved, would constitute grounds for discipline; and if so,

(B) Whether to formally investigate the matter under C.R.C.P. 242.14 or to address the matter by means of a diversion program under C.R.C.P. 242.17.

(2) If requested to do so, the lawyer must submit to the Regulation Counsel a written response to the allegations within 21 days. The Regulation Counsel may require the lawyer to provide a copy of the written response to the complaining witness, except when a protective order entered under C.R.C.P. 242.41(e) restricts the disclosure of information or when the Regulation Counsel otherwise determines that certain information should not be disclosed to the complaining witness.

(3) The Regulation Counsel's decision under subsection (b)(1) above is an exercise of discretion that may take into account numerous factors, including the availability of admissible and credible evidence to support the allegation, the presumptive form of discipline provided by the American Bar Association Standards for Imposing Lawyer Sanctions if the allegation is proven, and the likelihood that additional education of the lawyer will address any concerns of future misconduct. The Regulation Counsel's decision under subsection (b)(1) above is final. The Regulation Counsel will inform the complaining witness of the decision. The complaining witness is not entitled to review or appeal of that decision.

Rule 242.14. Formal Investigation of Allegations

(a) Commencement of Investigation.

(1) Initiation. A formal investigation may commence if the Regulation Counsel decides to investigate under C.R.C.P. 242.13(b)(1)(B) or if the Regulation Counsel receives notice that a lawyer has been convicted of a crime, other than serious crimes (which are addressed in C.R.C.P. 242.15(c)).

(2) Notice. When the Regulation Counsel commences a formal investigation under this section 242.14, the Regulation Counsel must give the respondent notice of the investigation and the allegations against the respondent.

(3) Response. If requested to do so, the respondent must submit to the Regulation Counsel a written response to the allegations within 21 days. The Regulation Counsel may require the respondent to provide a copy of the written response to the complaining witness, except when a protective order entered under C.R.C.P. 242.41(e) restricts the disclosure of information or when the Regulation Counsel otherwise determines that certain information should not be disclosed to the complaining witness.

(b) Procedures for Investigation.

(1) Investigator. A member of the Regulation Counsel's staff, a member of the Regulation Committee, or a special counsel appointed under C.R.C.P. 242.4(e) may act as investigator. The investigator must promptly investigate the allegations, which may include conducting interviews and procuring evidence.

(2) Subpoenas.

(A) Issuance. During an investigation, the Regulation Counsel or the Chair of the Regulation Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, and to compel the production of relevant documents and other evidence.

(B) Production of Required Records. A respondent must produce records required to be kept under Colo. RPC 1.15D in response to a subpoena duces tecum that is issued under this section 242.14 and that requests such records.

(C) Standards. Subpoenas issued under this section 242.14 and challenges thereto are subject to C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(c) Stipulation to Discipline or Diversion During Investigation. While a matter is under formal investigation, the respondent and the Regulation Counsel may enter into a stipulation to discipline as provided in C.R.C.P. 242.19 or to diversion as provided in C.R.C.P. 242.17. If a stipulation provides for diversion or private admonition, the parties must submit the stipulation to the Regulation Committee for approval. If a stipulation provides for public discipline, the parties must submit the stipulation to the Presiding Disciplinary Judge for approval. When a stipulation has been submitted and approved under this section 242.14, no determination or written report under subsection (d) below is required.

(d) Results of Investigation. After an investigation by the Regulation Counsel's staff, the Regulation Counsel must make a determination under C.R.C.P. 242.15. After an investigation conducted by an investigator who is not a member of the Regulation Counsel's staff, the investigator will submit a written report of investigation and recommendation to the Regulation Committee for a determination under C.R.C.P. 242.16.

COMMENT

For purposes of C.R.C.P. 45 a respondent subject to an investigation is considered a party, but a complaining witness is not considered a party.

Rule 242.15. Determination by Regulation Counsel

(a) Conclusion of Investigation. At the end of a formal investigation, the Regulation Counsel, using discretion, will take one of the following actions:

(1) Request that the Regulation Committee authorize the Regulation Counsel to file a complaint;

(2) Request that the Regulation Committee impose private admonition;

(3) Request that the Regulation Committee direct the matter to a diversion program;

(4) Request that the Regulation Committee place the matter in abeyance; or

(5) Dismiss the matter.

(b) Regulation Committee Review of Dismissal by Regulation Counsel. If the Regulation Counsel dismisses a matter at the end of a formal investigation, the Regulation Counsel must promptly notify the complaining witness and the respondent. If the complaining witness submits a request to the Regulation Counsel within 35 days of the notice, the Regulation Committee must review the Regulation Counsel's decision. If the Regulation Committee finds in such a review that the Regulation Counsel's decision to dismiss the matter was not an abuse of discretion, the Regulation Committee must sustain the dismissal and provide the complaining witness with a written explanation of its decision. If the Regulation Committee finds that the Regulation Counsel's decision was an abuse of discretion, the Regulation Committee must take action in accordance with C.R.C.P. 242.16(a)-(b).

(c) Direct Filing of Complaint. If the Regulation Counsel receives notice that a lawyer has been publicly disciplined in another jurisdiction or that a lawyer has been convicted of a serious crime, the Regulation Counsel may directly file a complaint against the lawyer as provided in C.R.C.P. 242.21 and C.R.C.P. 242.25(c), as applicable. Such proceedings are not governed by C.R.C.P. 242.13, C.R.C.P. 242.14, or subsection (a) above.

Rule 242.16. Determination by Regulation Committee

(a) Action By Regulation Committee. On receiving a request from the Regulation Counsel under C.R.C.P. 242.15 or a recommendation from another investigator under C.R.C.P. 242.14(d), the Regulation Committee must determine whether there is reasonable cause to believe that grounds for discipline exist and, using its discretion and evaluating the considerations listed in subsection (b) below, will take one of the following actions:

(1) Authorize the Regulation Counsel to file a complaint;

(2) Impose private admonition;

(3) Direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program;

(4) Place the matter in abeyance;

(5) Direct further investigation; or

(6) Dismiss the matter.

(b) Considerations in Taking Action. In making a determination under subsection (a) above, considerations for the Regulation Committee include:

(1) Whether it is reasonable to believe that misconduct warranting discipline can be proved by clear and convincing evidence;

(2) The level of injury or potential injury caused by the alleged misconduct;

(3) Whether the respondent previously has been disciplined; and

(4) Whether the alleged misconduct may warrant public discipline.

(c) Private Admonition by Regulation Committee.

(1) Contents. When the Regulation Committee privately admonishes a respondent, it must admonish the respondent in writing, state the basis for the admonition, and promptly notify the respondent of the admonition.

(2) Costs. On issuing a private admonition, the Regulation Committee must assess against the respondent the administrative fee and may assess against the respondent all or any part of the costs of the proceeding.

(3) Challenges. To challenge a private admonition by the Regulation Committee, a respondent must, within 21 days after notice of the admonition, submit a written demand that the Regulation Committee vacate the admonition. When the admonition is vacated, the Regulation Counsel may file a complaint against the lawyer. If a complaint is filed, a public disciplinary proceeding will go forward as otherwise provided in this rule.

(d) Notice to Respondent. After the Regulation Committee's decision to authorize the filing of a complaint, to direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program, to place a matter in abeyance, to direct further investigation, or to dismiss a matter, the Regulation Counsel must promptly notify the respondent of the decision.

(e) Respondent's Duty to Disclose to Law Firm. Within 14 days of receiving notice under subsection (d) above of the Regulation Committee's authorization to file a complaint, the respondent must disclose in writing that authorization to the respondent's current law firm as defined in C.R.C.P. 241 and, if different, to the respondent's law firm at the time of the alleged misconduct.

(f) Notice to Complaining Witness. Within 28 days after the Regulation Committee's decision to authorize the filing of a complaint, to direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program, or to dismiss a matter, the Regulation Counsel must notify the complaining witness of the decision. If the admonition has not been vacated at the end of the 21-day period provided in subsection (c)(3) above, the Regulation Counsel must notify the complaining witness that the respondent has been privately admonished. The contents of the private admonition may not be disclosed to the complaining witness.

Part V. Diversion, Probation, Stipulations, Resignation, and Reciprocal Discipline

Rule 242.17. Diversion

(a) Overview. Diversion is not a form of discipline. Diversion is designed to address lesser misconduct when a lawyer may benefit from guidance to improve the lawyer's skills or ethical infrastructure or to manage a behavioral health issue, including a mental health or substance use issue.

(b) Eligibility. A lawyer is eligible to participate in a diversion program only if it is unlikely that the lawyer will harm the public during the program, the Regulation Counsel can adequately supervise the terms of diversion, and the lawyer's participation in the program is likely to benefit the lawyer and serve the public interest. A matter generally will not be diverted under this section when:

(1) The presumptive form of discipline is greater than public censure under the American Bar Association Standards for Imposing Lawyer Sanctions;

(2) The conduct involves dishonesty, deceit, fraud, or misrepresentation, including misappropriation of funds or property of a client or another person;

(3) The conduct involves a serious crime;

(4) The conduct involves domestic violence, elder abuse, or child abuse;

(5) The conduct resulted in or is likely to result in a client's or another person's loss of money, legal rights, or property rights, unless restitution is made a term of diversion;

(6) The lawyer has been publicly disciplined in the last three years;

(7) The conduct is of the same nature as misconduct for which the lawyer has been disciplined in the last five years; or

(8) The conduct involves a pattern of similar misconduct.

(c) Diversion Agreement.

(1) Contents. If a lawyer agrees to an offer of diversion, the terms of the diversion must be set forth in a written agreement between the lawyer and the Regulation Counsel. The agreement must specify the general purpose of the diversion, the requirements of the diversion, how compliance will be monitored, the length of the diversion period, required payment of costs, and any required payment of restitution. Terms may include one or more of the following: mediation, fee arbitration, law office management assistance, continuing legal education courses, trust account school, ethics school, passing the multistate professional responsibility examination, referral to the Colorado Lawyer Assistance Program, assessment of and treatment for medical or

behavioral health issues including mental health and substance use issues, and monitoring of the lawyer's practice or accounting procedures. The Regulation Counsel will monitor the lawyer's compliance with the diversion agreement.

(2) Procedure.

(A) When the Regulation Counsel decides under C.R.C.P. 242.13 not to formally investigate a matter, the Regulation Counsel has discretion to offer the lawyer the opportunity to participate in a diversion program.

(B) After the Regulation Counsel has decided under C.R.C.P. 242.13 to formally investigate a matter but before the Regulation Counsel has filed a complaint, a diversion agreement must be submitted to the Regulation Committee for approval. If the Regulation Committee rejects the diversion agreement, the disciplinary proceeding will go forward as otherwise provided in this rule.

(C) In reviewing a matter presented by the Regulation Counsel under C.R.C.P. 242.16(a), the Regulation Committee may direct the Regulation Counsel to offer the respondent the opportunity to participate in a diversion program.

(D) After the Regulation Counsel has filed a complaint but before a hearing has been held, a diversion agreement must be submitted to the Presiding Disciplinary Judge for approval. If the Presiding Disciplinary Judge rejects a diversion agreement, the disciplinary proceeding will go forward as otherwise provided in this rule.

(3) Effect of Diversion. When a diversion agreement is approved, the underlying disciplinary proceeding is placed in abeyance pending successful completion of the diversion program.

(d) Costs and Administrative Fee. The respondent must pay the administrative fee and all costs incurred in connection with participating in a diversion program. If the Regulation Counsel prevails in a hearing before the Presiding Disciplinary Judge involving allegations that a respondent breached a diversion agreement, the respondent may be required to pay all or any part of the reasonable costs of the proceeding.

(e) Effect of Successful Completion of Diversion.

(1) Pre-complaint Matters. If the Regulation Counsel finds that the respondent successfully completed a diversion program in a matter in which a complaint was not filed, the Regulation Counsel must dismiss the matter and expunge the files and records thereof under C.R.C.P. 242.43.

(2) Post-complaint Matters. If the Regulation Counsel finds that the respondent successfully completed a diversion program in a matter in which a complaint was filed, the Regulation Counsel must promptly notify the Presiding Disciplinary Judge of the successful completion.

The Presiding Disciplinary Judge will dismiss the matter. The files and records of the matter will not be expunged.

(f) Breach of Diversion Agreement. Whether a diversion agreement has been breached is determined as follows:

(1) Diversion Agreement Entered After Preliminary Investigation. If the Regulation Counsel believes that a lawyer breached a diversion agreement that the Regulation Counsel offered at the conclusion of a preliminary investigation under C.R.C.P. 242.13, the Regulation Counsel must notify the lawyer and give the lawyer an opportunity to respond. The Regulation Counsel then may decide that the original agreement should remain in effect; offer to modify the diversion requirements; or terminate the diversion agreement, remove the proceeding from abeyance, and proceed with the disciplinary proceeding as otherwise provided in this rule.

(2) Diversion Agreement Approved by Regulation Committee. If the Regulation Counsel believes that a respondent breached a diversion agreement that was approved by the Regulation Committee under C.R.C.P. 242.16(a)(3), the Regulation Counsel must notify the Regulation Committee of the alleged breach and request relief. The Regulation Counsel must also notify the respondent, who must be afforded an opportunity to respond. Either party may request a hearing before the Presiding Disciplinary Judge.

(A) Hearings and Burden of Proof. At a hearing before the Presiding Disciplinary Judge, the Regulation Counsel has the burden by a preponderance of the evidence to establish a material breach of the diversion agreement and to justify the relief requested. The respondent has the same burden to establish that the breach was justified. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45.

(B) Report. After a hearing, the Presiding Disciplinary Judge will prepare a report setting forth findings of fact and recommendations for the Regulation Committee.

(C) Relief. The Regulation Committee may direct that the original agreement remain in effect; direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program with modified requirements; terminate the diversion agreement, remove the disciplinary proceeding from abeyance, and impose a private admonition; or terminate the diversion agreement, remove the disciplinary proceeding from abeyance, and authorize the Regulation Counsel to file a complaint.

(3) Diversion Agreement Approved by Presiding Disciplinary Judge. If the Regulation Counsel believes that a respondent breached a diversion agreement that was approved by the Presiding Disciplinary Judge under C.R.C.P. 242.17(c)(2)(D), the Regulation Counsel must notify the Presiding Disciplinary Judge of the alleged breach and request relief. The Regulation Counsel must also notify the respondent, who must be afforded an opportunity to respond. Either party may request a hearing before the Presiding Disciplinary Judge.

(A) Hearings and Burden of Proof. At a hearing before the Presiding Disciplinary Judge, the Regulation Counsel has the burden by a preponderance of the evidence to establish a material breach and to justify the relief requested. The respondent has the same burden to establish that a breach was justified. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45.

(B) Decision. After a hearing, the Presiding Disciplinary Judge will prepare findings of fact and render a decision. The Presiding Disciplinary Judge may terminate the diversion agreement and remove the disciplinary proceeding from abeyance or direct that the original agreement remain in effect.

(g) Confidentiality.

(1) Files and Records.

(A) Pre-complaint Matters. Files and records relating to a matter in which diversion is entered before a complaint is filed are not available to the public.

(B) Post-complaint Matters. Files and records relating to a matter in which diversion is entered after a complaint is filed, including an order dismissing the underlying case, are available to the public. But the diversion agreement itself and any order approving the diversion agreement are not available to the public.

(C) Publishing. For educational purposes, the Regulation Counsel or the Presiding Disciplinary Judge may publish anonymous summaries of matters in which diversion has been entered in pre-complaint or post-complaint matters so long as there is no reasonable likelihood that a reader will be able to ascertain the identity of the lawyer.

(2) Admissions of Misconduct. A lawyer's admissions of misconduct to a treatment provider or a practice monitor while in a diversion program are confidential, but only if the misconduct occurred before the lawyer entered the diversion program.

Rule 242.18. Probation

(a) Overview. Probation is a form of discipline that allows a respondent who has been found to have committed misconduct to continue practicing law subject to supervision when the respondent would benefit from conditions designed to improve the respondent's skills or ethical infrastructure or to manage a behavioral health issue, including a mental health or substance use issue. An order of probation must specify the conditions of probation. Probation must be imposed for a specified period of time in conjunction with a suspension, which may be stayed in whole or in part. A period of probation must not exceed three years, unless the Presiding Disciplinary Judge grants an extension on motion by either party.

(b) Eligibility. Probation may be imposed only when a respondent:

(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;

(2) Is able to practice law without undermining public confidence in the legal system; and

(3) Has not committed misconduct for which the presumptive form of discipline is disbarment.

(c) Conditions. Conditions must take into consideration the nature and circumstances of the respondent's misconduct and the respondent's history and health status. A mandatory condition of probation is that the respondent must not commit further violations of the Colorado Rules of Professional Conduct during the period of probation. Other conditions may include one or more of the following:

(1) Periodic reporting to the Regulation Counsel;

(2) Monitoring of the respondent's law practice or accounting procedures;

(3) Establishing a relationship with a lawyer-mentor;

(4) Satisfactory completion of a course of study;

(5) Achieving a passing score on the multistate professional responsibility examination;

(6) Payment of restitution;

(7) Evaluation or treatment of medical or behavioral health issues, including mental health or substance use issues;

(8) Evaluation or treatment in a program for disorders related to sexual misconduct;

(9) Evaluation or treatment in a program for addressing matters relating to family violence, including domestic partner, elder, and child abuse;

(10) Compliance with civil or criminal court orders;

(11) Abstinence from or limitations on the use of alcohol or drugs; and

(12) Payment of expenses associated with probationary conditions.

(d) Monitoring. The Regulation Counsel must monitor the respondent's compliance with the conditions of probation.

(e) Termination. Probation does not terminate until the Presiding Disciplinary Judge enters an order of termination. To seek timely termination of probation, a respondent must file with the Presiding Disciplinary Judge, no earlier than 28 days before the date probation is scheduled to

terminate, an affidavit attesting to whether the respondent has complied with each term of probation. Within 14 days of that filing, unless otherwise ordered, the Regulation Counsel must file either a notice that the Regulation Counsel does not object to the termination of probation or a motion to revoke probation. On receiving notice that the Regulation Counsel does not object to termination of probation, the Presiding Disciplinary Judge will enter an order terminating probation. An order of termination takes effect no earlier than the date probation is scheduled to terminate.

(f) Violations.

(1) Initiation of Revocation Proceeding. If, while a respondent is on probation, the Regulation Counsel receives information that the respondent may have violated a condition of probation, the Regulation Counsel may move that the Presiding Disciplinary Judge order the respondent to show cause why the stay on the respondent's suspension should not be lifted.

(2) Continued Compliance. During a revocation proceeding, the respondent must continue to comply with the probationary conditions unless otherwise ordered.

(3) Hearing. The Presiding Disciplinary Judge may hold a revocation hearing on motion of either party or on the Presiding Disciplinary Judge's own initiative. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. At the hearing, the Regulation Counsel has the burden of establishing by a preponderance of the evidence that the respondent violated a condition of probation and to justify the relief requested. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence. When the alleged violation is the respondent's failure to pay restitution or costs, evidence of the failure to pay constitutes prima facie evidence of a violation.

(4) Order. After a hearing or after briefing if no hearing is held, the Presiding Disciplinary Judge will enter an order revoking probation, modifying the conditions or length of probation, or directing that probation remain in effect.

(5) Costs. If probation is revoked or modified, the Presiding Disciplinary Judge may assess against the respondent all or any part of the reasonable costs of the revocation proceeding.

(g) Independent Charges. The filing or the granting of a motion under subsection (f) above does not preclude the Regulation Counsel from filing independent disciplinary charges based on the same underlying conduct.

Rule 242.19. Stipulation to Discipline

(a) Overview. After the Regulation Committee has approved the filing of a complaint but before a disciplinary hearing, the Regulation Counsel and a respondent may enter into a stipulation to

discipline whereby the respondent conditionally admits to misconduct in exchange for a stipulated form of discipline.

(b) Contents. A stipulation to discipline must be sworn or affirmed by the respondent and notarized and must contain:

(1) The factual basis for the stipulation;

(2) An admission of misconduct that constitutes grounds for discipline;

(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the respondent is fully aware of the implications of the admission;

(4) An agreement that the respondent will pay the costs and the administrative fee of the proceeding; and

(5) A statement whether the respondent will pay restitution and in what amount.

(c) Procedure. A stipulation must be submitted to the Presiding Disciplinary Judge for review. Using discretion and in accordance with the considerations governing imposition of disciplinary sanctions, the Presiding Disciplinary Judge may either reject the stipulation and order that the disciplinary proceeding go forward as otherwise provided in this rule or approve the stipulation and enter an appropriate order.

(d) Rejected Stipulation. If a stipulation to discipline is rejected, the stipulation and any related motions, briefs, and orders will not be available to the public and will not be admissible in any disciplinary proceeding.

Rule 242.20. Resignation

As provided in C.R.C.P. 227(A)(8), the supreme court may permit a lawyer to resign from the practice of law in Colorado. The Regulation Counsel must inform the supreme court whether any disciplinary or disability matter involving the lawyer should preclude the lawyer's resignation and whether any pre-complaint proceeding pending against the lawyer under this rule should be dismissed. A lawyer may not resign if a complaint under C.R.C.P. 242.25 is pending against the lawyer. A lawyer who has been permitted to resign remains subject to the supreme court's jurisdiction as set forth in C.R.C.P. 242.1 as to the lawyer's previous or authorized practice of law in Colorado. Resignation under C.R.C.P. 227(A)(8) is not a form of discipline.

Rule 242.21. Reciprocal Discipline

(a) Standards. A final adjudication of misconduct constituting grounds for discipline issued in another jurisdiction conclusively establishes such misconduct for purposes of this rule and conclusively establishes that the same discipline should be imposed in Colorado, unless a party challenging imposition of that discipline establishes by clear and convincing evidence that:

(1) The procedure followed in the other jurisdiction did not comport with Colorado's requirements of due process of law;

(2) The proof upon which the other jurisdiction based its determination of misconduct is so infirm that the determination cannot be accepted;

(3) The imposition of the same discipline as was imposed in the other jurisdiction would result in grave injustice; or

(4) The misconduct proved warrants a substantially different form of discipline in Colorado.

(b) Procedures.

(1) Complaint. If a complaint is based on the respondent's public discipline in another jurisdiction, the Regulation Counsel must attach to the complaint a copy of the disciplinary order entered in the other jurisdiction. If the Regulation Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent must be given in the complaint.

(2) Answer. If the respondent intends to raise a defense listed in subsection (a) above, the respondent must file with the Presiding Disciplinary Judge, within 28 days after service of the complaint, an answer and a full copy of the record of the disciplinary proceeding in the other jurisdiction.

(3) Decision by Presiding Disciplinary Judge. The Presiding Disciplinary Judge may, without a hearing or a Hearing Board, issue a decision imposing the same discipline as was imposed by the other jurisdiction if:

(A) The Regulation Counsel does not seek substantially different discipline and the respondent does not challenge the order based on any of the defenses listed in subsection (a) above; or

(B) The matter can be resolved on a dispositive motion, such as a motion filed under C.R.C.P. 12, 55, or 56.

(4) Hearing and Decision by Hearing Board. A hearing before a Hearing Board must be conducted in accordance with the procedures set forth in C.R.C.P. 242.29 through C.R.C.P. 242.31. After the hearing, the Hearing Board must issue a decision imposing the same discipline as was imposed by the other jurisdiction unless the respondent establishes by clear and convincing evidence one or more of the four defenses listed in subsection (a) above or the Regulation Counsel establishes by clear and convincing evidence that substantially different discipline is warranted.

(5) Costs and Administrative Fee. If reciprocal discipline is imposed, the respondent must pay the administrative fee and may be ordered to pay all or any part of the reasonable costs of the proceeding.

(6) Effect of Stay in Other Jurisdiction. If the discipline imposed in the other jurisdiction has been stayed pending appeal there, reciprocal discipline cannot take effect in Colorado unless and until the stay in the other jurisdiction is lifted.

(c) Reinstatement and Readmission.

(1) Costs and Restitution Awarded in Originating Jurisdiction. A respondent who is reciprocally disciplined in Colorado must pay all costs and restitution ordered in the originating jurisdiction before petitioning for reinstatement or readmission to practice law in Colorado.

(2) Reinstatement or Readmission in Originating Jurisdiction. A respondent who is reciprocally disciplined in Colorado must be reinstated or readmitted in the originating jurisdiction before petitioning for reinstatement or readmission to practice law in Colorado under C.R.C.P. 242.39 unless the respondent shows good cause for not seeking reinstatement or readmission in the originating jurisdiction.

Part VI. Interim and Nondisciplinary Suspension

Rule 242.22. Interim Suspension for Alleged Serious Disciplinary Violations

(a) Overview. Interim suspension is the temporary suspension by the supreme court of a respondent's license to practice law while a disciplinary proceeding is pending against the respondent.

(b) Applicability. Although a respondent's license to practice law is not ordinarily suspended while a disciplinary proceeding is pending, the supreme court may suspend a respondent's license on an interim basis if there is reasonable cause to believe that:

(1) The respondent is causing or has caused substantial public or private harm; and

(2) The respondent has:

(A) Been convicted of a serious crime;

(B) Knowingly converted property or funds;

(C) Abandoned a client; or

(D) Engaged in conduct that poses a substantial threat to the administration of justice.

(c) Procedure.

(1) Initiation. To initiate an interim suspension proceeding under this section 242.22, the Regulation Counsel must file a petition with the Presiding Disciplinary Judge. The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that the alleged conduct occurred. The Regulation Counsel must serve a copy of the petition and affidavit on the respondent.

(2) Order to Show Cause. On receiving a properly supported petition for interim suspension, the Presiding Disciplinary Judge will order the respondent to show cause within 14 days why the petition should not be granted.

(3) Subpoenas. During a proceeding under this section 242.22, either party may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(4) Hearing. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. A hearing will take place within 14 days of the respondent's response to the show cause order. A record must be made of the hearing.

(5) Report. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact and a recommendation as to interim suspension.

(6) Supreme Court Decision. On receiving the Presiding Disciplinary Judge's report, the supreme court may suspend the respondent's license to practice law on an interim basis or discharge the show cause order. An order of interim suspension takes effect immediately, unless otherwise provided.

(d) Disclosure to Law Firms. In addition to a respondent's duties under C.R.C.P. 242.32, a respondent whose license is suspended on an interim basis under this section 242.22 must disclose in writing the interim suspension order to the respondent's current law firm as defined in C.R.C.P. 241 and, if different, to the respondent's law firm at the time of the misconduct giving rise to the matter. The disclosure must be made within 7 days of the supreme court's order.

(e) Related Disciplinary Proceeding.

(1) Direct Filing of Complaint. When the supreme court suspends a respondent's license on an interim basis and a complaint has not already been filed alleging the same misconduct, the Regulation Counsel must promptly file a complaint under C.R.C.P. 242.25. The disciplinary proceeding then will go forward as otherwise provided in this rule. In such proceedings, C.R.C.P. 242.14 through C.R.C.P. 242.16 do not apply.

(2) Accelerated Disposition. A respondent whose license has been suspended on an interim basis under this section 242.22 may exercise the right to an accelerated disposition of the disciplinary proceeding by filing a notice to that effect with the Presiding Disciplinary Judge. The matter then must proceed without appreciable delay.

(3) Termination of Interim Suspension. The interim suspension of a respondent's license under this section 242.22 terminates on resolution of a disciplinary proceeding alleging the same misconduct.

(f) Access to Information. Pre-complaint proceedings under this section 242.22 are confidential if the supreme court has not yet issued a final decision under this section or if the supreme court does not impose an interim suspension. But the files and records of the matter become public if the supreme court suspends a respondent's license under this section, if a complaint is filed alleging the same misconduct, or if C.R.C.P. 242.41 otherwise so provides.

(g) Automatic Reinstatement from Interim Suspension When Conviction Vacated. If a respondent subject to an interim suspension files a certificate showing that the criminal conviction on which the interim suspension was based has since been vacated, the Presiding Disciplinary Judge will terminate the interim suspension order. An order of termination under this subsection (g) does not affect any disciplinary proceeding pending against the respondent or

any discipline that has been imposed against the respondent based on the same underlying conduct.

Rule 242.23. Nondisciplinary Suspension for Noncompliance with Child Support or Paternity Orders

(a) Overview. Suspension under this section 242.23 is a temporary form of suspension designed to address certain types of lawyer noncompliance in child support and paternity proceedings. Suspension under this section is not a form of discipline and does not bar disciplinary action based on the same underlying conduct. A lawyer whose license has been suspended under this section may be reinstated when the lawyer demonstrates compliance in such proceedings. Suspension under this section terminates on reinstatement under this section or on resolution of a disciplinary proceeding based on the same underlying misconduct.

(b) Applicability. This section 242.23 applies to a lawyer who:

(1) Is not in compliance with any child support order, including any administrative or court order requiring the payment of child support, child support arrears, child support debt, retroactive support, or medical support, whether or not such order is combined with an order for maintenance; or

(2) Is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding.

(c) Procedure.

(1) Initiation. To initiate a proceeding under this section 242.23, the Regulation Counsel must file a petition for suspension with the Presiding Disciplinary Judge. The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that one or more of the circumstances set forth in subsection (b) above exists. The Regulation Counsel must serve a copy of the petition and affidavit on the lawyer.

(2) Order to Show Cause. On receiving a properly supported petition for suspension, the Presiding Disciplinary Judge will order the lawyer to show cause within 21 days why the petition should not be granted.

(3) Subpoenas. During a proceeding under this section 242.23, either party may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(4) Hearing. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. A hearing will take place within 14 days of the lawyer’s response to the show cause order.

(5) Decision.

(A) Issuance. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will issue an order setting forth findings of fact and a decision. The Presiding Disciplinary Judge will suspend the lawyer's license if the Regulation Counsel proves the allegations of the petition by a preponderance of the evidence, unless the lawyer establishes one of the defenses listed in subsection (B) below by a preponderance of the evidence. An order of suspension under this section 242.23 takes effect immediately, unless otherwise provided.

(B) Defenses.

(i) The following are valid defenses:

(a) The lawyer has paid the past-due obligation;

(b) The lawyer has negotiated a payment plan approved by the court or the state child support enforcement agency or other agency with jurisdiction over the child support order;

(c) A bona fide disagreement is currently before a trial court or an agency concerning the amount of the child support debt, arrearage balance, retroactive support due, or amount of the past-due child support when combined with maintenance;

(d) The lawyer has complied with the subpoena or warrant;

(e) The lawyer was not served with the subpoena or warrant; or

(f) The subpoena or warrant had a technical defect.

(ii) The inappropriateness of an underlying child support order and the lawyer's inability to comply with such an order are not valid defenses.

(d) Disclosure to Law Firm. In addition to a lawyer's duties under C.R.C.P. 242.32, a lawyer whose license is suspended under this section 242.23 must disclose in writing the suspension order to the lawyer's current law firm as defined in C.R.C.P. 241. The disclosure must be made within 14 days of the order.

(e) Access to Information. Proceedings under this section 242.23 are confidential if the Presiding Disciplinary Judge has not yet issued a final decision under this section or does not suspend a lawyer's license. But the files and records of the matter become public if the Presiding Disciplinary Judge suspends a lawyer's license under this section, if a complaint is filed based on the same underlying allegations, or if C.R.C.P. 242.41 otherwise so provides.

(f) Reinstatement.

(1) Petition. A lawyer whose license has been suspended under this section 242.23 is eligible for reinstatement if, as applicable, the lawyer pays the past-due obligations; enters into a payment plan approved by the court, the state child support enforcement agency, or other agency with jurisdiction over the child support order; complies with the warrant or subpoena; or is no longer subject to subsection (b) above as a result of an appellate decision in the lawyer's favor. To seek reinstatement, the lawyer must file with the Presiding Disciplinary Judge a verified petition containing evidence of compliance.

(2) Procedure. After receiving a petition for reinstatement, the Regulation Counsel has 21 days to conduct an investigation, unless the Presiding Disciplinary Judge grants the Regulation Counsel additional time. The lawyer must cooperate in the investigation. At the end of the investigation period, the Regulation Counsel must file an answer. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. The lawyer bears the burden of establishing the right to be reinstated by a preponderance of the evidence. The Presiding Disciplinary Judge may order reinstatement or deny reinstatement. Reinstatement under this subsection (f) does not affect any disciplinary proceeding pending against the respondent or any disciplinary sanction imposed for the respondent's conduct.

(g) Appeal. A decision of the Presiding Disciplinary Judge under subsection (c)(5) or subsection (f)(2) above is final, and an appeal may be initiated under C.R.C.P. 242.34.

Rule 242.24. Nondisciplinary Suspension for Failure to Cooperate

(a) Overview. Suspension under this section 242.24 is a temporary form of suspension designed to address noncooperation by a respondent in a disciplinary investigation. A respondent whose license is suspended under this section may be reinstated when the respondent rectifies the conduct at issue. Suspension under this section is not a form of discipline, does not bar disciplinary action based on the respondent's noncooperation, and is distinct from any disciplinary suspension that may be imposed based on the same underlying conduct.

(b) Applicability. Although a respondent's license to practice law is not ordinarily suspended during a disciplinary investigation, a respondent's license may be suspended during an investigation of alleged serious misconduct if there is reasonable cause to believe that the respondent has not cooperated, as described in subsection (c)(1)(A) below.

(c) Procedure.

(1) Initiation.

(A) To initiate a proceeding under this section 242.24, the Regulation Counsel must file a petition for suspension with the supreme court alleging that the respondent:

(i) Has failed to respond to a lawful demand for information relating to a disciplinary investigation and has not interposed a good-faith objection to responding; or

(ii) Has not produced information or records subpoenaed by the investigator and has not interposed a good-faith objection to producing the information or records.

(B) The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that the alleged serious misconduct under investigation occurred and that the respondent has failed to cooperate as set forth in subsection (c)(1)(A) above. The affidavit must also describe the investigator's efforts to obtain the respondent's cooperation.

(C) The Regulation Counsel must serve a copy of the petition and affidavit on the respondent.

(2) Order to Show Cause. On receiving a properly supported petition for suspension, the supreme court may order the respondent to show cause within 14 days why the petition should not be granted.

(3) Hearing. If the respondent responds to the show cause order, either party may request a hearing. The supreme court may refer the matter to the Presiding Disciplinary Judge for resolution of contested factual matters and a hearing, for which subpoenas may be issued. A hearing will take place within 14 days of the supreme court's order of referral.

(4) Report. Within 7 days after any hearing, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact and a recommendation. The report must make findings as to the allegations and the applicability of any defenses, including inability to comply or a good-faith objection to response or production.

(5) Decision. After considering the petition, any response to the show cause order, and any report from the Presiding Disciplinary Judge, the supreme court may suspend the respondent's license to practice law until further order of the supreme court or entry of a final order in the underlying disciplinary proceeding, whichever occurs earlier; deny the petition; or enter any other appropriate order. An order of suspension under this section 242.24 takes effect immediately, unless otherwise provided.

(d) Disclosure to Law Firm. In addition to a respondent's duties under C.R.C.P. 242.32, a respondent whose license is suspended under this section 242.24 must disclose in writing the suspension order to the respondent's current law firm as defined in C.R.C.P. 241. The disclosure must be made within 14 days of the supreme court's order.

(e) Access to Information. Pre-complaint proceedings under this section 242.24 are confidential if the supreme court has not yet issued a final decision under this section or does not suspend a respondent's license. But the files and records of the matter become public if the supreme court suspends a respondent's license under this section, if a complaint is filed based on the allegations underlying the petition filed under this section, or if C.R.C.P. 242.41 otherwise so provides.

(f) Reinstatement. A respondent whose license was suspended under this section 242.24 may petition the supreme court for reinstatement. The respondent's petition must show that the

respondent has rectified the conduct alleged in the petition or that the respondent has otherwise complied with any directions issued by the supreme court. The respondent must provide a copy of the petition to the Regulation Counsel, who must respond within 7 days. The supreme court may reinstate the respondent's license to practice law, deny the petition, or enter any other appropriate order. Reinstatement under this subsection (f) does not affect any disciplinary proceeding pending against the respondent or any disciplinary sanction imposed for the respondent's noncooperation.

COMMENT

C.R.C.P. 242.24 addresses problems caused by the relatively few lawyers who fail to cooperate in a disciplinary investigation. The intent of this rule is to ensure that lawyers comply with the rules governing the legal profession, in this case the duty to cooperate in a disciplinary investigation. See Colo. RPC 8.1(b); Colo. RPC 8.4(d). This section is intended to promote communication between the lawyer and the investigator. The rule is not designed to threaten or punish lawyers who have a good reason for not complying with investigative requests, such as an inability to comply or a good-faith objection to production. For example, a lawyer will not be suspended under this section merely because the lawyer is out of the office on vacation when a disciplinary investigation is initiated.

Part VII. Procedure for Formal Disciplinary Proceedings

Rule 242.25. Complaint

(a) Contents and Filing of Complaint and Citation.

(1) To initiate a formal disciplinary proceeding, the Regulation Counsel must file a complaint and citation with the Presiding Disciplinary Judge. Complaints are filed in the name of the People of the State of Colorado.

(2) The complaint must set forth clearly and with particularity the alleged rule violations and the conduct giving rise to those claims.

(3) The citation must direct the respondent to file an answer to the complaint within 28 days after service.

(b) Service of Complaint. The Regulation Counsel must promptly serve on the respondent a copy of the complaint and citation as provided in C.R.C.P. 242.42(b). The Regulation Counsel must promptly file with the Presiding Disciplinary Judge proof of service of the complaint and citation.

(c) Complaints Involving Criminal Conduct. If a complaint is based on the respondent's conviction of a crime, the Regulation Counsel must present proof of the conviction with the complaint. A conviction is not a prerequisite to filing a disciplinary proceeding based on alleged criminal conduct.

Rule 242.26. Answer

A respondent must file an answer or a motion under C.R.C.P. 12(b) with the Presiding Disciplinary Judge, and provide a copy to the Regulation Counsel, within 28 days after service of the complaint and citation. The answer must either admit or deny each allegation in the complaint as provided in C.R.C.P. 8(b). In addition, the answer must set forth any affirmative defenses. If a respondent files a motion under C.R.C.P. 12(b), the Regulation Counsel must file a response thereto within 14 days. The respondent must file any reply within 7 days thereafter. If the Presiding Disciplinary Judge denies a motion under C.R.C.P. 12(b), the respondent must file an answer within 14 days of the denial.

Rule 242.27. Failure to Answer and Default

(a) Motion for and Entry of Default. If a respondent does not timely file an answer, the Regulation Counsel will move for entry of default. For good cause shown, the Presiding Disciplinary Judge may grant the respondent leave to file an untimely answer. If the Presiding Disciplinary Judge enters default, the properly pleaded allegations and claims in the complaint will be deemed admitted.

(b) Sanctions Hearing. After default is entered, a sanctions hearing will be held under C.R.C.P. 242.30 to determine the appropriate sanction. If, 14 days after entry of default, neither the respondent nor the Regulation Counsel has requested a sanctions hearing before a Hearing Board, then the sanctions hearing will be held solely before the Presiding Disciplinary Judge. At the sanctions hearing, the respondent may appear and present evidence and arguments about the appropriate sanction.

(c) Notice. The respondent and the complaining witness must be given at least 28 days' notice of the sanctions hearing in accordance with C.R.C.P. 242.29(b).

(d) Opinion. After the sanctions hearing, an opinion will be issued under C.R.C.P. 242.31.

Rule 242.28. Alleged Inability to Defend Proceeding

During a disciplinary proceeding under C.R.C.P. 242, the respondent, the respondent's counsel, the Regulation Counsel, or the Presiding Disciplinary Judge may raise an issue as to the respondent's ability to defend the proceeding. In that event, the Presiding Disciplinary Judge may under this section 242.28 issue an interim stay of the disciplinary proceeding in accordance with the disability procedures set forth in C.R.C.P. 243.7. After following those procedures, the Presiding Disciplinary Judge may under this section 242.28 place the disciplinary proceeding in abeyance, lift the interim stay, or take other actions in accordance with C.R.C.P. 243.7. An interim stay or abeyance governs all phases of a disciplinary proceeding, including the respondent's response to a request for investigation, investigative interviews of the respondent, and investigative activities that implicate the respondent's rights under C.R.C.P. 45 or other rules.

Rule 242.29. Prehearing Matters

(a) Applicability and Overview. This section 242.29 governs prehearing procedures in disciplinary proceedings under part VII of this rule and in reinstatement and readmission proceedings under C.R.C.P. 242.39. This section also governs prehearing procedures after entry of default under C.R.C.P. 242.27 unless inconsistent with that section. Except as otherwise provided in this rule or by court order, all proceedings governed by this section must be conducted in accordance with the Colorado Rules of Civil Procedure.

(b) Notice. Other than for sanctions hearings under C.R.C.P. 242.27(b) and reinstatement and readmission matters, notice must be given no fewer than 56 days (8 weeks) before a hearing. The Presiding Disciplinary Judge has discretion to establish a different timeframe for notice.

(1) Notice to Respondent. The Presiding Disciplinary Judge must notify the respondent of the place, date, and time of the hearing and of the respondent's rights to be represented by counsel at the respondent's own expense, to cross-examine witnesses, and to present argument and evidence.

(2) Notice to Complaining Witness. The Regulation Counsel must give a complaining witness notice of the place, date, and time of the hearing. The notice must state that the complaining witness has a right to attend the hearing, subject to a sequestration order or protective order.

(c) Subpoenas. Either party to a disciplinary proceeding may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(d) Discovery.

(1) Scope. C.R.C.P. 26 applies where not inconsistent with this rule. C.R.C.P. 16 does not apply to disciplinary proceedings.

(2) Meeting. No later than 14 days after an answer is filed, the parties must confer in person or remotely about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(3) Disclosures. No later than 28 days after an answer is filed, each party must disclose:

(A) The name and, if known, the address, telephone number, and email address of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific information that each such individual is known or believed to possess;

(B) A listing, together with a copy or a description by category, of the subject matter and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the claims and defenses of any party; and

(C) A statement as to whether the party plans to use expert witnesses and, if so, the experts' fields of expertise.

(4) Expert Witnesses. The parties must exchange any expert witness reports at least 56 days (8 weeks) before the hearing, or as otherwise ordered by the Presiding Disciplinary Judge. A report must contain the elements required by the applicable Colorado Rules of Civil Procedure.

(5) Limitations. Except by order of the Presiding Disciplinary Judge for good cause shown, and subject to the proportionality factors in C.R.C.P. 26(b)(1), discovery is limited as follows:

(A) The Regulation Counsel may take one deposition of the respondent (or the petitioner, as applicable) and of two other persons in addition to depositions of experts as provided in C.R.C.P. 26. The respondent (or the petitioner, as applicable) may take three depositions in addition to depositions of experts as provided in C.R.C.P. 26. Depositions are generally governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45, unless otherwise inconsistent with this rule. A record must be made of depositions.

(B) Written interrogatories, requests for production of documents, and requests for admission are governed by C.R.C.P. 26(b)(2), 33, 34, and 36, unless otherwise inconsistent with this rule.

(C) Interview notes created as part of a preliminary investigation under C.R.C.P. 242.13 are deemed to be prepared in anticipation of litigation or for trial under the work product doctrine.

(6) Modifying the Scope of Discovery. The Presiding Disciplinary Judge may modify discovery limitations in accordance with C.R.C.P. 26(b)(2)(F).

(7) Supplementation of Discovery. The parties must supplement disclosures, discovery responses, and expert reports and statements in accordance with C.R.C.P. 26(e).

(e) Dispositive Motions. Proceedings governed by this section 242.29 may be resolved on dispositive motions, such as motions filed under C.R.C.P. 12, 55, or 56.

(f) Order for Independent Medical Examination. When a physical or behavioral health condition or disorder of the respondent becomes an issue in a disciplinary proceeding, the Presiding Disciplinary Judge, on motion of the Regulation Counsel or on the Presiding Disciplinary Judge's own initiative, may order the respondent to submit to a physical or mental examination by a suitable examiner. The Presiding Disciplinary Judge may order the examination only after finding that reasonable cause exists for the examination and after notice to the respondent. The respondent will be provided the opportunity to respond to the Regulation Counsel's motion or to request reconsideration of the Presiding Disciplinary Judge's order, and either party may request a hearing on the limited issue of whether reasonable cause exists for an examination. Any hearing must be held within 14 days of the request. The cost of an examination must initially be paid by the Regulation Counsel if the Regulation Counsel requests the order for the examination, or by the Office of the Presiding Disciplinary Judge if the examination is ordered on the Presiding Disciplinary Judge's own initiative. Either party may request that the Presiding Disciplinary Judge enter a protective order to preserve the confidentiality of results of the examination. If discipline is imposed against a respondent in the proceeding, the respondent may be assessed the cost of the examination as part of the costs ordered under C.R.C.P. 242.31(a)(3).

Rule 242.30. Disciplinary Hearings

(a) Overview. Disciplinary hearings take place before a Hearing Board or before the Presiding Disciplinary Judge, as provided in this part VII. Disciplinary hearings are public unless subject to a protective order.

(b) Standards Governing Hearings.

(1) Procedure. Except as otherwise provided in this rule, hearings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in Colorado.

(2) Evidence. Except as otherwise provided in this rule, hearings must be conducted in accordance with the Colorado Rules of Evidence. Except as otherwise provided in this rule, orders entered by other tribunals are admissible but do not serve as conclusive proof of any disputed fact.

(3) Burden of Proof. Proof as to rule violations, affirmative defenses, and eligibility for reinstatement or readmission must be by clear and convincing evidence. The Regulation Counsel has the burden to prove aggravating factors in disciplinary hearings, while the respondent has the burden to prove mitigating factors.

(4) Privilege Against Self-Incrimination. A respondent cannot be required to testify or to produce records over the respondent's objection if doing so would violate the respondent's constitutional privilege against self-incrimination.

(5) Adverse Inferences.

(A) Invocation of Privilege Against Self-Incrimination. If a respondent refuses to testify or to produce records based on invocation of the privilege against self-incrimination, an adverse inference in favor of the Regulation Counsel may be drawn as to related disciplinary claims.

(B) Failure to Produce Records Subject to Colo. RPC 1.15D. If a respondent does not produce records that are required to be kept under Colo. RPC 1.15D, an adverse inference in favor of the Regulation Counsel may be drawn as to disciplinary claims related to those records.

(c) Complaining Witnesses. The complaining witness in a disciplinary proceeding has the right to attend the hearing, subject to a sequestration order or protective order. The Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, permit the complaining witness to testify about injury caused by the alleged misconduct.

(d) Record of Hearing. A record must be made of hearings under this section 242.30.

Rule 242.31. Findings of Fact and Decision

(a) Opinion of the Hearing Board.

(1) Opinion. After a hearing, the Hearing Board will first determine whether the Regulation Counsel has proved any claims of misconduct. If the Hearing Board finds that the respondent committed misconduct, the Hearing Board will determine the sanction to be imposed. The Hearing Board will issue an opinion setting forth its findings of fact, conclusions of law, and decision.

(2) Disposition of Case. In its opinion, the Hearing Board may:

(A) Dismiss the complaint if no claims of misconduct have been proved; or

(B) Impose private admonition, public censure, suspension, or disbarment.

(3) Other Orders. Where the Hearing Board finds that the respondent committed misconduct, the Hearing Board must order the respondent to pay the administrative fee. The Hearing Board may also enter other appropriate orders, including requiring the respondent to comply with conditions of probation, to make restitution, to pay attorney's fees or costs incurred in related protective appointment of counsel proceedings, or to pay all or any part of the reasonable costs of the disciplinary proceeding. If the Hearing Board suspends the respondent from the practice of law for one year or less, the Hearing Board may require that the respondent seek reinstatement, if at all, by petition under C.R.C.P. 242.39 rather than by affidavit under C.R.C.P. 242.38.

(4) Participation of Hearing Board Members. Two members of the Hearing Board are required to issue an opinion. The opinion must be signed. Members of the Hearing Board may append to the opinion a dissent or concurrence.

(5) Timing. The Hearing Board generally will issue its opinion within 56 days (8 weeks) after the hearing.

(6) Effective Date. Disciplinary sanctions take effect upon entry of an order and notice of discipline, which generally enters 35 days after issuance of the opinion, unless applicable rules provide otherwise.

(7) Post-hearing Relief. Within 14 days after the opinion issues, a party may move the Hearing Board for post-hearing relief under C.R.C.P. 59. If the Hearing Board members consent, the Presiding Disciplinary Judge may sign the order ruling on post-hearing relief on the members' behalf.

(8) Finality. For purposes of this section 242.31, a Hearing Board's opinion is a final decision, and the time for filing a notice of appeal begins as set forth in C.R.C.P. 242.34. Unless the supreme court stays, vacates, reverses, or modifies a Hearing Board's opinion, the opinion is considered an order of the supreme court.

(b) Opinion of the Presiding Disciplinary Judge. The provisions governing a Hearing Board's opinion in subsection (a) above also govern an opinion or other final decision entered by the Presiding Disciplinary Judge without a Hearing Board.

COMMENT

Disciplinary sanctions are based on consideration of the American Bar Association Standards for Imposing Lawyer Sanctions. Opinions issued under section 242.31 do not serve as binding precedent but may have persuasive value and provide guidance in future decisions.

Rule 242.32. Lawyer's Required Actions After Disbarment, Disciplinary or Nondisciplinary Suspension, or Resignation

(a) Applicability.

(1) Lawyers Subject. The duties listed in this section 242.32 apply to lawyers when they become subject to:

(A) A final decision assigning a sanction of disbarment or suspension, unless fully stayed, under C.R.C.P. 242.31 or C.R.C.P. 242.21;

(B) An order approving a stipulation to disbarment or suspension, unless fully stayed, under C.R.C.P. 242.19;

(C) An order imposing an interim or a nondisciplinary suspension under C.R.C.P. 242.22 through C.R.C.P. 242.24; or

(D) An order permitting a lawyer to resign under C.R.C.P. 227(A)(8).

(2) Effect of Pending Appeals and Motions for Stay. A lawyer is not normally exempted from the duties listed in this section 242.32 during an appeal of a final decision or order. But the period for the lawyer to comply with the duties listed in this section stops running upon the filing of a motion for post-hearing relief under C.R.C.P. 59 or the filing of a motion for stay pending appeal under C.R.C.P. 242.35. If a motion for post-hearing relief is denied, the lawyer must complete the duties set forth in this section within 14 days of the denial. If a motion for stay is denied, the lawyer must complete the duties within 14 days of the denial unless, during that 14-day period, the lawyer files a motion for stay with the supreme court, in which case the period for the lawyer to comply with the duties listed in this section stops running while the motion is pending. If the supreme court denies the motion for stay, the lawyer must complete the duties within 14 days of the denial.

(b) Winding Up Affairs. After the entry of a final decision or other order listed in subsection (a)(1) above, the lawyer may not accept any new case, legal matter, or offer of employment as a lawyer. During any period between the entry of such a decision or order and the date the sanction takes effect, the lawyer may wind up or conclude any matters that were pending as of the decision's or order's entry, provided that the lawyer complies with Colo. RPC 1.4. On or before the date the sanction takes effect, the lawyer must surrender to each client any documents and property to which the client is entitled.

(c) Notice to Current Clients.

(1) A lawyer subject to this section 242.32 must, no later than 14 days after entry of the final decision or order identified in subsection (a)(1) above, send to each client whom the lawyer represents in a matter pending as of the entry of the final decision or order the following:

(A) A copy of the final decision or order identified in subsection (a)(1) above;

(B) Notice of the sanction imposed and the lawyer's inability to continue the representation after the date the sanction takes effect; and

(C) Notice of the client's need to seek any desired legal services from another lawyer and any right to seek appointment of counsel.

(2) The lawyer must maintain records showing that the lawyer sent the notices required under subsection (c)(1) above and written confirmation that each client received notice. If the lawyer is unable to obtain written confirmation that a client received notice, the lawyer must maintain proof that the lawyer sent notice by certified mail to the client's last-known mailing address.

(d) Additional Duties in Litigation Matters.

(1) A lawyer subject to this section 242.32 who represents a client before a tribunal in a pending matter, where there is no active co-counsel and where no substitution of counsel has been filed, must further state in the notice provided under subsection (c) above the following:

(A) That the client bears the responsibility to keep the tribunal and the parties informed where service may be effected;

(B) The possible adverse consequences if the client refuses to comply with all rules and orders of the tribunal;

(C) Any pending deadlines or court dates; and

(D) If the client is not a natural person, that it must be represented by counsel in any court proceeding unless it is a closely held entity and first complies with C.R.S. section 13-1-127.

(2) A lawyer subject to this section 242.32 who represents a client before a tribunal in a pending matter must, no later than 14 days after sending a notice under subsection (1) above, notify in writing any opposing counsel of:

(A) The final decision or order identified in subsection (a)(1), including any sanction imposed;

(B) The lawyer's inability to continue the representation after the date the sanction takes effect; and

(C) Where there is no active co-counsel and where no substitution of counsel has been filed, the client's address and, if known, the client's telephone number and email address.

(3) If substitute counsel does not enter an appearance before the date the sanction takes effect, the lawyer must notify the tribunal in which the proceeding is pending of the lawyer's withdrawal.

(e) Notification of Other Jurisdictions. A lawyer subject to this section 242.32 must, no later than 14 days after entry of the final decision or order identified in subsection (a)(1) above, notify every other jurisdiction in which the lawyer is admitted, certified, or otherwise authorized to practice law of the final decision or order in question and provide to the other jurisdiction a copy thereof.

(f) Affidavit Filed With the Presiding Disciplinary Judge. Unless otherwise ordered, within 14 days after the date the sanction takes effect the lawyer must file an affidavit with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. The lawyer must file an affidavit even if the lawyer does not have an active practice. The affidavit must list all pending matters in which the lawyer serves as counsel, list all clients notified under subsection (c) above, attach a copy of each such notice, and:

(1) Attest whether the lawyer is in full compliance with the final decision or order in question and this section 242.32;

(2) Attest whether the lawyer has notified every other jurisdiction in which the lawyer is admitted, certified, or otherwise authorized to practice law of the final decision or order in question; and

(3) In the case only of lawyers subject to an order of disbarment or an order permitting a lawyer to resign under C.R.C.P. 227(A)(8), provide the lawyer's mailing address and any email address to which communications may be sent.

(g) Registration Statements and Fees During Suspension. Lawyers subject to a final decision imposing a sanction of suspension unless fully stayed, an order approving a stipulation to suspension unless fully stayed, or an order imposing an interim or a nondisciplinary suspension under C.R.C.P. 242.22 through C.R.C.P. 242.24 must file a registration statement under C.R.C.P. 227 for five years after the date the sanction takes effect, or until the lawyer is reinstated. The statement must provide the lawyer's mailing address and any email address to which communications may be sent. But the lawyer need not pay the annual registration fee unless and until the lawyer is reinstated.

(h) Duty to Maintain Records. A lawyer subject to this section 242.32 must maintain records of the lawyer's compliance with this section.

(i) Noncompliance. Noncompliance with this section 242.32 may be grounds for additional discipline or denial of reinstatement or readmission.

Part VIII. Appeals to Supreme Court

Rule 242.33. Overview of Appeals

(a) Appellate Jurisdiction. A party may seek appellate review by the supreme court of any final decision as defined in C.R.C.P. 241.

(b) Governing Provisions. Except as otherwise provided in this part VIII, and to the extent practicable, appeals will be conducted in accordance with the general provisions in C.A.R. 25 (filing and service), 26 (computation and extension of time), 27 (motions), 28 (briefs), 28.1 (briefs in cases involving cross-appeals), 29 (brief of an amicus curiae), 30 (e-filing), 31 (serving and filing briefs), 32 (form of briefs and appellate documents), 34 (oral argument), 36 (entry and service of judgment), 38 (sanctions), 39 (costs), and 42 (voluntary dismissal).

(c) Standard of Review. The supreme court reviews conclusions of law de novo and findings of fact for clear error. The supreme court reviews a sanction to determine whether it bears no relation to the misconduct, is manifestly excessive or insufficient in relation to the needs of the public, or is otherwise unreasonable.

(d) Regulation Counsel. Appeals on behalf of the People of the State of Colorado under this part VIII are prosecuted or defended, as applicable, by the Regulation Counsel.

Rule 242.34. Initiation of Appeal

(a) Overview. To initiate an appeal, a party must timely file a notice of appeal with the supreme court and serve an advisory copy on the Presiding Disciplinary Judge. After that filing, the supreme court has exclusive jurisdiction over the appeal except as otherwise provided in this rule.

(b) Contents of Notice of Appeal. Except as otherwise provided in this part VIII, the notice of appeal and any notice of cross-appeal should conform to the requirements set forth in C.A.R. 3(d). A notice of cross-appeal also must identify the party initiating the cross-appeal and all cross-appellees. Content of the notice of appeal is not jurisdictional.

(c) Timing.

(1) Validity of Appeal. An appellant's failure to timely file a notice of appeal affects the appeal's validity. An appellant's failure to timely take any other step does not affect the appeal's validity, though it is a basis for other action by the supreme court, including dismissing the appeal.

(2) Initial Deadline. The notice of appeal must be filed with the supreme court within 21 days of entry of the final decision from which the party appeals. If a timely notice of appeal is filed, the appellee may file a notice of cross-appeal within 14 days of the filing of the initial notice of appeal, or within the time otherwise provided in this subsection (c), whichever period last expires.

(3) Motions Under C.R.C.P. 59.

(A) The Hearing Board or the Presiding Disciplinary Judge, as applicable, continues to have jurisdiction to decide a motion under C.R.C.P. 59 even if a notice of appeal has been filed, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within 49 days (7 weeks) of the filing. During that time, all proceedings in the supreme court are stayed, and the effect of the final decision is also stayed.

(B) The running of the time for filing a notice of appeal is terminated as to both parties by a timely motion filed by either party under C.R.C.P. 59.

(C) The full time for filing a notice of appeal begins to run and is to be computed from the entry of any of the following orders made on a timely motion:

(i) Granting or denying a motion under C.R.C.P. 59 to amend or make additional findings of fact, whether or not an alteration of the final decision would be required if the motion were granted;

(ii) Granting or denying a motion under C.R.C.P. 59 to alter or amend the final decision;

(iii) Denying a motion for a new hearing under C.R.C.P. 59; or

(iv) Expiration of an extension of time granted by the Presiding Disciplinary Judge to file a motion for post-hearing relief under C.R.C.P. 59, when no motion is filed.

(4) Extensions. On a showing of excusable neglect, the supreme court may extend a party's time for filing a notice of appeal for a period not to exceed 28 days from the expiration of the time otherwise provided in this subsection (c). Such an extension may be granted before or after the time otherwise provided in this subsection (c) has expired. But if a request for an extension is made after the prescribed time has expired, it must be made by motion with such notice as the supreme court deems appropriate.

(d) Filing and Docketing.

(1) Fee. The appellant must pay the clerk of the supreme court the applicable docket fee for civil proceedings when filing the notice of appeal or when filing any documents with the supreme court, if those documents are filed before the notice of appeal. The applicable docket fee for an appellee in civil proceedings must be paid on entry of appearance for the appellee.

(2) Docketing. The clerk of the supreme court will docket the appeal on receiving the appellant's docket fee or, if the appellant is authorized to proceed in forma pauperis, at the written request of that party. The matter will be docketed as:

SUPREME COURT, STATE OF COLORADO

Case No.

ORIGINAL PROCEEDING IN DISCIPLINE [OR DISABILITY]

IN THE MATTER OF [the name of the LAWYER]

(e) Leave to Proceed In Forma Pauperis. A party may file with the Presiding Disciplinary Judge a motion for leave to proceed on appeal in forma pauperis. The motion must be accompanied by an affidavit showing the party's inability to pay costs. If the motion is granted, the party may proceed without prepaying fees or costs or giving security. The party may file briefs and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

Rule 242.35. Stay Pending Appeal

(a) Procedure. A party may move the Hearing Board or the Presiding Disciplinary Judge, as applicable, to stay the operation of a final decision pending appeal. The entity that issued the final decision is the entity with authority to decide the motion. The motion must be filed on or before the date on which the notice of appeal is due under C.R.C.P. 242.34.

(b) Applicability. It is within the discretion of the Hearing Board or the Presiding Disciplinary Judge, as applicable, to grant a motion for stay pending appeal. The Hearing Board or the Presiding Disciplinary Judge, as applicable, must make findings of fact and determine whether to grant the stay, with or without conditions. In making the findings and determination, the Hearing Board or the Presiding Disciplinary Judge, as applicable, will consider the parties' submissions, the final decision's findings of fact, and evidence adduced at any applicable hearing. A respondent subject to disbarment is presumed ineligible for a stay. A respondent who is required to petition for reinstatement under C.R.C.P. 242.39 will not be granted a stay unless the Hearing Board or the Presiding Disciplinary Judge, as applicable, finds that the respondent's practice of law during the appeal is unlikely to harm the public and that the granting of a stay would not undermine public confidence in the legal system. A respondent who is not required to petition for reinstatement under C.R.C.P. 242.39 will be granted a stay unless the Regulation Counsel establishes that the respondent's practice of law during the appeal would pose an unreasonable risk of harm to the public.

(c) Seeking Relief from Supreme Court. Either party may move the supreme court for relief from an order entered under subsection (b) above within 14 days thereof. The motion must state the reasons for the relief requested and the facts relied upon, and must be accompanied by a copy of the final decision and the order entered under subsection (b). The supreme court will review the motion under an abuse of discretion standard.

(d) Jurisdiction Over Motion to Lift Stay. Although the supreme court has exclusive jurisdiction over an appeal, the Hearing Board or the Presiding Disciplinary Judge, as applicable, retains jurisdiction to issue, modify, or lift a stay pending appeal that was issued under subsection (b) above. The Hearing Board or the Presiding Disciplinary Judge, as applicable, may lift a stay if conditions attached to the stay no longer protect the public or if the respondent has failed to comply with the conditions imposed. If the Hearing Board that issued the final decision subject to appeal is unavailable, the Presiding Disciplinary Judge may decide the matter.

Rule 242.36. Record on Appeal

(a) Composition of the Record on Appeal. The record on appeal in all cases must consist of:

(1) All documents filed with and orders entered by the Presiding Disciplinary Judge or Hearing Board as of the filing of a notice of appeal or any amended notice of appeal; and

(A) Any transcripts designated by a party as set forth in subsection (d) below;

(B) Any tendered, non-admitted exhibits designated by a party; and

(C) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the clerk of the Presiding Disciplinary Judge as set forth in subsection (e) below.

(2) If a timely motion under C.R.C.P. 59 has been filed, the record must also include that motion, any response, and any resulting order.

(b) Format of the Record on Appeal.

(1) Electronic Record. If all or part of the record is maintained in electronic format by the clerk of the Presiding Disciplinary Judge, the clerk is authorized to transmit the record electronically in accordance with procedures established by the supreme court.

(2) Paper Record. If all or part of the record is transmitted in paper format, the original papers in the record must be submitted. The paper-filed portion of the record must be properly paginated and fully indexed and must be prepared and bound in accordance with procedures established by the supreme court.

(3) Certification by Clerk. The clerk of the Presiding Disciplinary Judge will certify the records of the Presiding Disciplinary Judge or the Hearing Board, as applicable.

(c) Transmission.

(1) Complete Record. The clerk of the Presiding Disciplinary Judge must transmit the record to the clerk of the supreme court when the record is complete. If the record will include any

transcripts, the clerk of the Presiding Disciplinary Judge will not transmit the record until transcripts are available.

(2) Time. The record on appeal must be transmitted to the supreme court within 63 days (9 weeks) after the date of filing of the notice of appeal unless the time is shortened or extended by order of the supreme court.

(A) For good cause shown, the supreme court may extend the time for transmitting the record. A request for extension must be made by the clerk of the Presiding Disciplinary Judge within the time originally prescribed or as previously extended.

(B) A request for an extension based on a court reporter's inability to complete the transcript must be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared and the date by which the transcript will be completed. If the reason stated in the affidavit for the reporter's inability to complete the record is the failure of the designating party to adequately arrange for payment of the transcripts, the designating party must file a response to the affidavit with the supreme court within 7 days.

(C) The supreme court may direct the clerk of the Presiding Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and may, on motion or on its own initiative, take other appropriate action regarding preparation and completion of the record.

(3) Oversized Exhibits. Documents of unusual bulk or weight and physical exhibits will not be transmitted by the clerk of the Presiding Disciplinary Judge unless directed to do so by the supreme court.

(4) Sexually Exploitative Material. Transmission of sexually exploitative material will be in accordance with Chief Justice Directive 16-03.

(d) Designation of Transcripts.

(1) Timing. If the appellant intends to include hearing transcripts in the record on appeal, the appellant must file a designation of transcripts with the clerk of the Presiding Disciplinary Judge and an advisory copy with the supreme court within 7 days of the date of filing the appellant's notice of appeal.

(2) Form. Form 8 must be used to file a designation of transcripts. A party designating transcripts must comply with the policies adopted by the supreme court and the Presiding Disciplinary Judge for designating transcripts.

(3) Contents Designated. The appellant must include in the record transcripts of all proceedings necessary for considering and deciding the issues on appeal. Unless the entire transcript is to be included, the appellant must include in the designation of transcript a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be

presented on appeal. The appellee may, within 14 days after filing the notice of appeal, file with the Presiding Disciplinary Judge, and provide an advisory copy to the supreme court, its own designation of transcripts if the appellee deems additional transcripts or parts thereof necessary.

(e) Statement of the Evidence or Proceedings. If the parties agree, or in cases where a transcript of the evidence or proceedings at a hearing is unavailable, the parties may file with the clerk of the Presiding Disciplinary Judge a statement of the evidence or proceedings in lieu of designating transcripts, and the clerk of the Presiding Disciplinary Judge must certify a statement of the evidence or proceedings in lieu of a transcript.

(f) Supplementing the Record on Appeal.

(1) Before Record is Transmitted. If any material part is omitted or missing from the record prepared by the clerk of the Presiding Disciplinary Judge or is misstated therein by error or accident before the record is transmitted to the supreme court, the parties may stipulate or the Presiding Disciplinary Judge may direct that the omission or misstatement be corrected.

(2) After Record is Transmitted. If any material part is omitted or missing from the record prepared by the clerk of the Presiding Disciplinary Judge by error or accident or is misstated therein after the record is transmitted to the supreme court, the supreme court, on motion or on its own initiative, may order that a supplemental record be certified and transmitted. Form 9 must be used by a party requesting to supplement the record after the record has been filed in the supreme court.

(g) Settling the Record on Appeal.

(1) If any difference arises as to whether the record truly discloses what occurred before the Presiding Disciplinary Judge or the Hearing Board, as applicable, or a portion of the record is not in the possession of the clerk of the Presiding Disciplinary Judge, the difference must be submitted to and settled by the Presiding Disciplinary Judge. The party moving to settle the record must file a motion with the supreme court to stay the appellate proceedings while the Presiding Disciplinary Judge considers the motion to settle the record.

(2) All other questions as to the form and content of the record must be presented to the supreme court.

(h) Filing of the Record. After timely receiving the record, the clerk of the supreme court will file the record. The clerk must immediately notify all parties of the record's filing date.

Rule 242.37. Proceedings Before Supreme Court

(a) Briefs. The appellant must serve and file the opening brief within 28 days after the record is filed. The appellee must serve and file the answer brief within 28 days after service of the

opening brief. The appellant may serve and file a reply brief within 14 days after service of the answer brief.

(b) Oral argument. Oral argument may be allowed at the discretion of the court in accordance with C.A.R. 34.

(c) Disposition. The supreme court may resolve appeals under this rule by opinion or by order without opinion.

Part IX. Reinstatement and Readmission

Rule 242.38. Reinstatement on Affidavit

(a) Overview. A lawyer who has been suspended from the practice of law for a period of one year or less may be reinstated by order of the Presiding Disciplinary Judge, without following the procedures set forth in C.R.C.P. 242.39, unless the lawyer's order of suspension provides otherwise. A suspension does not terminate until the Presiding Disciplinary Judge enters an order of reinstatement.

(b) Procedure.

(1) Motion and Affidavit by Respondent. To seek reinstatement, a respondent must, no earlier than 28 days before the period of suspension is set to terminate, file a motion and an affidavit with the Presiding Disciplinary Judge under the case number used in the underlying disciplinary proceeding. The affidavit must state whether and how the respondent has fully complied with the order of suspension and with all applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, during the period of suspension. The respondent must submit a copy of the motion and affidavit to the Regulation Counsel.

(2) Procedure Where Regulation Counsel Does Not Oppose Reinstatement. If the Regulation Counsel does not oppose the respondent's reinstatement, the Regulation Counsel must so notify the Presiding Disciplinary Judge within 14 days after the respondent files the motion and affidavit. The Presiding Disciplinary Judge will then reinstate the respondent.

(3) Procedure Where Regulation Counsel Opposes Reinstatement.

(A) Requested Relief. If the Regulation Counsel has reason to believe that the respondent failed to comply with the order of suspension or an applicable provision of Chapter 20, the Regulation Counsel may oppose reinstatement by filing a response with the Presiding Disciplinary Judge within 14 days after the respondent files the motion and affidavit, requesting either:

(i) That the respondent's motion for reinstatement be denied with leave to refile on a showing that the respondent has cured the noncompliance; or

(ii) That the respondent's current order of suspension be continued pending a final decision in a new disciplinary proceeding.

(B) Reply. If the respondent opposes the requested relief, the respondent must file a reply within 7 days.

(C) Decision by the Presiding Disciplinary Judge. As soon as practicable after considering the parties' filings, and after holding any hearing the Presiding Disciplinary Judge deems necessary, the Presiding Disciplinary Judge will issue a decision, determining whether the Regulation Counsel has justified the relief requested.

(i) Denial with Leave to Refile. If the Regulation Counsel shows by a preponderance of the evidence that during the period of suspension the respondent failed to comply with the order of suspension or with any applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, it is within the Presiding Disciplinary Judge's discretion to deny the respondent's motion with leave to refile on a showing that the respondent has cured the noncompliance. The respondent may file a renewed motion and affidavit under subsection (b)(1) above.

(ii) Continuation of Suspension.

(a) If the Regulation Counsel shows by a preponderance of the evidence that during the period of suspension the respondent failed to comply with the order of suspension or with any applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, the Presiding Disciplinary Judge may continue the respondent's current order of suspension pending a final decision in a new disciplinary proceeding brought to address that conduct if:

(1) The respondent is causing or has caused substantial public or private harm; and

(2) The respondent has, during the period of suspension:

(A) Been convicted of a serious crime based on conduct that occurred during the period of suspension, regardless of whether the respondent is appealing the conviction;

(B) Knowingly converted property or funds;

(C) Engaged in conduct that poses a substantial threat to the administration of justice; or

(D) Practiced law in violation of the order of suspension.

(b) If the Presiding Disciplinary Judge continues the respondent's current order of suspension, the respondent may request an accelerated disposition of the new disciplinary proceeding. The proceeding then must proceed without appreciable delay.

(c) Independent Charges. Regardless of the relief requested or granted under this rule, the Regulation Counsel may file independent disciplinary charges based on conduct that occurred during the period of the respondent's suspension.

(d) Failure to Timely File. A respondent who files an untimely motion and affidavit but whose suspension has been in effect for one year or less may be reinstated under the procedures outlined in subsection (b) above. A respondent who remains suspended for more than one year as a result of an untimely filing or a denial of reinstatement under subsection (b)(3)(C) above must seek reinstatement, if at all, under C.R.C.P. 242.39, unless on a showing of good cause the Presiding Disciplinary Judge grants a motion for extension of time to seek reinstatement under this section 242.38.

(e) Running of Time. If a respondent files a motion and affidavit under this section 242.38 within one year of the effective date of the respondent's suspension, the one-year period addressed in this section stops running until the Presiding Disciplinary Judge rules on the motion under subsection (b)(3)(C) above.

Rule 242.39. Petition for Readmission or Reinstatement After Discipline

(a) Overview.

(1) Readmission After Disbarment. A lawyer who has been disbarred may be eligible for readmission under this section 242.39 no less than eight years after the disbarment takes effect. To petition for readmission, the lawyer must have satisfied the supreme court's bar examination and MPRE requirements within the preceding eighteen months.

(2) Reinstatement After Suspension. Except as otherwise provided in C.R.C.P. 242.38, a lawyer must seek reinstatement under this section 242.39 if the lawyer was suspended in a disciplinary proceeding for more than one year or if the Hearing Board or Presiding Disciplinary Judge otherwise required that the lawyer seek reinstatement by petition under this section.

(b) Petition for Readmission or Reinstatement.

(1) Timing. A lawyer may not file a petition under this section 242.39 earlier than 91 days (13 weeks) before, as applicable, (A) the period of suspension is set to terminate or (B) eight years from the effective date of the lawyer's disbarment. A lawyer may not be reinstated or readmitted until the full disciplinary period has been served.

(2) Filing. A lawyer must file a verified petition with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. The lawyer will be designated as the petitioner and the Regulation Counsel as the respondent. The Presiding Disciplinary Judge will assign the proceeding a new case number.

(3) Contents. A petition must set forth:

(A) The date the order of discipline was entered and the effective date of the discipline;

(B) The date on which the petitioner filed any prior petitions for readmission or reinstatement and the disposition of the prior petitions;

(C) If applicable, a statement showing the amount and source of funds the petitioner used to pay restitution to any persons or to the Colorado Attorneys' Fund for Client Protection, and a statement showing the amount and source of funds the petitioner used to pay attorney's fees or costs related to protective appointment of counsel proceedings; and

(D) The evidence the petitioner intends to rely on to show that the petitioner meets the requirements set forth in subsection (d)(2) below.

(4) Lawyer Suspended for Five Years or Longer. Regardless of the length of the disciplinary suspension originally imposed, a lawyer who has remained suspended for five years or longer may not file a petition under this section 242.39 unless the lawyer has satisfied the supreme court's bar examination and MPRE requirements within the preceding eighteen months. But if a lawyer files a petition for reinstatement within five years of the effective date of the lawyer's suspension, the five-year period addressed in this subsection stops running until a final decision is issued on the petition and any appeal has been decided.

(5) Reinstatement or Readmission from Reciprocal Discipline. A lawyer subject to reciprocal discipline who wishes to seek reinstatement or readmission in Colorado must comply with the requirements of C.R.C.P. 242.21(c).

(c) Answer. After receiving a petition for reinstatement or readmission, the Regulation Counsel will conduct an investigation. The petitioner must cooperate in the investigation. The Regulation Counsel must file an answer to the petition within 21 days after receiving the petition. The answer must state any grounds for opposing the petition.

(d) Reinstatement and Readmission Proceedings.

(1) Procedures. Reinstatement and readmission proceedings are conducted in accordance with the procedures set forth in C.R.C.P. 242.29, and petitions are considered by a Hearing Board in accordance with the procedures set forth in C.R.C.P. 242.30.

(2) Requirements. The petitioner must prove by clear and convincing evidence that the petitioner:

(A) Has been rehabilitated, as measured by considerations including the circumstances and seriousness of the original misconduct, conduct since being disbarred or suspended, remorse and acceptance of responsibility, how much time has elapsed, restitution for any financial injury, and evidence that the petitioner has changed in ways that reduce the likelihood of future misconduct;

(B) Has complied with all applicable disciplinary orders and with all provisions of Chapter 20, including the Colorado Rules of Professional Conduct; and

(C) Is fit to practice law, as measured by the petitioner's satisfaction of the following eligibility requirements for the practice of law, as applicable:

(i) Honesty and candor with clients, lawyers, courts, regulatory authorities, and others;

(ii) The ability to reason logically, recall complex factual information, and accurately analyze legal problems;

(iii) The ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others;

(iv) The ability to use good judgment on behalf of clients and in conducting professional business;

(v) The ability to act with respect for and in accordance with the law;

(vi) The ability to exhibit regard for the rights and welfare of others;

(vii) The ability to comply with the Colorado Rules of Professional Conduct; state, local, and federal laws; regulations, statutes, and rules; and orders of tribunals;

(viii) The ability to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and others;

(ix) The ability to be honest and use good judgment in personal financial dealings and on behalf of clients and others; and

(x) The ability to comply with deadlines and time constraints.

(e) Hearing Board Opinion.

(1) Opinion. After a hearing, the Hearing Board will determine whether to grant or deny the petition for reinstatement or readmission. The Hearing Board will issue an opinion setting forth its findings of fact and decision.

(2) Participation of Hearing Board Members. Two members of the Hearing Board are required to issue an opinion. The opinion must be signed. Members of the Hearing Board may append to the opinion a dissent or concurrence.

(3) Timing. The Hearing Board generally will issue its opinion within 56 days (8 weeks) after the hearing.

(4) Effective Date. Reinstatement or readmission takes effect immediately on issuance of the opinion, unless otherwise ordered.

(5) Post-hearing Relief. Within 14 days of issuance of the Hearing Board's opinion, a party may move the Hearing Board for post-hearing relief under C.R.C.P. 59.

(6) Finality. For purposes of this section 242.39, a Hearing Board's opinion is a final decision, and the time for filing a notice of appeal begins as set forth in C.R.C.P. 242.34. Unless the supreme court stays, vacates, reverses, or modifies the Hearing Board's opinion, the opinion is considered an order of the supreme court.

(f) Successive Petitions. No petition for reinstatement or readmission under this section 242.39 may be filed within two years after issuance of a final decision denying a previous petition for reinstatement or readmission. But this subsection does not bar a petitioner from filing a new petition if the petitioner withdrew a previous petition before the hearing on that petition began.

(g) Costs and Deposit.

(1) Costs. The petitioner bears all reasonable costs of the proceeding and must also pay the administrative fee.

(2) Deposit. When filing a petition for readmission or reinstatement, the petitioner must tender to the Regulation Counsel a deposit of $500 to be used to pay the administrative fee and costs. If the administrative fee and costs exceed $500, the Presiding Disciplinary Judge may order the petitioner to provide an additional deposit. After a proceeding, the Presiding Disciplinary Judge will order the Regulation Counsel to render an accounting and to return to the petitioner any unexpended portion of the deposit.

(h) Reinstatement on Stipulation. If the petitioner and the Regulation Counsel agree to reinstatement, the parties may file a stipulation with the Presiding Disciplinary Judge. The stipulation must contain an agreement that the respondent will pay the administrative fee and any agreed-upon costs of the proceeding. The Presiding Disciplinary Judge may either approve the stipulation or reject it and order that a hearing be held before a Hearing Board under subsection (d) above. Parties are not permitted to stipulate to readmission. A readmission hearing must be held before a Hearing Board under subsection (d) above.

COMMENT

Under C.R.C.P. 242.39(a)(2), the requirement to petition for reinstatement applies: (1) when a lawyer has remained suspended for more than one year due to the lawyer's failure to timely seek reinstatement by affidavit under C.R.C.P. 242.38, even if the lawyer's ordered period of suspension was for less than one year and one day; (2) when, in connection with a single disciplinary proceeding, a lawyer serves a suspension that cumulatively totals more than one year due to revocation of the lawyer's probation, even if the lawyer does not serve the period of suspension continuously; and (3) when, in connection with separate disciplinary proceedings, a lawyer serves consecutive suspensions that cumulatively total more than one year. Interim suspensions and nondisciplinary suspensions that are contiguously served with a disciplinary suspension are not used to calculate the duration of the served disciplinary suspension for purposes of determining whether a lawyer must petition for reinstatement under C.R.C.P. 242.39(a)(2).

Part X. Contempt

Rule 242.40. Contempt During Proceeding

(a) Applicability. If, during a proceeding under this rule, a person knowingly obstructs an investigation, fails to comply with a subpoena, refuses to answer a proper question when testifying, or disrupts through misbehavior the Hearing Board or the Presiding Disciplinary Judge in the performance of authorized duties, the person may be held in contempt and sanctioned. Authority conferred under this section 242.40 is in addition to any other authority to issue sanctions. C.R.C.P. 107 does not govern contempt proceedings under this section.

(b) Procedure for Direct Contempt. If a person commits contemptuous conduct that the Presiding Disciplinary Judge sees or hears and that is so extreme no warning is necessary, or that has been repeated despite a warning to desist, the Presiding Disciplinary Judge may summarily punish the conduct by imposing reasonable sanctions, including a fine. In such a case, the Presiding Disciplinary Judge will enter an order on the record reciting the facts constituting the contempt, including a description of the conduct, and finding that the conduct is offensive to the authority and dignity of the tribunal. Before the Presiding Disciplinary Judge imposes sanctions, the person held in contempt has the right to respond to the charge of contempt, including making a statement in mitigation.

(c) Procedure for Indirect Contempt.

(1) Motion. A party may file with the Presiding Disciplinary Judge a motion for an order to show cause alleging that a person has, outside of the direct sight or hearing of the Hearing Board or Presiding Disciplinary Judge, as applicable, engaged in any of the conduct identified in subsection (a) above. The party must also serve the motion on the person alleged to be in contempt.

(2) Order to Show Cause. The Presiding Disciplinary Judge may enter an order to show cause directing the person alleged to be in contempt to appear at a specified time and place and to show cause why the person should not be held in contempt.

(3) Determination. If the Presiding Disciplinary Judge finds that the person has engaged in any of the conduct described in subsection (a) above, the Presiding Disciplinary Judge may hold the person in contempt and impose reasonable sanctions. The Presiding Disciplinary Judge also may order costs and reasonable attorney’s fees.

(d) Independent Charges. An allegation or a finding of contempt does not preclude the Regulation Counsel from filing independent disciplinary charges based on the same underlying conduct.

(e) Referral to Other Court. Nothing herein precludes the Regulation Counsel from referring a matter to another court of competent jurisdiction to commence other proceedings or to address other appropriate sanctions or remedies.

(f) Appeal. For the purposes of appeal, an order deciding the issue of contempt and sanctions is final.

Part XI. Information, Expungement, and General Provisions

Rule 242.41. Access to Information

(a) Public Information. Unless otherwise provided in this section, all files and records of the Regulation Counsel, the Presiding Disciplinary Judge, and the supreme court that relate to any phase of a disciplinary proceeding are available to the public after:

(1) A complaint is filed with the Presiding Disciplinary Judge;

(2) The Presiding Disciplinary Judge approves a stipulation to discipline that is submitted before the filing of a complaint;

(3) A petition for reinstatement or readmission is filed with the Presiding Disciplinary Judge;

(4) The Presiding Disciplinary Judge approves a stipulation to reinstatement that is submitted before the filing of a petition; or

(5) An interim or a nondisciplinary suspension is imposed before the filing of a complaint.

(b) Confidential Information. The following types of information are confidential and are not available to the public:

(1) Files and records of a proceeding in which none of the five events set forth in subsection (a) above has occurred, unless the respondent has waived confidentiality;

(2) Files and records of any proceeding that was dismissed before a complaint was filed, unless the respondent has waived confidentiality;

(3) Interview notes made during a preliminary investigation under C.R.C.P. 242.13;

(4) The work product, deliberations, privileged communications, and internal communications of the Office of the Regulation Counsel, the Advisory Committee, the Regulation Committee, the Office of the Presiding Disciplinary Judge, Hearing Boards, and the supreme court;

(5) Lists of pending matters, lists of clients, and copies of client notices referred to in C.R.C.P. 242.32(f);

(6) Information subject to a protective order under subsection (e) below; and

(7) Information otherwise made confidential under this rule.

(c) Subpoenaed Records. If the Regulation Counsel is served with a valid subpoena, the Regulation Counsel shall not permit access to files or records or furnish documents that are confidential under this rule unless the supreme court orders otherwise.

(d) Private Admonitions. Access to information in proceedings resulting in private admonition is governed by C.R.C.P. 242.10(a)(4).

(e) Protective Orders. On motion of any person and on a showing of good cause, the Presiding Disciplinary Judge may enter a protective order restricting the disclosure of specific information to protect a complaining witness, another witness, a third party, a respondent, or a petitioner from annoyance, embarrassment, oppression, or undue burden or expense. A protective order may direct that a proceeding, including a hearing, be conducted so as to preserve the confidentiality of certain information.

(f) Exceptions to Confidentiality During Investigation.

(1) Before the filing of a complaint, the Regulation Counsel may, to conduct an investigation, disclose information to a complaining witness or to another third party.

(2) Before the filing of a complaint, the Regulation Counsel may disclose the existence, subject matter, status, and resolution, if any, of an investigation if:

(A) The respondent has waived confidentiality;

(B) The investigation is based on the respondent's conviction of a crime or discipline by another jurisdiction;

(C) The investigation is based on allegations that have become generally known to the public;

(D) The disclosure is made solely to a confidential supreme court program, such as the Colorado Attorneys' Fund for Client Protection or the Colorado Lawyer Assistance Program;

(E) The disclosure is necessary to protect the public, the administration of justice, or the legal profession; or

(F) A petition for interim suspension based on the investigation has been filed under C.R.C.P. 242.22.

(g) Request for Confidential Information.

(1) Release With Notice.

(A) The Regulation Counsel may, on request, release information that is confidential under subsection (b) above to the following types of agencies:

(i) An agency authorized to investigate the qualifications of persons for admission to practice law;

(ii) An agency authorized to investigate the qualifications of persons for government employment;

(iii) A lawyer or judicial discipline enforcement agency;

(iv) An agency authorized to investigate criminal conduct; or

(v) An agency authorized to investigate the qualifications of judicial candidates.

(B) When the Regulation Counsel releases confidential information under this subsection (g)(1), the Regulation Counsel must send to the lawyer's registered address or other last-known address contemporaneous notice and a copy of the information released.

(2) Release Without Notice.

(A) The Regulation Counsel may release confidential information without notifying the lawyer if an agency listed in subsection (g)(1)(A) above requests the information and certifies that:

(i) The request is made in furtherance of an ongoing investigation of the lawyer;

(ii) The information is essential to that investigation; and

(iii) Disclosing to the lawyer the existence of the investigation would seriously prejudice that investigation.

(B) A certification made under subsection (g)(2)(A) above is deemed confidential.

(h) Release to Commission on Judicial Discipline. The Regulation Counsel may, on request, release to the Colorado Commission on Judicial Discipline information concerning a Colorado judge that is confidential under subsection (b) above without obtaining a waiver from the judge or notifying the judge.

(i) Response to False or Misleading Statement and Defense to Civil Suit. The Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disciplinary proceeding or to defend against litigation in which the Regulation Counsel is a named defendant.

(j) Confidential Matters Involving Allegations of Sexual Harassment. For matters that are confidential under this section 242.41 and that involve allegations of sexual harassment, the Regulation Counsel's investigation records regarding the sexual harassment allegations, not otherwise privileged or protected by court rule or court order, are available to the complaining witness and respondent, subject to the provisions of C.R.C.P. 242.43.

(k) Disclosure by Persons and Entities Other Than Disciplinary Entities. Unless otherwise ordered, nothing in this rule prohibits the complaining witness, any other witness, or the respondent from disclosing the existence of a proceeding under this section 242.41, from disclosing any documents or correspondence provided to those persons, or from providing testimony related to a proceeding under this rule.

(l) Duty of Officials and Employees. All officials, employees, and volunteers within the supreme court, the Advisory Committee, the Regulation Committee, the Office of the Regulation Counsel, the Office of the Presiding Disciplinary Judge, and the Hearing Board pool have an ongoing duty to maintain the confidentiality mandated by this rule.

(m) Publication of Opinions. The clerk of the Presiding Disciplinary Judge must release for publication opinions imposing public discipline, orders revoking probation, and opinions granting or denying reinstatement or readmission.

(n) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of orders of disbarment, suspension, or interim or nondisciplinary suspension.

(o) Notice to ABA National Lawyer Regulatory Data Bank. The Regulation Counsel must promptly transmit notice of all public discipline imposed and reinstatements and readmissions to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

COMMENT

C.R.C.P. 242.41 seeks to strike a balance between protecting lawyers against publicity predicated upon unfounded accusations and protecting clients, prospective clients, and the effective administration of justice from harm caused by lawyers who do not fulfill their professional obligations. C.R.C.P. 242.41 also recognizes that restrictions on confidentiality no longer serve a purpose when allegations that ordinarily would be confidential have become generally known through publicity, disclosure in the public record, or otherwise.

The Regulation Counsel frequently receives inquiries from judges, clients, prospective clients, and the media asking if a lawyer is the subject of a pending disciplinary investigation. Ordinarily, C.R.C.P. 242.41 prohibits the Regulation Counsel from providing information about a pending investigation or even confirming that an investigation is pending. C.R.C.P. 242.41(f)(2), however, sets forth several exceptions when the Regulation Counsel may reveal the existence, subject matter, status, and any resolution of an investigation.

Two such exceptions warrant further explanation. C.R.C.P. 242.41(f)(2)(C) requires the Regulation Counsel to determine whether otherwise confidential allegations against a lawyer have become generally known. Factors that the Regulation Counsel should consider in these circumstances include the nature and extent of media coverage, the nature and extent of inquiries from the media and the public, the nature and status of any related judicial proceedings, the number of people believed to have knowledge of the allegations, and the seriousness of the allegations.

Another exception is C.R.C.P. 242.41(f)(2)(E), which allows disclosure when necessary to protect the public, the administration of justice, or the legal profession. In determining whether a

need to notify exists, the Regulation Counsel should consider factors including the nature and seriousness of the conduct under investigation, the lawyer's prior disciplinary history, whether prior discipline was premised on conduct similar to the alleged conduct under investigation, and the potential harm to a client, a prospective client, the public, or the judicial system. In those instances in which the Regulation Counsel determines that disclosure is permitted under C.R.C.P. 242.41(f)(2)(E), the Regulation Counsel is authorized not only to disclose the existence, subject matter, status, and any resolution of an investigation in response to an inquiry, but also to disclose this information affirmatively to those persons having a need to know the information in order to avoid potential harm.

Rule 242.42. General Provisions

(a) Notice. Except as otherwise provided in this rule, notice must be in writing. Notice must be sent to the last-known mailing address of the recipient, unless the recipient consents to receiving notice by email. Notice is deemed effective the date notice is placed in the mail; placed in the custody of a delivery service; or emailed, if the recipient has consented to notice by email.

(b) Service of Process. When a pleading commencing a proceeding requiring service is filed under this rule, a lawyer may be served with process by personal service; by mail or email using the information provided by the lawyer under C.R.C.P. 227; by mail to any other address the lawyer has provided to the Regulation Counsel; or, if the lawyer is not admitted in Colorado, by mail or email to the lawyer's address of registration in any jurisdiction where the lawyer's registration is active. Service is deemed effective on the date that the lawyer is personally served, that the pleading is placed in the mail, or that the email is sent.

(c) Application of Civil Rules of Procedure. Except as otherwise provided in this rule, proceedings before the Presiding Disciplinary Judge or a Hearing Board are governed by the Colorado Rules of Civil Procedure.

(d) Proof of Conviction. Except as otherwise provided in this rule, a court-certified copy of the judgment of conviction or order showing that a lawyer has been convicted in that court of a crime, as defined in C.R.C.P. 241, conclusively establishes the conviction and proves the lawyer's commission of that crime for purposes of this rule.

(e) Related Litigation.

(1) Substantially Similar Criminal Cases. A disciplinary proceeding that involves material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may, in the discretion of the Regulation Committee or the Presiding Disciplinary Judge, as applicable, be placed in abeyance until the criminal prosecution concludes.

(2) Substantially Similar Civil Cases. A disciplinary proceeding that involves material allegations substantially similar to the material allegations made against the respondent in pending civil litigation may, in the discretion of the Regulation Committee or the Presiding Disciplinary Judge, as applicable, be placed in abeyance until the civil litigation concludes. If the disciplinary proceeding is placed in abeyance and the respondent fails to make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation, the Regulation Counsel may request that the Regulation Committee or the Presiding Disciplinary Judge, as applicable, promptly resume the disciplinary proceeding.

(3) Effect of Favorable Criminal or Civil Disposition. A criminal or civil disposition favorable to the respondent does not bar disciplinary action against the respondent based on the same or substantially similar material allegations. Nothing in this section 242.42 precludes a respondent from seeking relief from a final decision under this rule based on a favorable disposition in a criminal or civil proceeding.

Rule 242.43. Expungement of Records

(a) Records Subject to Expungement. Except for records of proceedings that have become public under C.R.C.P. 242.41, all records of proceedings that were dismissed must be expunged from the files of the Regulation Committee and the Regulation Counsel five years after the end of the calendar year in which the dismissal occurred. When a respondent successfully completes a diversion agreement in a disciplinary proceeding that did not result in the filing of a complaint, all files and records from that proceeding must be expunged five years after the end of the calendar year in which the diversion was completed. But if a new request for investigation is filed against the respondent before an existing diversion file is expunged, the Regulation Counsel may wait to expunge the file until the new proceeding has been resolved. Files and records that notify the Regulation Counsel of a lawyer's conviction of a crime need not be expunged.

(b) Effect of Expungement. The Regulation Committee and the Regulation Counsel must respond to any general or specific inquiry concerning the existence of a proceeding the records of which have been expunged by stating that no record of a proceeding exists.

(c) Extension of Time to Retain Records. The Regulation Counsel may apply in writing to the Regulation Committee for permission to retain files and records that would otherwise be expunged under this section 242.43 for an additional period of time not to exceed three years. After giving the lawyer in question notice and an opportunity to respond in writing, the Regulation Committee may grant the request on a finding of good cause. Through the same procedure, the Regulation Committee may grant additional extensions.

COMMENT

C.R.C.P. 242.43(b) governs only how the Regulation Committee and the Regulation Counsel should respond to an inquiry concerning the existence of proceedings the records of which have

been expunged. That subsection does not address how lawyers should respond to such an inquiry. Other legal authorities or requirements may govern how a lawyer should respond depending on the context in which the inquiry arises.

Rule 243. Rules Governing Lawyer Disability Proceedings

Rule 243.1. Disability Jurisdiction

Disability jurisdiction exists under this rule over the following persons:

(a) A lawyer admitted, certified, or otherwise authorized to practice law in Colorado, regardless of where the lawyer's conduct occurs or where the lawyer resides; and

(b) A lawyer not admitted to practice law in Colorado who provides or offers to provide any legal services in Colorado, including a lawyer who practices in Colorado pursuant to federal or tribal law.

Rule 243.2. Relevant Entities

(a) Supreme Court. The supreme court has plenary and appellate authority under this rule. The supreme court has the authority to review any determination made in disability proceedings and to enter any order in such proceedings.

(b) Advisory Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is authorized to act with respect to this rule in accordance with the powers and duties set forth in C.R.C.P. 242.3(c).

(c) Regulation Counsel. The Attorney Regulation Counsel (Regulation Counsel) represents the People of the State of Colorado in proceedings under this rule. The Regulation Counsel is authorized to act in disability proceedings in accordance with the powers and duties set forth in C.R.C.P. 242.5(c) and to perform the duties set forth in this rule.

(d) Presiding Disciplinary Judge. The Presiding Disciplinary Judge is authorized to act in disability proceedings in accordance with the powers and duties set forth in C.R.C.P. 242.6(c) and to perform the duties set forth in this rule.

(e) Hearing Boards. Hearing Boards are authorized to act in accordance with the powers and duties set forth in C.R.C.P. 242.7 as to consolidated disciplinary and disability reinstatement proceedings.

Rule 243.3. Immunity

(a) Prohibition Against Lawsuit Based on Proceeding Under this Rule. A lawyer may not institute a civil lawsuit against any person based on testimony in a proceeding under this rule or other written or oral communications made to relevant entities described in this rule, those entities' members or employees, or persons acting on their behalf, including monitors and health care professionals.

(b) Immunity for Entities. All entities described in this rule and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 243.4. Standard and Effect

(a) Standard. A lawyer is disabled under this rule and may be transferred to disability inactive status if the lawyer is unable to competently fulfill professional responsibilities as a result of a physical or behavioral health condition or disorder, including a mental, cognitive, emotional, substance use, or addictive issue.

(b) Effect. While a lawyer is on disability inactive status, the lawyer must not practice law. Disability inactive status is not a form of discipline. The pendency of a disability proceeding or a lawyer's transfer to disability inactive status does not stay a disciplinary proceeding against the lawyer, unless such an order is entered under C.R.C.P. 242.28 (governing alleged inability to defend disciplinary proceedings).

Rule 243.5. Judicial Duties to Report Lawyer Disability

A judge's duty to report a lawyer's disability is governed by Rule 2.14 of the Colorado Code of Judicial Conduct.

Rule 243.6. Transfer to Disability Inactive Status

(a) Procedure and Determination.

(1) Petition Filed by Regulation Counsel.

(A) Petition. If the Regulation Counsel has reason to believe that a lawyer is disabled, the Regulation Counsel may file a petition with the Presiding Disciplinary Judge alleging that the lawyer is disabled and requesting an order requiring the lawyer to undergo an independent medical examination or an order transferring the lawyer to disability inactive status. The Regulation Counsel must promptly serve on the lawyer a copy of the petition and file with the Presiding Disciplinary Judge proof of service.

(B) Show Cause Order. Unless the Regulation Counsel files an affidavit setting forth facts that clearly and convincingly show the lawyer is unable to respond, the Presiding Disciplinary Judge must afford the lawyer an opportunity to show cause in writing why the requested relief should not be granted.

(C) Determination. After considering the lawyer's response, the Presiding Disciplinary Judge may issue appropriate orders, such as ordering an independent medical examination of the lawyer by a qualified examiner designated by the Presiding Disciplinary Judge. If the Presiding Disciplinary Judge finds clear and convincing evidence that the lawyer is disabled, the Presiding Disciplinary Judge will transfer the lawyer to disability inactive status.

(2) Petition Premised on Reciprocal Disability.

(A) Duty to Notify. A lawyer who is transferred to disability inactive status in another jurisdiction must promptly inform the Regulation Counsel of the transfer.

(B) Petition. On learning that a lawyer has been transferred to disability inactive status in another jurisdiction, the Regulation Counsel may file with the Presiding Disciplinary Judge a certified copy of the order, accompanied by a petition for the lawyer's transfer to disability inactive status. The Regulation Counsel must promptly serve on the lawyer a copy of the petition and file with the Presiding Disciplinary Judge proof of service.

(C) Show Cause Order. Unless the Regulation Counsel files an affidavit setting forth facts that clearly and convincingly show the lawyer is unable to respond, the Presiding Disciplinary Judge must afford the lawyer an opportunity to show cause in writing why reciprocal transfer to disability inactive status should not be ordered.

(D) Answer. To contest transfer to disability inactive status, the lawyer must file with the Presiding Disciplinary Judge an answer asserting at least one of the defenses in subsection (E) below and a full copy of the record of the disability proceeding in the other jurisdiction.

(E) Determination. The Presiding Disciplinary Judge will order the lawyer's transfer to disability inactive status unless the lawyer demonstrates by clear and convincing evidence that (i) the procedure followed in the other jurisdiction did not comport with Colorado's requirements of due process of law; (ii) the reason for the original transfer to disability inactive status no longer exists; or (iii) the proof upon which the other jurisdiction based its determination of disability is so infirm that the determination of the other jurisdiction cannot be accepted. In all other respects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, should be transferred to disability inactive status conclusively establishes the disability for purposes of this rule.

(3) Petition Premised on Order of Commitment, Guardianship, or Judicial Declaration of Incompetence. On learning that a lawyer is subject to a valid and current order of commitment, is under guardianship, or is subject to a judicial declaration of incompetence to stand trial, the Regulation Counsel may file with the Presiding Disciplinary Judge a petition seeking the lawyer's transfer to disability inactive status, accompanied by proof of the basis for the petition. On receiving a properly supported petition, the Presiding Disciplinary Judge may transfer the lawyer to disability inactive status. The Presiding Disciplinary Judge must send notice of the transfer to the lawyer or, where applicable, to the lawyer's guardian or the director of the facility to which the lawyer has been committed.

(4) Verified Notice Filed By Lawyer. If a lawyer believes that she or he is disabled, the lawyer must, if able, file with the Presiding Disciplinary Judge a verified notice setting forth the basis

for the assertion of disability accompanied by proof thereof. On receiving a properly supported notice, the Presiding Disciplinary Judge will transfer the lawyer to disability inactive status.

(5) Allegation of Inability to Defend. After an allegation of inability to defend a disciplinary proceeding has been raised under C.R.C.P. 243.7, the Presiding Disciplinary Judge may transfer a respondent to disability inactive status either:

(A) If the respondent has raised the issue of disability as provided in C.R.C.P. 243.7(d)(1); or

(B) If, subject to the procedures in C.R.C.P. 243.7(f), clear and convincing evidence shows that the respondent is disabled within the meaning of C.R.C.P. 243.4(a).

(b) Service of Process. When a petition is filed under this rule, a lawyer may be served with process by personal service; by mail or email using the information provided by the lawyer under C.R.C.P. 227; by mail to any other address the lawyer has provided to the Regulation Counsel; or, if the lawyer is not admitted in Colorado, by mail or email to the lawyer's address of registration in any jurisdiction where the lawyer's registration is active. Service is deemed effective on the date that the lawyer is personally served, that the petition is placed in the mail, or that the email is sent.

(c) Hearings. Either party may request a hearing on the issue of whether the lawyer should be transferred to disability inactive status. The Presiding Disciplinary Judge also has discretion to hold a hearing to address any issue in a disability proceeding. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Disability hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board. Except as otherwise provided in this rule, disability proceedings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the lawyer has a fair opportunity to rebut hearsay evidence.

(d) Privilege Against Self-Incrimination and Adverse Inferences. A lawyer cannot be required to testify or to produce records over the lawyer's objection if doing so would violate the lawyer's constitutional privilege against self-incrimination. But in proceedings under this rule, the Presiding Disciplinary Judge may draw an adverse inference from a lawyer's failure to testify or to produce records. The Presiding Disciplinary Judge may also draw an adverse inference from a lawyer's disregard of orders issued in a disability proceeding.

(e) Confidentiality. An order transferring a lawyer to disability inactive status is available to the public. Otherwise, disability proceedings, files, and records are confidential and are not available to the public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or

misleading public statements made during a disability proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

(f) Costs. The Regulation Counsel bears the costs of petitioning for a lawyer's transfer to disability inactive status, including examination costs, unless the Presiding Disciplinary Judge exercises discretion to order otherwise.

Rule 243.7. Alleged Inability to Defend Disciplinary Proceeding

(a) Overview. This section 243.7 sets forth the standards and procedures that apply when an issue is raised under C.R.C.P. 242.28 as to whether a respondent is able to defend a pending disciplinary proceeding. The Presiding Disciplinary Judge may initially direct the respondent to undergo an independent medical examination and may issue an interim stay of the disciplinary proceeding. Then, after considering all relevant information, the Presiding Disciplinary Judge may place a disciplinary proceeding in abeyance as provided below.

(b) Standard. A respondent is deemed unable to defend a disciplinary proceeding if the respondent has a medical, mental, or cognitive condition that renders the respondent unable to prepare or present a defense.

(c) Initiation.

(1) Under C.R.C.P. 242.28, the respondent, the respondent's counsel, the Presiding Disciplinary Judge, or the Regulation Counsel may raise an issue as to the respondent's ability to defend the proceeding.

(2) If the issue of inability to defend is raised as to a respondent who is unrepresented, the Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, appoint counsel to represent the respondent in a proceeding under this section 243.7 to determine whether the respondent is able to defend the disciplinary proceeding.

(d) Procedure. Depending on the entity raising the issue, the following procedures apply, subject to the Presiding Disciplinary Judge's discretion to adopt a different procedure:

(1) By Respondent. If a respondent or respondent's counsel alleges that the respondent is unable to defend a disciplinary proceeding:

(A) The Presiding Disciplinary Judge will direct the respondent to undergo an independent medical examination on the issues of whether the respondent is able to defend the disciplinary proceeding and to competently fulfill professional responsibilities;

(B) The Presiding Disciplinary Judge will issue an interim stay of the disciplinary proceeding under C.R.C.P. 242.28, which the Presiding Disciplinary Judge may subsequently lift on a showing of good cause;

(C) The Presiding Disciplinary Judge will treat a respondent's allegation of inability to defend as a waiver of the physician-patient and psychologist-client privileges under C.R.S. section 13-90-107(d) and (g) between the lawyer and any professional who has examined or treated the lawyer for any condition related to the alleged inability to defend; and

(D) The Presiding Disciplinary Judge will treat the allegation as a stipulation to the respondent's transfer to disability inactive status and will transfer the respondent to disability inactive status under C.R.C.P. 243.6(a)(5)(A).

(2) By Presiding Disciplinary Judge. If the Presiding Disciplinary Judge believes the respondent may be unable to defend a disciplinary proceeding, the Presiding Disciplinary Judge will follow the procedures set forth in subsections (d)(1)(A)-(B) above.

(3) By Regulation Counsel. If the Regulation Counsel moves to place a disciplinary proceeding in abeyance due to the respondent's inability to defend the disciplinary proceeding, where the respondent has already been transferred to disability inactive status, the Presiding Disciplinary Judge may grant the request without requiring the Regulation Counsel to provide proof or information about the disability in question.

(e) Hearings. The Presiding Disciplinary Judge has discretion to hold a hearing to address any issue in a proceeding under this section 243.7. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board. Except as otherwise provided in this rule, proceedings under this section must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence.

(f) Decision. After reviewing the report of an independent medical examination and any other relevant information, and after holding any hearing the Presiding Disciplinary Judge deems necessary, the Presiding Disciplinary Judge will, in the Presiding Disciplinary Judge's discretion, take one or more of the following actions:

(1) Transfer the respondent to disability inactive status under C.R.C.P. 243.6(a)(5) and place the disciplinary proceeding in abeyance under C.R.C.P. 242.28, if the Presiding Disciplinary Judge finds it is more likely than not that the respondent is unable to defend the proceeding or finds that justice otherwise so requires;

(2) Lift the interim stay on the disciplinary proceeding and order under C.R.C.P. 242.28 that the proceeding go forward with or without also transferring the respondent to disability inactive status under C.R.C.P. 243.6(a)(5); or

(3) Enter any other appropriate order, including an order directing further examination of the respondent, an order continuing the disciplinary proceeding, or an order immediately reinstating the respondent from disability inactive status without following the procedures set forth in C.R.C.P. 243.10(b).

(g) Subsequent Removal of Proceeding from Abeyance.

(1) If the respondent is subsequently reinstated from disability inactive status under C.R.C.P. 243.10, the Presiding Disciplinary Judge will remove the respondent's disciplinary proceeding from abeyance under C.R.C.P. 242.28.

(2) If the respondent has not been reinstated from disability inactive status under C.R.C.P. 243.10, the Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, remove a disciplinary proceeding from abeyance under C.R.C.P. 242.28 if:

(A) A preponderance of the evidence establishes that the respondent is able to defend the proceeding; or

(B) The Presiding Disciplinary Judge otherwise determines that justice so requires.

(h) Confidentiality. An order transferring a lawyer to disability inactive status is available to the public. Otherwise, disability proceedings, files, and records are not public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disability proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

(i) Costs and Fees. The Presiding Disciplinary Judge, in the Presiding Disciplinary Judge's discretion, may order the respondent to pay all or any part of the costs arising under this section 243.7, including examination costs. Fees for appointed counsel may be paid by the Office of the Presiding Disciplinary Judge, and the Presiding Disciplinary Judge may condition reinstatement from disability inactive status on reimbursement of all or any part of those fees. Fees for appointed counsel are subject to payment caps as established by judicial policy governing analogous proceedings.

(j) Automatic Abeyance and Removal of Proceeding from Abeyance. If a respondent in a pending disciplinary proceeding has been transferred to disability inactive status under C.R.C.P. 243.6(a)(3), the Regulation Counsel must request that the Presiding Disciplinary Judge place a pending disciplinary proceeding in abeyance under C.R.C.P. 242.28. The Presiding Disciplinary Judge will grant a proper request. The Presiding Disciplinary Judge will remove the disciplinary proceeding from abeyance under C.R.C.P. 242.28 if the respondent is reinstated from disability inactive status.

Rule 243.8. Notices After Transfer to Disability Inactive Status

(a) Notice to Clients and Parties; Filing of Affidavit. A lawyer who is transferred to disability inactive status must, if able, comply with C.R.C.P. 242.32(b)-(i).

(b) Disclosure to Law Firm. A lawyer who is transferred to disability inactive status must, if able, disclose in writing the order to the lawyer's current law firm within 14 days of the order.

(c) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of a final order transferring a lawyer to disability inactive status.

(d) Notice to ABA National Regulatory Data Bank. The Regulation Counsel must promptly transmit notice of a final order transferring a lawyer to disability inactive status to the National Regulatory Data Bank maintained by the American Bar Association.

Rule 243.9. Resignation

As provided in C.R.C.P. 227(A)(8), the supreme court may permit a lawyer to resign from the practice of law in Colorado. The Regulation Counsel must inform the supreme court whether any disciplinary or disability matter involving the lawyer should preclude the lawyer's resignation.

Rule 243.10. Reinstatement After Transfer to Disability Inactive Status

(a) Overview and Eligibility. The Presiding Disciplinary Judge considers petitions for reinstatement from disability inactive status under the standards set forth in subsection (b) below. If the lawyer has remained on disability inactive status for five years or longer, the lawyer must have satisfied the supreme court's bar examination and MPRE requirements within the eighteen months preceding the filing of the petition. But if a lawyer petitions for reinstatement within five years of the effective date of the lawyer's transfer to disability inactive status, the five-year period addressed in this subsection stops running until a final order is issued and any appeals have been decided.

(b) Procedure and Standards.

(1) Disability Cases Arising in Colorado.

(A) Standards. Unless a lawyer was transferred to disability inactive status based on reciprocal disability, a lawyer may be reinstated if the lawyer demonstrates by clear and convincing evidence that the lawyer is competent to resume the practice of law and meets the following eligibility requirements, as may be applicable to the facts of the matter, for the practice of law:

(i) Honesty and candor with clients, lawyers, courts, regulatory authorities, and others;

(ii) The ability to reason logically, recall complex factual information, and accurately analyze legal problems;

(iii) The ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others;

(iv) The ability to use good judgment on behalf of clients and in conducting professional business;

(v) The ability to act with respect for and in accordance with the law;

(vi) The ability to exhibit regard for the rights and welfare of others;

(vii) The ability to comply with the Colorado Rules of Professional Conduct; state, local, and federal laws; regulations, statutes, and rules; and orders of a tribunal;

(viii) The ability to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and others;

(ix) The ability to be honest and use good judgment in personal financial dealings and on behalf of clients and others; and

(x) The ability to comply with deadlines and time constraints.

(B) Petition by Lawyer.

(i) A lawyer seeking reinstatement from disability inactive status must file a properly verified petition with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. Within 14 days of receiving the petition, the Regulation Counsel must file a response indicating whether the Regulation Counsel objects to reinstatement, intends to stipulate to reinstatement, or believes further investigation is needed.

(ii) After receiving a petition and response, the Presiding Disciplinary Judge may order the lawyer to undergo an independent medical examination by a qualified examiner designated by the Presiding Disciplinary Judge.

(iii) The Presiding Disciplinary Judge has discretion to order reinstatement proceedings procedurally analogous to those set forth in C.R.C.P. 242.39. But the Presiding Disciplinary Judge considers reinstatement petitions from disability inactive status without a Hearing Board.

(iv) After considering the relevant information and holding any hearing, the Presiding Disciplinary Judge may grant or deny reinstatement.

(C) Stipulation to Reinstatement. Either before or after the filing of a petition, the parties may file a stipulated agreement that the lawyer should be reinstated from disability inactive status. After considering the relevant information and holding any hearing, the Presiding Disciplinary Judge may approve or reject the stipulation.

(2) Reciprocal Disability.

(A) Summary Reinstatement Premised on Reinstatement in Originating Jurisdiction. If a lawyer was transferred to disability inactive status under C.R.C.P. 243.6(a)(2) and has since been reinstated to practice law in the jurisdiction in which the reciprocal disability proceeding originated, the lawyer may file a petition seeking reinstatement, accompanied by a certified copy of the order reinstating the lawyer in the originating jurisdiction. Provided that the lawyer has not remained on disability inactive status under this rule for more than five years, the Presiding Disciplinary Judge may summarily reinstate the lawyer.

(B) No Reinstatement in Originating Jurisdiction. If a lawyer's petition demonstrates that good cause exists for not seeking reinstatement in the originating jurisdiction, the Presiding Disciplinary Judge may allow a lawyer subject to reciprocal disability to seek reinstatement in Colorado under subsection (b)(1) above without having been reinstated in the originating jurisdiction. A lawyer seeking reinstatement under this provision must attach to the petition for reinstatement a complete record of the disability proceeding in the originating jurisdiction and must certify in the petition that the lawyer was not subject in the originating jurisdiction to any disciplinary proceedings, including a disciplinary investigation, at the time the lawyer was transferred to disability inactive status.

(c) Disability Reinstatement Hearings. Disability reinstatement hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board, except as provided in subsection (d) below. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Except as otherwise provided in this rule, reinstatement proceedings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the lawyer has a fair opportunity to rebut hearsay evidence.

(d) Consolidated Disability and Disciplinary Reinstatement Proceedings. If a lawyer concurrently petitions for reinstatement from disability inactive status and reinstatement or readmission in a disciplinary case, the Presiding Disciplinary Judge may, if the lawyer consents, consolidate the proceedings. If so, a Hearing Board will consider both petitions together under C.R.C.P. 242.39, and the consolidated proceedings will be public.

(e) Costs. Unless the Presiding Disciplinary Judge orders otherwise, a lawyer may not file a petition for reinstatement under this section 243.10 until the lawyer has paid the costs incurred in the underlying disability proceeding, including the cost of any examinations ordered.

(f) Waiver of Privilege. For purposes of this rule, when a lawyer petitions for reinstatement from disability inactive status, the lawyer thereby waives the physician-patient and psychologist-client privileges under C.R.S. section 13-90-107(d) and (g) between the lawyer and any professional who has examined or treated the lawyer in connection with the disability. The Presiding Disciplinary Judge may order the lawyer to identify professionals who have examined or treated the lawyer in connection with the disability. The Presiding Disciplinary Judge may also order the lawyer to provide written consent for those professionals to disclose information and records pertaining to the lawyer's examination or treatment.

(g) Confidentiality. An order reinstating a lawyer from disability inactive status is available to the public. Otherwise, disability reinstatement proceedings, files, and records are confidential and are not available to the public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disability reinstatement proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability reinstatement proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

Rule 243.11. Notices After Reinstatement

(a) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of a final order of reinstatement from disability inactive status.

(b) Notice to ABA National Regulatory Data Bank. The Regulation Counsel must transmit notice of reinstatement from disability inactive status to the National Regulatory Data Bank maintained by the American Bar Association.

Rule 243.12. Post-Hearing Relief and Appeals

(a) Post-hearing Relief. Within 14 days of entry of a final order in a disability proceeding under this rule, including a disability reinstatement proceeding, a party may move for post-hearing relief under C.R.C.P. 59.

(b) Appellate Review. A party may seek appellate review by the supreme court of a final decision in a proceeding under this rule. Part VIII of C.R.C.P. 242 governs appellate review.

(c) Stay Pending Appeal. If reinstatement is granted, the Regulation Counsel may at any time move the supreme court for a stay pending appeal. The supreme court should grant the stay if the Regulation Counsel demonstrates the stay is necessary to protect the public.

(d) Confidentiality. Proceedings under this section are confidential.

Rule 243.13. Contempt During Proceeding

(a) Applicability. If, during a proceeding under this rule, a person knowingly obstructs an investigation, fails to comply with a subpoena, refuses to answer a proper question when testifying, or disrupts through misbehavior the Presiding Disciplinary Judge in the performance of authorized duties, the person may be held in contempt and sanctioned. Authority conferred under this section 243.13 is in addition to any other authority to issue sanctions. C.R.C.P. 107 does not govern contempt proceedings under this section.

(b) Procedure for Direct Contempt. If a person commits contemptuous conduct that the Presiding Disciplinary Judge sees or hears and that is so extreme no warning is necessary, or that has been repeated despite a warning to desist, the Presiding Disciplinary Judge may summarily punish the conduct by imposing reasonable sanctions, including a fine. In such a case, the Presiding Disciplinary Judge will enter an order on the record reciting the facts constituting the contempt, including a description of the conduct, and finding that the conduct is offensive to the authority and dignity of the tribunal. Before the Presiding Disciplinary Judge imposes sanctions, the person held in contempt has the right to respond to the charge of contempt, including making a statement in mitigation.

(c) Procedure for Indirect Contempt.

(1) Motion. A party may file with the Presiding Disciplinary Judge a motion for an order to show cause alleging that a person has, outside of the direct sight or hearing of the Presiding Disciplinary Judge, as applicable, engaged in any of the conduct identified in subsection (a) above. The party must also serve the motion on the person alleged to be in contempt.

(2) Order to Show Cause. The Presiding Disciplinary Judge may enter an order to show cause directing the person alleged to be in contempt to appear at a specified time and place and to show cause why the person should not be held in contempt.

(3) Determination. If the Presiding Disciplinary Judge finds that the person has engaged in any of the conduct described in subsection (a) above, the Presiding Disciplinary Judge may hold the person in contempt and impose reasonable sanctions. The Presiding Disciplinary Judge also may order costs and reasonable attorney's fees.

(d) Disciplinary Charges. An allegation or a finding of contempt does not preclude the Regulation Counsel from filing disciplinary charges under C.R.C.P. 242 based on the same underlying conduct.

(e) Referral to Other Court. Nothing herein precludes the Regulation Counsel from referring a matter to another court of competent jurisdiction to commence other proceedings or to address other appropriate sanctions or remedies.

(f) Appeal. For the purposes of appeal, an order deciding the issue of contempt and sanctions is final.

Rule 244. Protective Appointment of Counsel

Rule 244.1. Relevant Entities

(a) Supreme Court. The supreme court has plenary authority under this rule. The supreme court has the authority to review any determination made in protective appointment of counsel proceedings and to enter any order in such proceedings.

(b) Advisory Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is authorized to act with respect to C.R.C.P. 244 in accordance with the powers and duties set forth in C.R.C.P. 242.3(c).

(c) Regulation Counsel. The Attorney Regulation Counsel (Regulation Counsel) is authorized to act in accordance with the powers and duties set forth in C.R.C.P. 242.5(c) as to protective appointment of counsel proceedings.

(d) Judicial District Chief Judge. The chief judge of any judicial district in which the lawyer in question maintained an office or in which client files or property are located is authorized to enter orders under this rule, including orders necessary for appointed counsel to carry out appointed counsel's duties.

(e) Appointed Counsel. Appointed counsel is authorized to act in accordance with this rule and the chief judge's orders. Appointed counsel must be an actively practicing lawyer licensed in Colorado and in good standing.

Rule 244.2. Immunity

(a) Prohibition Against Lawsuit Based on Communication Under this Rule. A lawyer may not institute a civil lawsuit against any person based on written or oral communications made to relevant entities described in this rule, those entities' members or employees, or persons acting on their behalf.

(b) Immunity for Entities. All relevant entities described in this rule and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 244.3. Applicability

(a) This rule applies to lawyers who practice law in Colorado, whether or not admitted to practice law in Colorado, as well as the client property, including files and funds, and related law office management documents and other property, in the possession, custody, or control of those lawyers.

(b) The Regulation Counsel may seek protective appointment of counsel under this rule when:

(1) A lawyer:

(A) Has died;

(B) Has been transferred to disability inactive status;

(C) Cannot be located by the Regulation Counsel through the exercise of reasonable diligence; or

(D) Is subject to an order of suspension, disbarment, or interim or temporary suspension and the lawyer has not complied with the lawyer's duties under C.R.C.P. 242.32; or

(2) Other reasons requiring immediate protection of the lawyer's clients are shown.

Rule 244.4. Procedure

(a) Appointment. The Regulation Counsel may request that the chief judge of any judicial district in which the lawyer maintained an office or in which client property is located appoint counsel under this rule. On receiving such a request, the chief judge may appoint counsel under this rule.

(b) Scope of Duties. Appointed counsel may obtain and inventory client property, including files and funds; related law office management documents; and other property containing client information. Under the chief judge's supervision, appointed counsel will, as appropriate, provide client property to the appropriate person to the extent practicable; return law firm documents, property, and funds to the appropriate party; take additional steps necessary to discharge the lawyer's obligations under Colo. RPC 1.16(d); destroy remaining inactive or unclaimed client files; and destroy documents that contain confidential client information but are not part of the client's file. If ownership of client funds cannot be determined, appointed counsel will remit the funds to the Colorado Lawyer Trust Account Foundation, consistent with Colo. RPC 1.15B(k).

(c) Filing Fees. Appointed counsel is entitled to take the actions authorized under this section 244.4 without paying filing fees in district court.

(d) Client File Retention. Colo. RPC 1.16A (client file retention) does not apply to counsel appointed under this rule.

(e) Protection of Records. Appointed counsel must not disclose information contained in client files without the consent of the client to whom the files relate, except as necessary or permitted to carry out the court's order appointing counsel or to comply with other law or a court order. Appointed counsel may apply to the chief judge for leave to make limited disclosure of information when necessary for other legitimate purposes.

(f) Reimbursement. Consistent with applicable authorities, appointed counsel may seek reimbursement of attorney's fees and costs incurred in connection with this rule.

Rule 251.1. Reserved.

~~DISCIPLINE AND DISABILITY; POLICY--JURISDICTION~~

~~(a) Statement of Policy. All members of the Bar of Colorado, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times. As officers of the Supreme Court of Colorado, attorneys must observe the highest standards of professional conduct. A license to practice law is a proclamation by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence; that the attorney will be true to that trust; that the attorney will hold inviolate the confidences of clients; and that the attorney will competently fulfill the responsibilities owed to clients and to the courts.~~

~~In order to maintain the highest standards of professional conduct, attorneys who have demonstrated that they are unable, or are likely to be unable, to discharge their professional responsibilities shall be subject to appropriate disciplinary or disability proceedings.~~

~~(b) Jurisdiction. Every attorney licensed to practice law in the State of Colorado is subject to the disciplinary and disability jurisdiction of the Supreme Court in all matters relating to the practice of law. Every attorney practicing law in this state pursuant to C.R.C.P. 204 or 205 is subject to the disciplinary and disability jurisdiction of the Supreme Court when practicing law pursuant to such rules. Every attorney serving as a magistrate pursuant to Colorado Rules for Magistrates, Chapter 35, Vol. 12, C.R.S., is subject to the disciplinary and disability jurisdiction of the Supreme Court for conduct performed as a magistrate as provided by C.R.M. 5(h).~~

~~(c) Standards of Conduct. Any reference contained in these Rules to the Code of Professional Responsibility pertains to conduct occurring prior to January 1, 1993. On January 1, 1993, and thereafter, the conduct of attorneys licensed to practice law in the State of Colorado shall be governed by the Colorado Rules of Professional Conduct and the other Rules or Standards of Professional Conduct adopted from time to time by this Court.~~

~~(d) Plenary Power of the Supreme Court. The Supreme Court reserves the authority to review any determination made in the course of a disciplinary proceeding and to enter any order with respect thereto, including an order directing that further proceedings be conducted as provided by these Rules.~~

Rule 251.2. Reserved.

~~LEGAL REGULATION COMMITTEE~~

~~(a) Permanent Committee. The Legal Regulation Committee ("Regulation Committee" or "Committee") is a permanent committee of the supreme court.~~

~~(b) Membership and Meeting Provisions.~~

~~(1) Members. The Regulation Committee comprises at least nine members, including a Chair and Vice-Chair. At least six of the members must be lawyers admitted to practice in Colorado and at least two of the members must be nonlawyers. The supreme court appoints the members with the assistance of the Advisory Committee. Diversity must be a consideration in making appointments. Members serve one term of seven years. Members' terms should be staggered to provide, so far as possible, for the expiration each year of the term of one member. So far as possible, appointments should be made to ensure an odd number of members.~~

~~(2) Dismissal, Resignation, and Vacancy. Regulation Committee members serve at the pleasure of the supreme court, and the supreme court may dismiss them at any time. A Regulation Committee member may resign at any time. The supreme court will fill any vacancies.~~

~~(3) Chair and Vice-Chair. With the assistance of the Advisory Committee, the supreme court appoints the Chair and Vice-Chair from the membership of the Regulation Committee. The Chair and Vice-Chair may serve in their respective roles for up to an additional seven years after their initial membership term, such that each may serve a total of 14 years on the Committee. The Chair and Vice-Chair serve at the pleasure of the supreme court.~~

~~(4) Quorum. A majority of the members of the Regulation Committee constitutes a quorum, and the action of a majority of those present and comprising a quorum constitutes the official action of the Regulation Committee.~~

~~(5) Reimbursement. Regulation Committee members are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.~~

~~(c) Powers and Duties. The Regulation Committee is authorized and empowered to act in accordance with this rule by:~~

~~(1) Making determinations as authorized by C.R.C.P. 251.1 et seq. regarding Attorney Discipline and Disability Proceedings ("these Rules");~~

~~(2) Adopting practices needed to govern the internal operation of the Regulation Committee, subject to the supreme court's or the Advisory Committee's approval when needed;~~

~~(3) Periodically reporting to the Advisory Committee on the operation of the Regulation Committee; and~~

~~(4) Recommending to the Advisory Committee proposed changes to these Rules.~~

~~(d) Disqualification. Regulation Committee members must refrain from taking part in a disciplinary proceeding in which a judge, similarly situated, would be required to abstain. A Regulation Committee member must also refrain from making determinations under these Rules where a lawyer associated with the member's law firm is in any way connected with the matter pending before the Regulation Committee.~~

~~(e) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or assist with investigations and prosecutions in accordance with these Rules.~~

Rule 251.3. Reserved.

~~ATTORNEY REGULATION COUNSEL~~

~~(a) Attorney Regulation Counsel. The Supreme Court shall appoint a Regulation Counsel. The Regulation Counsel shall serve at the pleasure of the Supreme Court.~~

~~(b) Qualifications. The Regulation Counsel shall be an attorney, duly admitted to the Bar of Colorado, with no less than five years experience in the practice of law. The Regulation Counsel, while serving in that capacity, shall not hold any other public office or engage in the private practice of law.~~

~~(c) Powers and Duties. The Regulation Counsel shall act in accordance with these Rules and:~~

~~(1) Maintain and supervise a permanent office to serve as a central office for the filing of requests for investigation and for the coordination of such investigations; the filing of claims with the Colorado Attorneys' Fund for Client Protection as provided in C.R.C.P. 252 and the consideration of such claims; the administration of all disciplinary and disability enforcement proceedings carried on pursuant to these Rules; and, the administration of all proceedings conducted pursuant to C.R.C.P. 252, et seq., under a budget approved by the Supreme Court;~~

~~(2) Appoint and supervise a staff as necessary to carry out the duties of the Regulation Counsel;~~

~~(3) Conduct investigations as provided by C.R.C.P. 251.9 and C.R.C.P. 251.10, dismiss the allegations as provided in C.R.C.P. 251.11, and report to the committee as provided in C.R.C.P. 251.12;~~

~~(4) Prepare and prosecute disciplinary and disability actions against attorneys as provided by these Rules;~~

~~(5) In appropriate cases, negotiate dispositions of pending matters as authorized in C.R.C.P. 251.10(b)(4) and C.R.C.P. 251.22;~~

~~(6) Prepare and prosecute petitions for immediate suspension in conformity with C.R.C.P. 251.8;~~

~~(7) Prosecute contempt proceedings for violations of these Rules;~~

~~(8) Prosecute contempt proceedings for violations of orders of the Supreme Court relating to suspended and disbarred attorneys and attorneys placed on disability inactive status;~~

~~(9) Participate in and present recommendations reflecting the public interest in all proceedings for reinstatement held pursuant to C.R.C.P. 251.29 and C.R.C.P. 251.30;~~

~~(10) Maintain permanent records of matters processed by the committee, and the disposition thereof;~~

~~(11) Participate in the management and supervision of the bar mediation process established by the Supreme Court, implemented by the Colorado Bar Association, and administered by the mediation committee of the association in conjunction with the committee; and,~~

~~(12) Perform such other duties as the Supreme Court may direct.~~

~~Mediators shall be appointed by the Supreme Court. The mediation committee and the Regulation Counsel shall jointly recommend attorneys to the Court for appointment as mediators. The Regulation Counsel shall forward the names of those recommended to the Court together with a proposed order making the appointment of the mediators.~~

~~(d) Disqualification. A former member of the Regulation Counsel's staff shall not represent an attorney in any proceeding that was being investigated and/or prosecuted during the member's association with the Regulation Counsel's staff.~~

Rule 251.4. Reserved.

~~DUTY OF JUDGE TO REPORT MISCONDUCT OR DISABILITY~~

~~A judge has a duty to report unprofessional conduct by an attorney to Regulation Counsel pursuant to Rule 2.15 of the Colorado Code of Judicial Conduct. No action taken by any judge pursuant to Rule 2.15 shall in any way limit the power of the reporting judge to exercise the power of contempt against an attorney, nor should the reporting of such matters to the Regulation Counsel be used in lieu of contempt proceedings.~~

Rule 251.5. Reserved.

~~GROUNDS FOR DISCIPLINE~~

~~Misconduct by an attorney, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:~~

~~(a) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;~~

~~(b) Any criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action;~~

~~(c) Any act or omission which violates these Rules or which violates an order of discipline or disability; or~~

~~(d) Failure to respond without good cause shown to a request by the committee, the Regulation Counsel, or the Board of Trustees of the Colorado Attorneys' Fund for Client Protection or obstruction of the committee, the Regulation Counsel, or the Board or any part thereof in the performance of their duties. Good cause includes, but is not limited to, an assertion that a response would violate the respondent's constitutional privilege against self-incrimination.~~

~~This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.~~

Rule 251.6. Reserved.

~~FORMS OF DISCIPLINE~~

~~Any of the following forms of discipline may be imposed in those cases where grounds for discipline have been established:~~

~~(a) Disbarment. Disbarment is the revocation of an attorney's license to practice law in this state, subject to readmission as provided by C.R.C.P. 251.29(a). Disbarment shall be for at least eight years;~~

~~(b) Suspension. Suspension is the temporary suspension of an attorney's license to practice law in this state, subject to reinstatement as provided in C.R.C.P. 251.29(b). Suspension, which may be stayed in whole or in part, shall be for a definite period of time not to exceed three years;~~

~~(c) Public Censure. Public censure is a reproach published with other grievance decisions and made available to the public; and~~

~~(d) Private Admonition. Private admonition is an unpublished reproach. An attorney who has been admonished by the committee and who wishes to challenge the order of admonition may, by written petition filed with the Regulation Counsel within 21 days after the date the letter of admonition was mailed to the admonished attorney or personally read to the attorney, demand as a matter of right that imposition of the admonition be vacated, that a complaint be filed against the attorney, and that disciplinary proceedings continue in the manner prescribed by these rules.~~

Rule 251.7. Reserved.

~~PROBATION~~

~~(a) Eligibility. When an attorney has demonstrated that the attorney:~~

~~(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;~~

~~(2) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and,~~

~~(3) Has not committed acts warranting disbarment, then the attorney may be placed on probation. Probation shall be imposed for a specified period of time in conjunction with a suspension which may be stayed in whole or in part. Such an order shall be regarded as an order of discipline. The period of probation shall not exceed three years unless an extension is granted upon motion by either party. A motion for an extension must be filed prior to the conclusion of the period originally specified.~~

~~(b) Conditions. The order placing an attorney on probation shall specify the conditions of probation. The conditions shall take into consideration the nature and circumstances of the attorney's misconduct and the history, character, and health status of the attorney and shall include no further violations of the Colorado Rules of Professional Conduct. The conditions may include but are not limited to the following:~~

~~(1) Making periodic reports to the Regulation Counsel or to the attorneys' peer assistance program as provided in subsection (d) of this Rule;~~

~~(2) Monitoring the attorney's practice or accounting procedures;~~

~~(3) Establishing a relationship with an attorney-mentor, and regular reporting with respect to the development of that relationship;~~

~~(4) Satisfactory completion of a course of study;~~

~~(5) Successful completion of the multi-state professional responsibility examination;~~

~~(6) Refund or restitution;~~

~~(7) Medical evaluation or treatment;~~

~~(8) Mental health evaluation or treatment;~~

~~(9) Evaluation or treatment in a program that specializes in treating disorders related to sexual misconduct;~~

~~(10) Evaluation or treatment in a program that specializes in treating matters relating to perpetration of family violence, including but not limited to domestic partner, elder, and child abuse;~~

~~(11) Substance abuse evaluation or treatment;~~

~~(12) Abstinence from alcohol and drugs; and~~

~~(13) No further violations of the Colorado Rules of Professional Conduct.~~

~~(c) Costs. The attorney shall also be responsible for all costs of evaluation, treatment and supervision. Failure to pay these costs prior to termination of probation shall constitute a violation of probation.~~

~~(d) Monitoring. The Regulation Counsel shall monitor the attorney's compliance with the conditions of probation imposed under these rules. When appropriate, the Regulation Counsel may delegate its monitoring role to the attorneys' peer assistance program. In cases in which the attorneys' peer assistance program is the designated monitor, regular reports regarding the progress of the attorney shall be submitted by the attorneys' peer assistance program to the Regulation Counsel.~~

~~(e) Violations. If, during the period the attorney is on probation, the Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an~~

~~order requiring the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion shall toll any period of suspension until final action. A hearing shall be held upon motion of either party before the Presiding Disciplinary Judge. At the hearing, the Regulation Counsel has the burden of establishing by a preponderance of the evidence the violation of a condition of probation. When, in a revocation hearing, the alleged violation of a condition is the attorney's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima facie evidence of a violation. Any evidence having probative value shall be received regardless of its admissibility under the rules of evidence if the attorney is accorded a fair opportunity to rebut hearsay evidence. At the conclusion of a hearing, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and decision.~~

~~(f) Termination. Unless otherwise provided in the order of suspension, within 28 days and no less than 14 days prior to the expiration of the period of probation, the attorney shall file an affidavit with the Regulation Counsel stating that the attorney has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. The order shall become effective upon the expiration of the period of probation.~~

~~(g) Independent Charges. A motion for revocation of an attorney's probation shall not preclude the Regulation Counsel from filing independent disciplinary charges based on the same conduct as alleged in the motion.~~

Rule 251.8. Reserved.

~~IMMEDIATE SUSPENSION~~

~~(a) Immediate Suspension. Immediate suspension is the temporary suspension by the Supreme Court of an attorney's license to practice law for a definite or indefinite period of time while proceedings conducted pursuant to this Rule and these Rules are pending against the attorney.~~

~~Although an attorney's license to practice law shall not ordinarily be suspended during the pendency of such proceedings, the Supreme Court may order the attorney's license to practice law immediately suspended when there is reasonable cause to believe that:~~

~~(1) the attorney is causing or has caused immediate and substantial public or private harm and the attorney:~~

~~(A) has been convicted of a serious crime as defined by C.R.C.P. 251.20(e);~~

~~(B) has converted property or funds;~~

~~(C) has abandoned clients; or~~

~~(D) has engaged in conduct which poses an immediate threat to the effective administration of justice.~~

~~(b) Petition for Immediate Suspension.~~

~~(1) When it is believed that an attorney should be immediately suspended, the committee or Regulation Counsel shall file a petition with the Presiding Disciplinary Judge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause that the alleged conduct has in fact occurred. A copy of the petition shall be served on the attorney pursuant to these Rules.~~

~~(2) The Presiding Disciplinary Judge, or the Supreme Court, by any justice thereof, may order the issuance of an order to show cause directing the attorney to show cause why the attorney should not be immediately suspended, which order shall be returnable within 14 days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and recommendation and file the report with the Supreme Court. After receipt of the report the Supreme Court may enter an order immediately suspending the attorney from the practice of law, or dissolve the order to show cause.~~

~~(3) If a response to the order to show cause is filed and the attorney requests a hearing on the petition, said hearing shall be held within 14 days before the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall submit a transcript of the hearing and a report setting forth findings of fact and a recommendation to the Supreme Court within 7 days after the conclusion of the hearing. Upon the receipt of the recommendation and the record relating thereto, the Supreme Court may enter an order immediately suspending the attorney from the practice of law or dissolve the order to show cause.~~

~~(4) When the Supreme Court enters an order immediately suspending the attorney, the Regulation Counsel shall promptly prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14, notwithstanding the provisions of C.R.C.P. 251.10 and C.R.C.P. 251.12. Thereafter the matter shall proceed as provided by these Rules.~~

~~(5) An attorney who has been immediately suspended pursuant to this Rule shall have the right to request an accelerated disposition of the allegations which form the bases for the immediate suspension by filing a notice with the Regulation Counsel requesting accelerated disposition.~~

~~After the notice has been filed, the Regulation Counsel shall promptly file a complaint pursuant to these Rules and the matter shall be docketed by the Presiding Disciplinary Judge for accelerated disposition. Thereafter the matter shall proceed and be concluded without appreciable delay.~~

~~(c) Transferred.~~

Rule 251.8.5. Reserved.

~~SUSPENSION FOR NONPAYMENT OF CHILD SUPPORT, OR FOR FAILURE TO COMPLY WITH WARRANTS RELATING TO PATERNITY OR CHILD SUPPORT PROCEEDINGS~~

~~(a) Application.~~

~~The provisions of this rule shall apply to an attorney licensed or admitted to practice law in Colorado who is in arrears in payment of child support or who is in arrears under a child support order as defined by section 26-13-123(a), C.R.S., or who fails to comply with a warrant relating to paternity or child support proceedings.~~

~~Proceedings commenced against an attorney under the provisions of this rule are not disciplinary proceedings. Suspension of an attorney's license to practice law under the provisions of this rule is not a form of discipline, and shall not necessarily bar disciplinary action.~~

~~(b) Petition for Suspension.~~

~~(1) Upon receipt of reliable information that an attorney is in arrears in payment under a child support order, or has failed to comply with subpoenas or warrants relating to paternity or child support proceedings, regulation counsel may file a petition for suspension with the presiding disciplinary judge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause to believe that the attorney is in arrears on a child support order, or has failed to comply with a subpoena or a warrant relating to paternity or child support proceedings. A copy of the petition shall be served on the attorney pursuant to these rules.~~

~~(2) The presiding disciplinary judge shall order the issuance of an order to show cause directing the attorney to show cause why the attorney's license to practice law should not be immediately suspended, which order shall be returnable within 28 days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the presiding disciplinary judge shall enter an order immediately suspending the attorney from the practice of law, unless within the 28-day period: the attorney has paid the past-due obligation, negotiated a payment plan approved by the court or the state child support enforcement agency or agency having jurisdiction over the child support~~

~~order, requested a hearing before the presiding disciplinary judge, or complied with the warrant or subpoena.~~

~~(3) If a response to the order to show cause is timely filed and the attorney or the regulation counsel requests a hearing before the presiding disciplinary judge on the petition, the hearing shall be held within 14 days of the request, or as soon thereafter as is practicable. At the hearing, the burden is initially on the regulation counsel to prove the allegations in the petition by a preponderance of the evidence. If the presiding disciplinary judge has determined that the regulation counsel has proved the allegations in the petition by a preponderance of the evidence, he or she shall issue an order immediately suspending the attorney, unless the attorney proves by a preponderance of the evidence that: (1) there is a mistake in the identity of the attorney; (2) there is a bona fide disagreement currently before a court or an agency concerning the amount of the child support debt, arrearage balance, retroactive support due, or the amount of the past-due child support when combined with maintenance; (3) all child support payments were made when due; (4) the attorney has complied with the subpoena or warrant; (5) the attorney was not served with the subpoena or warrant; or (6) there was a technical defect with the subpoena or warrant. No evidence with respect to the appropriateness of the underlying child support order or ability of the attorney in arrears to comply with such order shall be received or considered by the presiding disciplinary judge. Upon conclusion of the hearing, the presiding disciplinary judge shall promptly prepare an opinion setting forth his or her findings of facts and decision.~~

~~(c) Appeal. For purposes of this rule, the decision of the presiding disciplinary judge shall be final, and an appeal may be commenced as set forth in C.R.C.P. 251.26.~~

~~(d) Reinstatement.~~

~~(1) If, after an attorney's license has been suspended, the attorney has paid the past-due obligations, entered into a payment plan approved by the court or the agency having jurisdiction over the child support order, or complied with the warrant or subpoena, the attorney may seek reinstatement by filing a verified petition, with evidence of compliance, with the presiding disciplinary judge.~~

~~(2) Immediately upon receipt of a petition for reinstatement, the regulation counsel shall have 28 days or, upon a showing of good cause, such greater time as authorized by the presiding disciplinary judge within which to conduct any investigation deemed necessary. The attorney shall cooperate in any such investigation. At the end of the period of time allowed for the investigation, the regulation counsel shall file an answer. Based on the petition and answer, the presiding disciplinary judge may order reinstatement or hold a hearing to determine whether the attorney shall be reinstated. The attorney shall bear the burden of establishing the right to be reinstated by a preponderance of the evidence.~~

~~(3) If the petition for reinstatement is denied by the presiding disciplinary judge, the attorney may proceed pursuant to C.R.C.P. 251.26.~~

Rule 251.8.6. Reserved.

~~SUSPENSION FOR FAILURE TO COOPERATE~~

~~(a) Application. The provisions of this rule shall apply in all cases where there is a request for investigation pending against an attorney under these rules, alleging serious misconduct. If the attorney fails to cooperate either by failing to respond to the request for investigation or by failing to produce information or records requested by Regulation Counsel, then Regulation Counsel may file a petition for suspension of the attorney's license to practice law. Proceedings commenced against an attorney under the provisions of this rule are not disciplinary proceedings. Suspension of an attorney's license to practice law under the provisions of this rule is not a form of discipline, and shall not necessarily bar disciplinary action.~~

~~(b) Petition for Suspension. Regulation Counsel may file a petition for suspension with the supreme court alleging that the attorney has not responded to requests for information, has not responded to the request for investigation, or has not produced records or documents requested by Regulation Counsel and has not interposed a good-faith objection to producing the records or documents. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause to believe that the serious misconduct alleged in the request for investigation has in fact occurred. The affidavit shall also include the efforts undertaken by Regulation Counsel to obtain the attorney's cooperation. A copy of the petition shall be served on the attorney pursuant to C.R.C.P. 251.32(b). The failure of the attorney to file a response in opposition to the petition within 14 days may result in the entry of an order suspending the attorney's license to practice law until further order of the court. The attorney's response shall set forth facts showing that the attorney has complied with the requests, or the reasons why the attorney has not complied and may request a hearing.~~

~~Upon consideration of a petition for suspension and the attorney's response, if any, the supreme court may suspend the attorney's license to practice law for an indefinite period pending further order of the court; it may deny the petition; or it may issue any other appropriate orders. If a response to the petition is filed and the attorney requests a hearing on the petition, the supreme court may conduct such a hearing or it may refer the matter to the presiding disciplinary judge for resolution of contested factual matters. The presiding disciplinary judge shall submit a report setting forth findings of fact and a recommendation to the supreme court within 7 days of the conclusion of the hearing.~~

~~(c) Reinstatement. An attorney suspended under this rule may apply to the supreme court for reinstatement upon proof of compliance with the requests of Regulation Counsel as alleged in the~~

~~petition, or as otherwise ordered by the court. A copy of the application must be delivered to Regulation Counsel, who may file a response to the application within two business days after being served with a copy of the application for reinstatement. The supreme court will summarily reinstate an attorney suspended under the provisions of this Rule upon proof of compliance with the requests of Regulation Counsel.~~

~~COMMENT~~

~~This rule addresses problems caused by relatively few attorneys who fail to cooperate with the regulation counsel after a request for investigation has been filed against the attorney. In general, it would not apply after formal proceedings have been commenced against the attorney by the filing of a complaint. The rule would still apply, however, even after formal proceedings have begun, with respect to matters outside of the complaint.~~

~~Suspension under the rule is not discipline. In this sense, it is similar to a summary administrative suspension for failing to pay the attorney registration fee or to file a registration statement, see C.R.C.P. 227(A)(4), or for noncompliance with mandatory continuing legal education requirements, see C.R.C.P. 260.6. It is also similar to a suspension for nonpayment of child support, see C.R.C.P. 251.8.5, except resort in the first instance is made to the supreme court rather than the presiding disciplinary judge. Like those other rules, the intent of this rule is to ensure that an attorney complies with the requirements of the rules governing the legal profession, in this case the attorney's duty to cooperate with regulation counsel in the investigation of a request for investigation. See C.R.C.P. 251.1(a); C.R.C.P. 251.5(d); Colo. RPC 8.4(d). By this rule, the supreme court intends to facilitate communication between the attorney and regulation counsel. The rule is not designed to threaten or punish lawyers who have a good reason for not complying with regulation counsel's request, such as an inability to comply or possession of a good-faith objection to production. For example, an attorney will not be suspended under this rule merely because the attorney is out of the office on vacation.~~

Rule 251.9. Reserved.

~~REQUEST FOR INVESTIGATION~~

~~(a) Commencement. Proceedings as provided in these Rules shall be commenced:~~

~~(1) Upon a request for investigation made by any person and directed to the Regulation Counsel; or~~

~~(2) Upon a report made by a judge of any court of record of this state and directed to the Regulation Counsel, as provided in C.R.C.P. 251.4;~~

~~(3) By the committee upon its own motion; or~~

~~(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the committee.~~

~~(b) Determination to Proceed. Immediately upon receipt of a request for investigation, a report made by a judge, or a motion made by the committee, as provided in subsection (a) of this Rule, the matter shall be referred to the Regulation Counsel to determine:~~

~~(1) If the attorney in question is subject to the disciplinary jurisdiction of the Supreme Court;~~

~~(2) If there is an allegation made against the attorney in question which, if proved, would constitute grounds for discipline; and~~

~~(3) If the matter should be investigated as provided by C.R.C.P. 251.10 or addressed by means of an alternative to discipline as provided by C.R.C.P. 251.13.~~

~~In making a determination whether to proceed, the Regulation Counsel may make inquiry regarding the underlying facts and consult with the Chair of the committee. The decision of the Regulation Counsel shall be final, and the complaining witness shall have no right to appeal.~~

Rule 251.10. Reserved.

~~INVESTIGATION OF ALLEGATIONS~~

~~(a) When Commenced. If, pursuant to C.R.C.P. 251.9, the Regulation Counsel makes a determination to proceed with an investigation, the Regulation Counsel shall give the attorney in question written notice that the attorney is under investigation and of the general nature of the allegations made against the attorney. The attorney in question shall file with the Regulation Counsel a written response to the allegations made against the attorney within 21 days after notice of the investigation is given.~~

~~Upon receipt of the attorney's response, or at the expiration of the 21-day period if no response is received, the matter shall be assigned to an Investigator for investigation and report.~~

~~(b) Procedures for Investigation.~~

~~(1) The Investigator. A member of the committee, the Regulation Counsel, a member of the Regulation Counsel's staff, or an attorney enlisted pursuant to C.R.C.P. 251.2(b)(1) may act as Investigator. The Investigator shall expeditiously conduct an investigation of the allegations made against the attorney in question.~~

~~(2) Procurement of Evidence During Investigation. In the course of an investigation conducted pursuant to these Rules, the Investigator, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.~~

~~In connection with an investigation of allegations made against an attorney, the Chair of the committee or the Regulation Counsel may issue subpoenas to compel the attendance of witnesses, including the attorney in question, and the production of pertinent books, papers, documents, or other evidence in proceedings before the Investigator. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge.~~

~~Any person who fails or refuses to comply with a subpoena issued pursuant to this Rule may be cited for contempt of the Supreme Court.~~

~~Any person who knowingly obstructs the Regulation Counsel or the committee or any part thereof in the performance of their duties may be cited for contempt of the Supreme Court.~~

~~Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.~~

~~A contempt citation may be issued by the Supreme Court upon recommendation of the Presiding Disciplinary Judge. A copy of the recommendation, together with the findings of fact made by the Presiding Disciplinary Judge surrounding the contemptuous conduct, shall be filed with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.~~

~~(3) Investigator's Report. When the Investigator is not a member of the Regulation Counsel's staff, the Investigator shall submit a written report of investigation and recommendation to the committee for a determination as provided in C.R.C.P. 251.12. If the Investigator is a member of the Regulation Counsel's staff, the matter shall be submitted as provided in C.R.C.P. 252.11.~~

~~(4) Conditional Admission. While the matter is under investigation, the attorney in question and the Regulation Counsel may tender an agreed upon conditional admission of misconduct as provided in C.R.C.P. 251.22 to the committee when the form of discipline is no greater than a private admonition. When the form of discipline is greater than a private admonition or, if a range of disciplinary measures is specified in the conditional admission, then the conditional admission shall be tendered to the Presiding Disciplinary Judge. When a conditional admission is tendered pursuant to this Rule, the person acting as Investigator may forego submitting a written report of investigation and recommendation to the committee as provided in subsection (3) of this Rule.~~

Rule 251.11. Reserved.

~~DETERMINATION BY THE REGULATION COUNSEL~~

~~During the investigation or at the conclusion thereof, the Regulation Counsel may determine that the matter should be diverted to the alternatives to discipline program as provided in C.R.C.P. 251.13.~~

~~At the conclusion of an investigation of a matter that has not been diverted, the Regulation Counsel shall either dismiss the allegations or report to the committee for a determination as provided in C.R.C.P. 251.12. If the Regulation Counsel dismisses the allegations as provided herein, the person making the allegations against the attorney in question may request review of the Regulation Counsel's decision. If review is requested, the committee shall review the matter and make a determination as provided by C.R.C.P. 251.12; provided, however, that the committee shall sustain the dismissal unless it determines that the Regulation Counsel's determination constituted an abuse of discretion. When the committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its determination.~~

Rule 251.12. Reserved.

~~DETERMINATION BY THE COMMITTEE~~

~~If, at the conclusion of an investigation, the Regulation Counsel believes that the committee should order private admonition imposed or authorize the Regulation Counsel to prepare and file a complaint, the Regulation Counsel shall submit a report of investigation and recommendation to the committee, which shall determine whether there is reasonable cause to believe grounds for discipline exist and shall either:~~

~~(a) Direct the Regulation Counsel or other investigator appointed pursuant to C.R.C.P. 251.2(b)(1) to conduct further investigation;~~

~~(b) Dismiss the allegations and furnish the person making the allegations with a written explanation of its determination;~~

~~(c) Divert the matter to the alternatives to discipline program as provided by C.R.C.P. 251.13;~~

~~(d) Order private admonition imposed; or~~

~~(e) Authorize the Regulation Counsel to prepare and file a complaint against the attorney.~~

~~In determining whether to authorize the Regulation Counsel to file a complaint, the committee shall consider the following:~~

~~(1) Whether it is reasonable to believe that misconduct warranting discipline can be proved by clear and convincing evidence;~~

~~(2) The level of injury;~~

~~(3) Whether the attorney previously has been disciplined; and~~

~~(4) Whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings because it involves misrepresentation, conversion or commingling of funds, acts of violence, or criminal or other misconduct that ordinarily would result in public censure, suspension or disbarment.~~

Rule 251.13. Reserved.

~~ALTERNATIVES TO DISCIPLINE~~

~~(a) Referral to Program. The Regulation Counsel, the committee, the Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court may offer diversion to the alternatives to discipline program to the attorney. The alternatives to discipline program may include, but is not limited to, diversion or other programs such as mediation, fee arbitration, law office management assistance, evaluation and treatment through the attorneys' peer assistance program, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, or any other program authorized by the Court.~~

~~(b) Participation in the Program. As an alternative to a form of discipline, an attorney may participate in an approved diversion program in cases where there is little likelihood that the attorney will harm the public during the period of participation, where the Regulation Counsel can adequately supervise the conditions of diversion, and where participation in the program is likely to benefit the attorney and accomplish the goals of the program. A matter generally will not be diverted under this Rule when:~~

~~(1) The presumptive form of discipline in the matter is likely to be greater than public censure;~~

~~(2) The misconduct involves misappropriation of funds or property of a client or a third party;~~

~~(3) The misconduct involves a serious crime as defined by C.R.C.P. 251.20(e);~~

~~(4) The misconduct involves family violence;~~

~~(5) The misconduct resulted in or is likely to result in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of diversion;~~

~~(6) The attorney has been publicly disciplined in the last three years;~~

~~(7) The matter is of the same nature as misconduct for which the attorney has been disciplined in the last five years;~~

~~(8) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or~~

~~(9) The misconduct is part of a pattern of similar misconduct.~~

~~(c) Diversion Agreement. If an attorney agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written agreement. If the agreement is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9, the agreement shall be between the attorney and Regulation Counsel. If diversion is offered and entered after a determination to proceed is made pursuant to C.R.C.P. 251.9 but before authorization to file a complaint, the diversion agreement between the attorney and Regulation Counsel shall be submitted to the committee for consideration. If the committee rejects the diversion agreement, the matter shall proceed as otherwise provided by these Rules. If diversion is offered and entered after a complaint has been filed pursuant to C.R.C.P. 251.14, the diversion agreement shall be submitted to the Presiding Disciplinary Judge or Supreme Court, whichever body before which the matter is pending for consideration. If the diversion agreement is rejected, the matter shall proceed as provided by these Rules.~~

~~The agreement shall specify the program(s) to which the attorney shall be diverted, the general purpose of the division, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.~~

~~(d) Costs of the Diversion. The attorney shall pay all the costs incurred in connection with participation in any diversion program. The attorney shall also pay the administrative cost of the proceeding as set by the Supreme Court.~~

~~(e) Effect of Diversion. When the recommendation for diversion becomes final, the attorney shall enter into the diversion program(s) and complete the requirements thereof. Upon the attorney's entry into the diversion programs(s), the underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.~~

~~(f) Effect of Successful Completion of the Diversion Program. If diversion is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9(b)(3), and if Regulation Counsel determines that the attorney has successfully completed all requirements of the diversion~~

~~program, the Regulation Counsel shall close the file. If diversion is successfully completed in a matter that was determined to warrant investigation or other proceedings pursuant to these Rules, the matter shall be dismissed and expunged pursuant to C.R.C.P. 251.33(d). After the file is expunged, the attorney may respond to any general inquiry as provided in C.R.C.P. 251.33(d).~~

~~(g) Breach of Diversion Agreement. The determination of a breach of a diversion agreement will be as follows:~~

~~(1) If the Regulation Counsel has reason to believe that the attorney has breached the diversion agreement, and the diversion agreement was entered prior to a decision to proceed pursuant to C.R.C.P. 251.9(b), and after the attorney has had an opportunity to respond, Regulation Counsel may elect to modify the diversion agreement or terminate the diversion agreement and proceed with the matter as provided by these rules.~~

~~(2) If Regulation Counsel has reason to believe that the attorney has breached the diversion agreement after a determination to proceed has been made, then the matter shall be referred to the Presiding Disciplinary Judge or Supreme Court, whichever body approved the diversion agreement, with an opportunity for the attorney to respond. The Regulation Counsel will have the burden by a preponderance of the evidence to establish the materiality of the breach, and the attorney will have the burden by a preponderance of the evidence to establish justification for the breach. If after consideration of the information presented by the Regulation Counsel and the attorney's response, if any, it is determined that the breach was material without justification, the agreement will be terminated and the matter will proceed as provided for by these rules. If a breach is established but determined to be not material or to be with justification, the diversion agreement may be modified in light of the breach. If no breach is found, the matter shall proceed pursuant to the terms of the original diversion agreement.~~

~~(3) If the matter has been referred for determination to the committee, Presiding Disciplinary Judge, or the Supreme Court as provided for in section (g)(2) of this rule, upon motion of either party, the Presiding Disciplinary Judge shall hold a hearing on the matter. Upon conclusion of the hearing, the Presiding Disciplinary Judge shall prepare written findings of fact and conclusions and enter an appropriate order in those matters in which the Presiding Disciplinary Judge originally approved the diversion agreement. If the hearing is requested in a matter pending before the committee or Supreme Court for consideration, the Presiding Disciplinary Judge shall prepare findings of fact and recommendations and forward them to the body which originally approved the diversion agreement for its determination of the matter.~~

~~(h) Effect of Rejection of Recommendation for Diversion. If an Attorney rejects a diversion recommendation, the matter shall proceed as otherwise provided in these Rules.~~

~~(i) Confidentiality. All the files and records resulting from the diversion of a matter shall not be made public except by order of the Supreme Court. Information of misconduct admitted by the attorney to a treatment provider or a monitor while in a diversion program is confidential if the misconduct occurred before the attorney's entry into a diversion program.~~

Rule 251.14. Reserved.

~~COMPLAINT--CONTENTS, SERVICE~~

~~(a) Contents of Complaint. Complaints seeking to establish grounds for discipline of an attorney shall be filed as provided by these Rules with the Presiding Disciplinary Judge. An original and three copies of the complaint shall be filed.~~

~~The complaint shall set forth clearly and with particularity the grounds for discipline with which the respondent is charged and the conduct of the respondent which gave rise to those charges. All disciplinary and disability proceedings filed as herein provided shall be conducted in the name of the People of the State of Colorado and shall be prosecuted by the Regulation Counsel.~~

~~(b) Service of Complaint. The Regulation Counsel shall promptly serve upon the respondent, as provided in C.R.C.P. 251.32(b), a citation and a copy of the complaint filed against the respondent. The citation shall require the respondent within 21 days after service thereof to file an original and three copies of a written answer to the complaint, in compliance with C.R.C.P. 251.15.~~

Rule 251.15. Reserved.

~~ANSWER--FILING, FAILURE TO ANSWER, DEFAULT~~

~~(a) Answer. Within 21 days after service of the citation and complaint, or within such greater period of time as may be approved by the Presiding Disciplinary Judge, the respondent shall file an original and three copies of an answer to the complaint with the Presiding Disciplinary Judge and one copy with the Regulation Counsel. In the answer the respondent shall either admit or deny every material allegation contained in the complaint, or request that the allegation be set forth with greater particularity. In addition, the respondent shall set forth in the answer any affirmative defenses. Any objection to the complaint which a respondent may assert, including a challenge to the complaint for failure to charge misconduct constituting grounds for discipline, must also be set forth in the answer.~~

~~(b) Failure to Answer, and Default. If the respondent fails to file an answer within the period provided by subsection (a) of this Rule, the Regulation Counsel shall file a motion for default with the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall enter a default and the complaint shall be deemed admitted; provided, however, that a respondent who~~

~~fails to file a timely answer may, upon a showing that the failure to answer was the result of mistake, inadvertence, surprise, or excusable neglect, obtain leave of the Presiding Disciplinary Judge to file an answer.~~

~~Notwithstanding the entry of a default, the Regulation Counsel shall give the respondent notice of the final hearing, at which the respondent may appear and present arguments to the Hearing Board regarding the form of discipline to be imposed.~~

~~Thereafter, the Hearing Board shall review all pleadings, arguments, and the report of investigation and shall prepare a report setting forth its findings of fact and its decision as provided in C.R.C.P. 251.19.~~

~~If, however, after the entry of default neither the respondent nor Regulation Counsel timely requests a hearing before the Hearing Board, then the sanctions hearing shall be held solely before the Presiding Disciplinary Judge.~~

Rule 251.16. Reserved.

~~PRESIDING DISCIPLINARY JUDGE~~

~~(a) Presiding Disciplinary Judge. The office of the Presiding Disciplinary Judge of the Supreme Court of Colorado is hereby established. The Supreme Court shall appoint a Presiding Judge to serve at the pleasure of the Supreme Court.~~

~~(b) Qualifications. The Presiding Disciplinary Judge shall be an attorney, duly admitted to the Bar of Colorado, with more than five years experience in the practice of law. The Presiding Disciplinary Judge, while serving in that capacity, may hold any other public office.~~

~~(c) Powers and Duties of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge shall be authorized and empowered to act in accordance with these Rules and to:~~

~~(1) Maintain and supervise a permanent office in the Denver metropolitan area to serve as the central office in which disciplinary and disability proceedings shall be conducted as provided in these Rules, under a budget approved by the Supreme Court;~~

~~(2) Select counsel and appoint a staff as necessary to assist the Presiding Disciplinary Judge in the administration of the judge's office and in the performance of the judge's duties;~~

~~(3) Order the parties in disciplinary proceedings to attend a settlement conference;~~

~~(4) Impose discipline on an attorney or transfer an attorney to disability inactive status as provided in these Rules;~~

~~(5) Periodically report to the Advisory Committee and the management committee on the operation of the office of the Presiding Disciplinary Judge;~~

~~(6) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and~~

~~(7) Adopt such practices as may from time to time become necessary to govern the internal operation of the office of the Presiding Disciplinary Judge, as approved by the Supreme Court.~~

~~(8) Preside over contempt proceedings initiated under these Rules and C.R.C.P. 107 when appropriate.~~

~~(9) Preside over sanctions hearings pursuant to C.R.C.P. 251.15(b) and C.R.C.P. 251.19(c).~~

~~(d) Abstention. The Presiding Disciplinary Judge shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of the Presiding Disciplinary Judge, or any attorney in any way affiliated with the Presiding Disciplinary Judge or the Judge's law firm, may accept or continue in employment connected with any matter pending before the committee, the Judge, or a Hearing Board as long as the Judge is serving as the Presiding Disciplinary Judge.~~

~~(e) Disqualification. Presiding Disciplinary Judges shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former presiding disciplinary judges shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.~~

Rule 251.17. Reserved.

~~HEARING BOARD~~

~~(a) Hearing Board. Hearing Boards are hereby established and empowered to act in accordance with these Rules.~~

~~(1) Members. The Supreme Court shall appoint a diverse pool of members of the Bar of Colorado and members of the public to serve as members of Hearing Boards. Persons appointed shall serve terms of six years. Terms shall be staggered to provide, so far as possible, for the expiration each year of the terms of an equal number of persons.~~

~~Persons appointed shall serve at the pleasure of the Supreme Court and may be dismissed from service at any time by order of the Supreme Court. Persons appointed may resign at any time.~~

~~(2) Vacancy. In the event of vacancies on the list of Hearing Board members, the Supreme Court shall, with the assistance of the Advisory Committee, appoint new persons to the list to serve on Hearing Boards.~~

~~(3) Reimbursement. Members of Hearing Boards shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.~~

~~(b) Abstention of Members. Members of Hearing Boards shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the Hearing Board, or any attorney in any way affiliated with a member of the Hearing Board or the member's law firm, may accept or continue in employment connected with any matter pending before the Hearing Board on which the member is serving.~~

~~(c) Disqualification. Members of Hearing Boards shall not represent an attorney in any matter as provided in these Rules during their terms of service.~~

Rule 251.18. Reserved.

~~HEARINGS BEFORE THE HEARING BOARD~~

~~(a) Notice. Not less than 56 days (8 weeks) before the date set for the hearing of a complaint, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, or the respondent's counsel, and to the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf.~~

~~The notice shall also advise the complaining witness that the complaining witness has a right to be present at the hearing and if there is a finding of misconduct to make a statement, orally or in writing, regarding the form of discipline.~~

~~(b) Designation of a Hearing Board.~~

~~(1) All hearings on complaints seeking disciplinary action against a respondent shall be conducted by a Hearing Board except as provided in subsection (b)(3). A Hearing Board shall consist of the Presiding Disciplinary Judge and two other members, one of whom shall be an attorney, who are to be selected at random from the pool of Hearing Board Members by the clerk for the Presiding Disciplinary Judge. If the Presiding Disciplinary Judge has been disqualified, then a presiding officer shall be selected at random from among the attorneys on the list of~~

~~Hearing Board members. The presiding officer shall, in all respects, act in accordance with these Rules.~~

~~(2) The Presiding Disciplinary Judge or the presiding officer shall rule on all motions, objections, and other matters presented after a complaint is filed and in the course of a hearing.~~

~~(3) Once a default has been entered against a respondent, the respondent or Regulation Counsel has 28 days after notice of the default order to request a sanctions hearing before a three-person Hearing Board. The party requesting this hearing shall send notice of such request, in writing, to the Presiding Disciplinary Judge and the opposing party. If neither party requests a sanctions hearing before a three-person Hearing Board, the sanction shall be decided by the Presiding Disciplinary Judge.~~

~~(c) Prehearing Conference. At the discretion of the Presiding Disciplinary Judge, a prehearing conference may be ordered.~~

~~(d) Procedure and Proof. Except as otherwise provided in these Rules, hearings and all matters commencing with filing the complaint as provided in C.R.C.P. 251.14 shall be conducted in conformity with the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over the respondent's objection if to do so would be in violation of the respondent's constitutional privilege against self-incrimination.~~

~~In the course of proceedings conducted pursuant to this Rule, the Presiding Disciplinary Judge or the Presiding Officer, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.~~

~~A complete record shall be made of all depositions and of all testimony taken at hearings before a Hearing Board.~~

~~(e) Order for Examination. When the mental or physical condition of the attorney in question has become an issue in the proceeding, the Presiding Disciplinary Judge, on motion of the Regulation Counsel, may order the attorney to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the attorney. The attorney will be provided the opportunity to respond to the motion of the Regulation Counsel, and the attorney may request a hearing before the Presiding Disciplinary Judge. If requested, the hearing shall be held within 28 days of the date of the attorney's request, and shall be limited to the issue of whether reasonable cause exists for such an order.~~

~~(f) Procurement of Evidence During Hearing.~~

~~(1) Subpoena. In the course of a hearing conducted pursuant to these Rules, and upon the petition of any party to the hearing, the clerk of the Presiding Disciplinary Judge may, for the use of a party, issue subpoenas to compel the attendance of witnesses and the production of pertinent books, papers, documents, or other evidence.~~

~~Witnesses shall be entitled to receive fees for mileage as provided by law for witnesses in civil actions.~~

~~(2) Quashing a Subpoena. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge or the Presiding Officer of the Hearing Board.~~

~~(3) Contempt. Any person who fails or refuses to comply with a subpoena issued pursuant to these Rules may be cited for contempt of the Supreme Court.~~

~~Any person who by misbehavior obstructs the Hearing Board or any part thereof in the performance of its duties may be cited for contempt of the Supreme Court.~~

~~Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.~~

~~A contempt citation may be issued by the Presiding Disciplinary Judge or the presiding officer. A copy of the contempt citation, together with the findings of fact made by the Presiding Disciplinary Judge or the presiding officer surrounding the contempt, shall be filed with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.~~

~~(4) Discovery.~~

~~(A) Purpose and Scope. Rules 16 and 26 of the Colorado Rules of Civil Procedure shall not apply to proceedings conducted pursuant to these Rules. This Rule shall govern discovery in attorney discipline and disability proceedings.~~

~~(B) Meeting. A meeting of the parties must be held no later than 14 days after the case is at issue to confer with each other about the nature and basis of the claims and defenses and discuss the matters to be disclosed.~~

~~(C) Disclosures. No later than 28 days after the case is at issue, the parties shall disclose:~~

(i) The name and, if known, the address, and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged in the pleadings, identifying who the person is and the subjects of the information;

(ii) A listing, together with a copy of, or a description of, all documents, data compilations, and tangible things in the possession, custody, or control of the parties that are relevant to the disputed facts in the pleadings; and

(iii) A statement of whether the parties anticipate use of expert witnesses, identifying the subject areas of the proposed experts.

(D) Trial Management Order. Upon the request of one of the parties or upon order of the Presiding Disciplinary Judge or the presiding officer of the Hearing Board, no later than 42 days prior to the trial date, the parties shall disclose to the other party and file a trial management order containing the following matters under the following captions and in the following order:

(i) Statement of Claims and Defenses to be Pursued or Withdrawn. The parties shall set forth a listing of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn."

(ii) Stipulated Facts. The parties shall set forth a plain, concise statement of all facts which the Hearing Board shall accept as undisputed.

(iii) Pretrial Motions. The parties shall list motions, if any, which are anticipated to be filed before trial as well as motions, if any, which are pending before the Hearing Board. The parties shall indicate a deadline for the filing of such motions which shall be no later than 14 days prior to the date set for trial.

(iv) Legal Issues. The parties shall set forth a list of legal issues that are controverted, including appropriate citation of statutory, case or other authority. In addition, the parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than 7 days before the commencement of the trial.

(v) Identification of Witnesses and Exhibits. Each party shall provide the following information:

(a) Lay Witnesses. Each party shall include a list containing the name, address, and telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.

(b) Exhibits. Each party shall attach a list describing any physical or documentary evidence which the party intends to introduce at trial. Complainant shall assign a number and respondent

~~shall assign a letter designation for each exhibit. If any party wishes to object to the authenticity or admissibility of any exhibit, such objection shall be noted, together with the grounds therefor.~~

~~(c) Expert Witnesses. Each party shall attach to the trial management order a list of the name, address, and telephone number of each person whom the party will call and any person whom the party may call as an expert witness at trial, indicating the anticipated length of testimony, including cross-examination. The list shall indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Copies of any expert reports shall be provided to the other party at this time.~~

~~(vi) Presentation of Testimony. If the testimony of any witness is to be presented by deposition or through any other acceptable means in lieu of live testimony, a copy shall be submitted to the Hearing Board or the Presiding Disciplinary Judge if there is no Hearing Board and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible prior to trial. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.~~

~~(vii) Trial Efficiencies. If the anticipated length of the trial has changed, the parties shall so indicate.~~

~~(E) Limitations. Except upon order by the Presiding Disciplinary Judge or the presiding officer of the Hearing Board for good cause shown, discovery shall be limited as follows:~~

~~(i) The Regulation Counsel may take one deposition of the respondent and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The respondent may take one deposition of the complaining witness and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45.~~

~~(ii) A party may serve on the adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.~~

~~(iii) The Regulation Counsel may obtain a physical or mental examination of the respondent pursuant to C.R.C.P. 251.18(e).~~

~~(iv) A party may serve the adverse party requests for production of documents pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.~~

~~(v) A party may serve on the adverse party 20 requests for admission, each of which shall consist of a single request. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.~~

~~(F) In determining good cause pursuant to C.R.C.P. 251.18(f)(4)(E), the Presiding Disciplinary Judge or the presiding officer of the Hearing Board shall consider the following:~~

~~(i) Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;~~

~~(ii) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;~~

~~(iii) Whether the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; and~~

~~(iv) Whether, because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.~~

~~(G) Supplementation of Disclosures and Discovery Responses. A party is under a duty to supplement its disclosures under section (f)(4)(C) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or summary disclosed pursuant to section (f)(4)(D)(v)(c) of this Rule and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be performed in a timely manner.~~

Rule 251.19. Reserved.

~~FINDINGS OF FACT AND DECISION~~

~~(a) Hearing Board Opinion and Decision. Within 56 days (8 weeks) after the hearing, the Hearing Board shall prepare an opinion setting forth its findings of fact and its decision. In preparing its decision, the Hearing Board shall take into consideration the respondent's prior disciplinary record, if any. The opinion shall be signed by each concurring member of the Hearing Board. Two members are required to make a decision. Members of the Hearing Board who dissent shall also sign the opinion, provided they indicate the basis of their dissent in the opinion.~~

~~(b) Decision of the Hearing Board. When it renders its decision, the Hearing Board shall:~~

~~(1) Determine that the complaint is not proved and enter an order dismissing the complaint;~~

~~(2) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment; or~~

~~(3) Enter an order conditioned on the agreement of the attorney diverting the case to the alternatives to discipline program.~~

~~The Hearing Board may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.~~

~~(4) Within 14 days of entry of an order as provided in this Rule or such greater time as the Hearing Board may allow, a party may move for post-hearing relief as provided in C.R.C.P. 59. In the event a motion for post-hearing relief is filed, the Presiding Disciplinary Judge or the presiding officer shall consult with the other members of the Hearing Board and then rule on the motion.~~

~~(5) For purposes of this Rule, the decision of the Hearing Board shall be final and time for filing notice of appeal shall commence as set forth in C.R.C.P. 251.27.~~

~~(6) Unless stayed, vacated, reversed, or otherwise modified by order of the Supreme Court, a final decision of the Hearing Board under paragraph (b)(5) of this Rule shall be considered for all purposes an order of the Supreme Court.~~

~~(c) Decision of the Presiding Disciplinary Judge. When the Presiding Disciplinary Judge renders a decision without a Hearing Board as provided in these rules, the Presiding Disciplinary Judge shall:~~

~~(1) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment; or~~

~~(2) Enter an order conditioned on the agreement of the attorney diverting the case to the alternatives to discipline program.~~

~~The Presiding Disciplinary Judge may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.~~

~~(3) Within 14 days of entry of an order as provided in this Rule or such greater time as the Presiding Disciplinary Judge may allow, a party may move for post-hearing relief as provided in C.R.C.P. 59.~~

~~(4) For purposes of this Rule, the decision of the Presiding Disciplinary Judge shall be final and time for filing notice of appeal shall commence as set forth in C.R.C.P. 251.26.~~

Rule 251.20. Reserved.

~~ATTORNEY CONVICTED OF A CRIME~~

~~(a) Proof of Conviction. Except as otherwise provided by these Rules, a certified copy of the judgment of conviction from the clerk of any court of criminal jurisdiction indicating that an attorney has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings in this state and shall be conclusive proof of the commission of that crime by the respondent.~~

~~(b) Duty to Report Conviction. Every attorney subject to these Rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall notify the Regulation Counsel in writing of such conviction within 14 days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the Regulation Counsel within 14 days after the date of the conviction a certificate thereof.~~

~~(c) Commencement of Disciplinary Proceedings Upon Notice of Conviction. Upon receiving notice that an attorney subject to these Rules has been convicted of a crime, other than a serious crime as hereinafter defined, the Regulation Counsel shall, following an investigation as provided in these Rules, make a determination as provided in C.R.C.P. 251.11 or refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.~~

~~If the conviction is for a serious crime as hereinafter defined, the Regulation Counsel shall obtain the record of conviction and prepare and file a complaint against the respondent as provided in C.R.C.P. 251.14.~~

~~If a complaint is filed against a respondent pursuant to the provisions of this Rule, the Regulation Counsel shall present proof of the criminal conviction and may present any other evidence which the Regulation Counsel deems appropriate. If the respondent's criminal conviction is either proved or admitted, the respondent shall have the right to be heard by the Hearing Board only on matters of rebuttal of any evidence presented by the Regulation Counsel other than proof of the conviction.~~

~~(d) Conviction of a Serious Crime--Immediate Suspension. The Regulation Counsel shall report to the Supreme Court the name of any attorney who has been convicted of a serious crime, as hereinafter defined. The Supreme Court shall thereupon issue a citation directing the convicted attorney to show cause why the attorney's license to practice law should not be immediately suspended pursuant to C.R.C.P. 251.8. Upon full consideration of the matter, the Supreme Court may either impose immediate suspension for a definite or indefinite period or may discharge the rule to show cause. The fact that a convicted attorney is seeking appellate review of the conviction shall not limit the power of the Supreme Court to impose immediate suspension.~~

~~(e) Serious Crime Defined. The term serious crime as used in these Rules shall include:~~

~~(1) Any felony; and~~

~~(2) Any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, or theft; or an attempt or conspiracy to commit such crime; or solicitation of another to commit such crime.~~

~~(f) Notice to Clients and Others of Immediate Suspension. An order of immediate suspension of an attorney pursuant to this Rule shall constitute a suspension of the attorney for the purpose of the provisions of C.R.C.P. 251.28.~~

~~(g) Automatic Reinstatement From Immediate Suspension When Conviction Reversed. An attorney suspended under the provisions of this Rule shall be reinstated to practice law immediately upon filing a certificate demonstrating that the underlying criminal conviction has been reversed; provided, however, that reinstatement of the attorney shall have no effect on any proceedings conducted pursuant to these Rules then pending against him.~~

~~(h) Conviction Defined. The term conviction as used in these Rules shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the~~

~~judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.~~

Rule 251.21. Reserved.

~~DISCIPLINE IMPOSED BY FOREIGN JURISDICTION~~

~~(a) Proof of Discipline Imposed. Except as otherwise provided by these Rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these Rules, conclusively establish such misconduct.~~

~~(b) Duty to Report Discipline Imposed. Any attorney subject to these Rules against whom any form of public discipline has been imposed by the authorities of another jurisdiction, or who voluntarily surrenders the attorney's license to practice law in connection with disciplinary proceedings in another jurisdiction, shall notify the Regulation Counsel of such action in writing within 14 days thereof.~~

~~(c) Commencement of Proceedings Upon Notice of Voluntary Surrender of License. Upon receiving notice that an attorney subject to these Rules has voluntarily surrendered his license to practice law in another jurisdiction, the Regulation Counsel shall, following investigation pursuant to these Rules, refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.~~

~~(d) Commencement of Proceedings Upon Notice of Discipline Imposed. Upon receiving notice that an attorney subject to these Rules has been publicly disciplined in another jurisdiction, the Regulation Counsel shall obtain the disciplinary order and prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14. If the Regulation Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the complaint.~~

~~If the attorney intends to challenge the validity of the disciplinary order entered in the foreign jurisdiction, the attorney must file with the Presiding Disciplinary Judge an answer and a full copy of the record of the disciplinary proceedings which resulted in the imposition of that disciplinary order within 21 days after service of the complaint or such greater time as the Presiding Disciplinary Judge may allow for good cause shown.~~

~~At the conclusion of proceedings brought under this Rule, the Hearing Board shall issue a decision imposing the same discipline as was imposed by the foreign jurisdiction, unless it is determined by the Hearing Board that:~~

~~(1) The procedure followed in the foreign jurisdiction did not comport with requirements of due process of law;~~

~~(2) The proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Hearing Board cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;~~

~~(3) The imposition by the Hearing Board of the same discipline as was imposed in the foreign jurisdiction would result in grave injustice; or~~

~~(4) The misconduct proved warrants that a substantially different form of discipline be imposed by the Hearing Board.~~

~~(e) If Regulation Counsel does not seek substantially different discipline and if the respondent does not challenge the order based on any of the grounds set forth in (d)(1)(4) above, then the Presiding Disciplinary Judge may, without a hearing or a Hearing Board, issue a decision imposing the same discipline as imposed by the foreign jurisdiction.~~

Rule 251.22. Reserved.

~~DISCIPLINE BASED ON ADMITTED MISCONDUCT~~

~~(a) Acceptance of Admission. An attorney against whom proceedings are pending pursuant to these Rules may, at any point in the proceedings prior to final action by a Hearing Board, tender a conditional admission of misconduct constituting grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by the Regulation Counsel prior to being tendered to the committee or the Presiding Disciplinary Judge.~~

~~If the form of discipline stipulated to is private admonition, the conditional admission shall be tendered to the committee for its review. The committee shall either reject the conditional admission and order the proceedings continued in accordance with these Rules, or accept the conditional admission and order private admonition imposed.~~

~~If the form of discipline stipulated to is disbarment, suspension, public censure, or a range that includes any of the former and private admonition, the conditional admission shall be tendered to the Presiding Disciplinary Judge for review. The Presiding Disciplinary Judge or Presiding Officer of the Hearing Board shall, after conducting a hearing as provided in this Rule, if one is requested, either reject the conditional admission and order the proceedings continued in accordance with these Rules, or approve the conditional admission and enter an appropriate order.~~

~~Imposition of discipline pursuant to a conditional admission of misconduct shall terminate all proceedings conducted pursuant to these Rules and pending against the attorney in connection with that misconduct.~~

~~(b) Conditional Admission--Contents. A conditional admission of misconduct shall be set forth in the form of an affidavit, be submitted by the attorney, and shall contain:~~

~~(1) An admission of misconduct which constitutes grounds for discipline;~~

~~(2) An acknowledgment of the proceedings pending against the attorney; and~~

~~(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the attorney is fully aware of the implications of the attorney's admission.~~

~~If the conditional admission is tendered before a complaint is filed as provided in C.R.C.P. 251.14, it shall remain confidential if the form of discipline stipulated to is private admonition and its contents shall not be publicly disclosed or made available for use in any proceedings outside this Chapter except as otherwise provided in these Rules or by order of the Supreme Court.~~

~~(c) Conditional Admission--Hearing.~~

~~(1) Procedure. Within 14 days of the date a conditional admission is filed, the respondent or the Regulation Counsel may request a hearing before the Presiding Disciplinary Judge. If a hearing is requested, it shall be set promptly.~~

~~(2) Notice. Not less than 14 days before the date set for the hearing on the conditional admission, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, the respondent's counsel, and the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing and to present argument regarding the form of discipline to be ordered.~~

~~(3) Complaining Witness. In addition to the foregoing, the notice shall advise the complaining witness that the complaining witness has a right to be present at the hearing and to make a statement, orally or in writing, to the Presiding Disciplinary Judge regarding the form of discipline.~~

~~(d) Stay of Proceedings. Proceedings conducted pursuant to these Rules that are pending before the Presiding Disciplinary Judge at the time a conditional admission is tendered may be stayed by order of the Presiding Disciplinary Judge.~~

~~(e) Further Proceedings. If the conditional admission of misconduct is rejected and the matter is returned for further proceedings consistent with these Rules, the conditional admission may not be used against the attorney.~~

Rule 251.23. Reserved.

~~DISABILITY INACTIVE STATUS~~

~~(a) Disability Inactive Status. Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney shall be transferred to disability inactive status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law.~~

~~Proceedings instituted against an attorney pursuant to this Rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings provided for by this Rule shall not defer or abate other proceedings conducted pursuant to these Rules, unless after a hearing the Presiding Disciplinary Judge determines that the attorney, is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided by C.R.C.P. 251.30.~~

~~(b) Transfer to Disability Inactive Status Without a Hearing. Where an attorney who is subject to these Rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the Presiding Disciplinary Judge, upon proper proof of the fact, shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge or the Supreme Court. A copy of the order transferring an attorney to disability inactive status shall be served upon the attorney and upon either the attorney's guardian or the superintendent of the hospital in which the attorney is confined. Service shall be made in such manner as the Presiding Disciplinary Judge may direct.~~

~~(c) Procedure When Disability is Alleged. Whenever any interested party shall petition the Presiding Disciplinary Judge to determine whether an attorney is incapable of continuing to practice law by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, or whether the attorney in a proceeding conducted pursuant to these Rules is so incapacitated as to be unable to proffer a defense, the Presiding Disciplinary Judge shall direct such action as it deems necessary or proper to determine whether the attorney is incapacitated, including an examination of the attorney by qualified medical experts designated by the Presiding Disciplinary Judge; provided, however, that before any medical examination or~~

other action may be ordered, the Presiding Disciplinary Judge must afford the attorney an opportunity to show cause why such examination or action should not be ordered. If, upon due consideration of the matter, the Presiding Disciplinary Judge determines that the attorney is incapable of continuing to practice law or is incapable of defending in proceedings conducted pursuant to these Rules, the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge or the Supreme Court.

An attorney against whom disability proceedings are pending shall be given notice of such proceedings. Notice shall be given in such a manner as the Presiding Disciplinary Judge may direct. The Presiding Disciplinary Judge may appoint counsel to represent the attorney if the attorney is without adequate representation.

(d) Procedure When Attorney During Course of Proceedings Alleges a Disability that Impairs the Attorney's Ability to Defend Himself. If in the course of proceedings conducted pursuant to these Rules the lawyer alleges disability by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend adequately in such proceedings, such proceedings shall be suspended and the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status and order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the Presiding Disciplinary Judge may do any of the following:

(1) Order a hearing on the issue of whether the attorney suffers from a disability that impairs the attorney's ability to defend adequately in such other proceedings;

(2) Continue the order transferring the lawyer to disability inactive status;

(3) Discharge the order transferring the lawyer to disability inactive status, and order that the proceedings pending against the attorney be resumed;

(4) Enter any other appropriate order, including an order directing further examination of the attorney.

(e) Burden of Proof. In a disability proceeding seeking the transfer of an attorney to disability inactive status the party petitioning for transfer shall bear the burden of proof by clear and convincing evidence.

(f) Hearings. Any hearings held pursuant to this Rule shall be conducted by the Presiding Disciplinary Judge in the manner prescribed by C.R.C.P. 251.18 and C.R.C.P. 251.19, and a Hearing Board shall not be required.

~~(g) Compensation. The Presiding Disciplinary Judge may fix the compensation to be paid to any legal counsel or medical expert appointed by the Presiding Disciplinary Judge pursuant to this Rule. The Presiding Disciplinary Judge may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.~~

~~(h) Post-Hearing Relief and Notice of Appeal. The attorney may file a motion for post-hearing relief or a notice of appeal as provided in C.R.C.P. 251.19.~~

Rule 251.24. [NO CHANGE]

Rule 251.25. [NO CHANGE]

Rule 251.26. [NO CHANGE]

Rule 251.27. Reserved.

~~PROCEEDINGS BEFORE THE SUPREME COURT~~

~~(a) Appellate Jurisdiction. Appellate review by the Supreme Court of every final decision of the Hearing Board in which public censure, a period of suspension, disbarment, or transfer to disability inactive status is ordered or in which reinstatement or readmission is denied shall be allowed as provided by these rules.~~

~~(b) Standard of Review. All disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the People of the State of Colorado titled "IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]" and shall be prosecuted by the Regulation Counsel.~~

~~When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court shall affirm the decision of the Hearing Board unless it determines that, based on the record, the findings of fact of the Hearing Board are clearly erroneous or that the form of discipline imposed by the Hearing Board (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs of the public, or (3) is otherwise unreasonable. The Supreme Court may conduct a de novo review of the conclusions of law.~~

~~The matter shall be docketed by the clerk of the Supreme Court as:~~

~~SUPREME COURT, STATE OF COLORADO~~

~~Case No.~~

ORIGINAL PROCEEDING IN DISCIPLINE [OR DISABILITY]

.....
.....
.....

IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]

.....
.....
.....

(c) Appeal--How Taken. An appeal from a Hearing Board to the Supreme Court shall be taken by filing a notice of appeal with the Supreme Court within the time set forth in this Rule. Upon the filing of the notice of appeal, the Supreme Court shall have the exclusive jurisdiction over the appeal and procedures concerning the appeal unless otherwise specified by these Rules. An advisory copy of the notice of appeal shall be served on the Presiding Disciplinary Judge within the time for its filing in the Supreme Court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal shall not be deemed jurisdictional.

(d) Contents of Notice of Appeal. Except as otherwise provided by these rules, and to the extent practicable, the notice of appeal shall conform to the requirements set forth in C.A.R. 3(e).

(e) Contents of Any Notice of Cross-Appeal. A notice of cross-appeal shall set forth the same information required for a notice of appeal and shall set forth the party initiating the cross-appeal and designate all cross-appellees.

(f) Number of Copies to be Filed. Five copies of the notice of appeal or cross-appeal shall be filed with the original.

(g) Appeal--When Taken. The notice of appeal required by this rule shall be filed with the Supreme Court with an advisory copy served on the Presiding Disciplinary Judge within 21 days of the date of mailing the decision from which the party appeals. If a timely notice of appeal is filed by a party, the other party may file a notice of appeal within 14 days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (g), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to both parties by a timely motion filed with the Presiding Disciplinary Judge by either party pursuant to the Colorado Rules

of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (g) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion under C.R.C.P. 52 or 59, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (3) denying a motion for a new hearing under C.R.C.P. 59; (4) expiration of an extension of time granted by the Presiding Disciplinary Judge to file motion(s) for post-hearing relief under C.R.C.P. 59, where no motion is filed. The Hearing Board shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the Supreme Court shall be stayed. If the decision is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the decision.

Upon a showing of excusable neglect, the Supreme Court may extend the time for filing the notice of appeal by a party for a period not to exceed 28 days from the expiration of the time otherwise prescribed by this section (g). Such an extension may be granted before or after the time otherwise prescribed by this section (g) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the Supreme Court shall deem appropriate.

(h) Stay Pending Appeal. Application for a stay of the decision of a Hearing Board pending appeal must ordinarily be made in the first instance to the Hearing Board. The application for stay pending appeal should be granted except when an immediate suspension has been ordered, or when no conditions of probation and supervision while the appeal is pending will protect the public. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the Hearing Board for the relief sought is not practicable, or that the Hearing Board has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Hearing Board for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties.

(i) Record on Appeal--Composition.

(1) The final pleadings which frame the issues before the Hearing Board; the findings of fact, conclusions of law and decision; motions for new trial and other post-trial motions, if any, and the Hearing Board's ruling; together with any other documents which by designation of either

party or by stipulation are directed to be included shall constitute the record on appeal in all cases.

(2) The reporter's transcript, or such parts thereof as provided under section (j) of this rule, relevant depositions and exhibits may be made a part of the record.

(3) The records and files of the Hearing Board shall be certified by the clerk of the Presiding Disciplinary Judge.

(4) The original papers in all instances shall be in the record submitted. Except on written request by a party, the Presiding Disciplinary Judge need not duplicate or retain a copy of the papers or exhibits included in the record. The party requesting that a duplicate be retained shall advance the cost of preparing the copies.

(5) The record shall be properly paginated and fully indexed and shall be prepared and bound under the direction of the Presiding Disciplinary Judge.

(j) Record of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Record is Ordered; Costs. Within 14 days after filing the notice of appeal, the appellant shall file with the Presiding Disciplinary Judge and with the clerk of the Supreme Court either: (1) a statement that no portions of the record other than those numerated in section (i) are desired or (2) a detailed designation of record, setting forth specifically those portions of the record to be included and all dates of proceedings for which transcripts are requested and the name(s) of the court reporter(s) who reported the proceedings that the appellant directs to be included in the record. The appellant shall serve a copy of the designation of record on each court reporter listed therein. If the appellant contends that a finding or conclusion is not supported by the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall include in the designation of record a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. If the appellee deems it necessary to include a transcript of other proceedings or other parts of the record, the appellee shall, within 14 days after the service of the statement or the appellant's designation of the record, file with the Presiding Disciplinary Judge and the Supreme Court, and serve on the appellant and on any court reporter who reported proceedings of which the appellee desires an additional transcript, a designation of the additional items to be included. Service on any court reporter of the appellant's designation of record or the appellee's additional designation of record shall constitute a request for transcription of the specified proceedings. Within 14 days after service of any such designation of record, each such court reporter shall provide in writing to all counsel in the appeal: (1) the estimated number of pages to be transcribed; (2) the estimated completion date; and (3) the estimated cost of transcription. Within 21 days after receiving the reporter's estimate, the designating party shall deposit the full amount of such estimate with the court

reporter. For good cause shown, within said 21 days and upon the agreement of the court reporter, the Presiding Disciplinary Judge may order a payment schedule extending the time for payment. When the cost of the transcription will be paid by public funds, the public entity shall make arrangements with the court reporter for payment of the transcription costs. Within 28 days of the transmittal of the court reporter's cost estimate to the pro se party or counsel, the court reporter shall file with the Presiding Disciplinary Judge and Supreme Court a statement of: (1) the date the court reporter's estimate was provided and the date on which the reporter received full payment of the estimate; or (2) the schedule of payments approved by the Presiding Disciplinary Judge under a good cause extension; or (3) that the cost of the transcript will be paid from public funds. Each party shall advance the cost of preparing that part of the record designated by such party except as otherwise ordered by the Presiding Disciplinary Judge for good cause shown.

(k) Transmission of the Record.

(1) Time. The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the Supreme Court within 56 days (8 weeks) after the filing of the notice of appeal unless the time is shortened or extended by an order entered as provided in this rule. After filing the notice of appeal the appellant shall comply with the provisions of this rule and shall take any other action necessary to enable the Presiding Disciplinary Judge to assemble and transmit the record.

(2) Duty Of Presiding Disciplinary Judge To Transmit The Record. When the record, including any designated transcript, is complete for purposes of the appeal, the clerk of the Presiding Disciplinary Judge shall transmit it to the clerk of the Supreme Court. The clerk of the Presiding Disciplinary Judge shall number the documents comprising the entire designated record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted unless a party or the Supreme Court directs the Presiding Disciplinary Judge to do so. A party must make advance arrangements for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the Presiding Disciplinary Judge mails or otherwise forwards the record to the clerk of the Supreme Court. The clerk of the Presiding Disciplinary Judge shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Supreme Court.

(3) Temporary Retention of Record by the Presiding Disciplinary Judge For Use In Preparing Appellate Papers. Notwithstanding the provisions of this rule, the parties may stipulate, or the Presiding Disciplinary Judge on motion of any party may order, that the record shall temporarily be retained by the Presiding Disciplinary Judge for use by the parties in preparing appellate

~~papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of this Rule and by presenting to the Supreme Court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the Supreme Court may order, the appellant shall request the Presiding Disciplinary Judge to transmit the record.~~

~~(4) Extension Of Time For Transmission Of The Record; Reduction Of Time. The Supreme Court for good cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, and the date by which the transcript can be completed and a statement by the court reporter that all payments due have been made. Failure to pay for the transcript in accordance with C.R.C.P. 251.27(j) is grounds for denial of a motion for extension. The Supreme Court may direct the Presiding Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and, upon motion or sua sponte, take other appropriate action regarding preparation and completion of the record.~~

~~(5) Stipulation Of Parties That Parts of the Record Be Retained By the Presiding Disciplinary Judge. The parties may agree by written stipulation filed with the Presiding Disciplinary Judge that designated parts of the record shall be retained by the Presiding Disciplinary Judge unless thereafter the Supreme Court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.~~

~~(6) Preliminary Record Transmitted to the Supreme Court. If prior to the time the record is transmitted, a party desires to make to the Supreme Court a motion for dismissal, for a stay pending appeal, or for any intermediate order, the Presiding Disciplinary Judge at the request of any party shall transmit to the Supreme Court such parts of the original record as any party shall designate.~~

~~(l) Docketing the Appeal.~~

~~(1) Filing. At the time of the filing of the notice of appeal or the time of filing any documents with the Supreme Court before the filing of the notice of appeal, the Appellant shall pay to the clerk of the Supreme Court a docket fee of $150 and the clerk shall enter the appeal upon the docket. The party appealing shall docket the case as provided in section (b) of this Rule.~~

(2) Leave to Proceed On Appeal In Forma Pauperis From Hearing Board to Supreme Court. A party to an action before a Hearing Board who desires to proceed on appeal in forma pauperis shall file with the Presiding Disciplinary Judge a motion for leave so to proceed, together with an affidavit showing an inability to pay costs, a belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court and without prepayment of costs. If the motion is denied, the Presiding Disciplinary Judge shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action before the Presiding Disciplinary Judge in forma pauperis may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Presiding Disciplinary Judge shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Presiding Disciplinary Judge shall state in writing the reasons for such certification or finding. A party proceeding under this subsection shall attach a copy of the Presiding Disciplinary Judge's order granting or denying leave to proceed in forma pauperis before the Hearing Board with the appendix to the notice of appeal.

(3) Filing Of The Record. Upon receipt of the record or papers authorized to be filed in lieu of the record under the provisions of subsections (k)(3) and (k)(6) of this rule following timely transmittal, the clerk of the Supreme Court shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(4) The appellant shall have 28 days after the filing with the clerk of the Supreme Court of the record on appeal within which to file an opening brief. The appellee shall have 28 days after the filing of the appellant's opening brief within which to file an answer brief. The appellant shall have 14 days after the filing of the answer brief within which to file a reply brief.

(m) General Provisions. Except as otherwise provided in these Rules, and to the extent practicable, appeals shall be conducted in conformity with the general provisions found in C.A.R. 25, 26, 27, 28, 29, 31, 32, 34, 36, 38, 39, 42, and 45.

(n) Oral Argument. Oral argument may be allowed at the discretion of the court in accordance with C.A.R. 34.

(o) Disposition. When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court may resolve the matter by opinion or by order without opinion, as the court shall determine in its discretion.

Rule 251.28. Reserved.

~~REQUIRED ACTION AFTER DISBARMENT, SUSPENSION, OR TRANSFER TO DISABILITY~~

~~(a) Effective Date of Order--Winding Up Affairs. Orders imposing disbarment or a definite suspension shall become effective 35 days after the date of entry of the decision or order, or at such other time as the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge may order. Orders imposing immediate suspension, transferring an attorney to disability inactive status, or for failure to comply with rules governing attorney registration or continuing legal education, shall become effective immediately upon the date of entry of the order, unless otherwise ordered by the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge. After the entry of an order of disbarment, suspension unless fully stayed (see C.R.C.P. 251.7(a)(3)), or transfer to disability inactive status, the attorney may not accept any new retainer or employment as an attorney in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date the attorney may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.~~

~~(b) Notice to Clients in Pending Matters. An attorney against whom an order of disbarment, suspension unless fully stayed, or transfer to disability inactive status has been entered shall promptly notify in writing by certified mail each client whom the attorney represents in a matter still pending of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of such order, and advising such clients to seek legal services elsewhere. In addition, the attorney shall deliver to each client all papers and property to which the client is entitled. An attorney who has been suspended as provided in the rules governing attorney registration or continuing legal education need not comply with the requirements of this subsection if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur within 14 days of the date of the order of suspension. If the attorney is not reinstated within those 14 days, then the attorney must comply with this subsection.~~

~~(c) Notice to Parties in Litigation. An attorney against whom an order of disbarment, suspension unless fully stayed, or transfer to disability inactive status is entered and who represents a client in a matter involving litigation or proceedings before an administrative body shall notify that client as required by section (b) of this rule, and shall recommend that the client promptly obtain substitute counsel. In addition, the lawyer must notify in writing by certified mail the opposing counsel of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice to opposing counsel shall state the place of residence of the client of the attorney against whom the order was entered. An attorney who has been suspended as provided in the rules governing attorney registration or continuing~~

~~legal education need not comply with the requirements of this section if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur 14 days of the date of the order of suspension. If the attorney is not reinstated within those 14 days, then the attorney must comply with this section.~~

~~If the client of the attorney against whom an order was entered does not obtain substitute counsel before the effective date of such order, the attorney must appear before the court or administrative body in which the proceeding is pending and move for leave to withdraw.~~

~~(d) Affidavit Filed With Supreme Court or the Hearing Board. Within 14 days after the effective date of the order of disbarment, suspension, or transfer to disability inactive status, or within such additional time as allowed by the Supreme Court, the Hearing Board, or the Presiding Disciplinary Judge, the attorney shall file with the Supreme Court or the Hearing Board an affidavit setting forth a list of all pending matters in which the attorney served as counsel and showing:~~

~~(1) That the attorney has fully complied with the provisions of the order and of this rule;~~

~~(2) That the attorney has served on Regulation Counsel, a list of the clients notified pursuant to subsection (b) of this rule and a copy of each notice provided;~~

~~(3) That the attorney has notified every other jurisdiction before which the attorney is admitted to practice law of the order entered against attorney; and~~

~~(4) That the attorney has served a copy of such affidavit upon the Presiding Disciplinary Judge and the Regulation Counsel. The list and notices described in (d) (2) shall only be attached to the affidavit provided to Regulation Counsel.~~

~~Such affidavit shall also set forth the address of the attorney to which communications may thereafter be directed.~~

~~In addition, the attorney shall continue to file a registration statement in accordance with C.R.C.P. 227 for a period of five years following the effective date of the order listing the attorney's residence or other address where communications may thereafter be directed to the attorney; provided, however, that the annual registration fee need not be paid during such five-year period unless and until the attorney is reinstated. Upon reinstatement the attorney shall pay the annual registration fee for the year in which reinstatement occurs.~~

~~(e) Public Notice of Order. The clerk of the Supreme Court or the Presiding Disciplinary Judge shall release for publication orders of disbarment, suspension, or transfer to disability inactive status entered against an attorney.~~

~~(f) Notice of Order to the Courts. The Presiding Disciplinary Judge or the clerk of the Supreme Court shall promptly transmit notice of the final order of disbarment, suspension, or transfer to disability inactive status to all courts in this state. The chief judge of each judicial district may make such further orders pursuant to C.R.C.P. 251.32(h) or otherwise as the Chief Judge deems necessary to protect the rights of clients of the attorney.~~

~~(g) Duty to Maintain Records. An attorney who has been disbarred, suspended, or transferred to disability inactive status shall keep and maintain records of any steps taken by the attorney pursuant to this rule as proof of compliance with this rule and with the order entered against the attorney. Failure to comply with this section without good cause shown shall constitute contempt of the Supreme Court. Proof of compliance with this section shall be a condition precedent to any petition for reinstatement or readmission.~~

Rule 251.29. Reserved.

~~READMISSION AND REINSTATEMENT AFTER DISCIPLINE~~

~~(a) Readmission After Disbarment. A disbarred attorney may not apply for readmission until at least eight years after the effective date of the order of disbarment. To be eligible for readmission the attorney must demonstrate the attorney's fitness to practice law and professional competence, and must successfully complete the written examination for admission to the Bar. The attorney must file a petition for readmission, properly verified, with the Presiding Disciplinary Judge, and furnish a copy to the Regulation Counsel. Thereafter, the petition shall be heard in procedures identical to those outlined by these rules governing hearings of complaints, except it is the attorney who must demonstrate by clear and convincing evidence the attorney's rehabilitation and full compliance with all applicable disciplinary orders and with all provisions of this Chapter. A Hearing Board shall consider every petition for readmission and shall enter an order granting or denying readmission.~~

~~(b) Reinstatement After Suspension. Unless otherwise provided by the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge in the order of suspension, an attorney who has been suspended for a period of one year or less shall be reinstated by order of the Presiding Disciplinary Judge, provided the attorney files an affidavit with the Regulation Counsel within 28 days prior to the expiration of the period of suspension, stating that the attorney has fully complied with the order of suspension and with all applicable provisions of this chapter. Upon receipt of the attorney's affidavit that has been timely filed, the Regulation Counsel shall notify the Presiding Disciplinary Judge of the attorney's compliance with this Rule. Upon receipt of the notice, the Presiding Disciplinary Judge shall issue an order reinstating the attorney. The order shall become effective upon the expiration of the period of suspension. If the attorney fails to file the required affidavit within the time specified, the attorney must seek reinstatement pursuant to section (c) of this Rule; provided, however, that a suspended attorney who fails to file a timely~~

affidavit may obtain leave of the Presiding Disciplinary Judge to file an affidavit upon showing that the attorney's failure to file the affidavit was the result of mistake, inadvertence, surprise, or excusable neglect. An attorney reinstated pursuant to this section shall not be required to show proof of rehabilitation.

An attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for reinstatement and must prove by clear and convincing evidence that the attorney has been rehabilitated, has complied with all applicable disciplinary orders and with all provisions of this chapter, and is fit to practice law.

If the attorney remains suspended for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the attorney's successful completion, after the expiration of the period of suspension, of the examination for admission to practice law and upon a showing by the attorney of such other proof of professional competence as the Supreme Court or a Hearing Board may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the suspension of the attorney tolls the five-year period until such time as the Hearing Board rules on the petition.

(c) Petition for Reinstatement. Any attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for an order of reinstatement if the attorney wishes to be reinstated to practice law. The petition must be properly verified and, when filed, a copy must be furnished to the Regulation Counsel.

The petition for reinstatement must set forth:

(1) The date the order of suspension was entered and the effective date thereof, and a copy of the disciplinary order or opinion;

(2) The date on which all prior petitions for reinstatement were filed and the disposition thereof;

(3) The facts other than passage of time and absence of additional misconduct upon which the petitioning attorney relies to establish that the attorney possesses all of the qualifications required of applicants for admission to the Bar of Colorado, fully considering the previous disciplinary action taken against the attorney;

(4) Evidence of compliance with all applicable disciplinary orders and with all provisions of this Chapter regarding actions required of suspended lawyers;

(5) Evidence of efforts to maintain professional competence through continuing legal education or otherwise during the period of suspension; and

~~(6) A statement of restitution made as ordered to any persons and the Colorado Attorneys' Fund for Client Protection and the source and amount of funds used to make restitution.~~

~~(d) Reinstatement Proceedings. Immediately upon receipt of a petition for reinstatement the Regulation Counsel shall conduct any investigation the Regulation Counsel deems necessary. The petitioner shall cooperate in any such investigation.~~

~~The Regulation Counsel shall submit an answer to the petition. Thereafter, the petition for reinstatement shall be reviewed in procedures identical to those outlined by these Rules governing hearings of complaints.~~

~~The Regulation Counsel may present evidence bearing upon the matters in issue, and the attorney seeking reinstatement shall bear the burden of proving by clear and convincing evidence the averments in the petition.~~

~~(e) Hearing Board Decision. In deciding whether to grant or deny the petition, the Hearing Board shall consider the attorney's past disciplinary record. The Hearing Board may condition reinstatement upon compliance with any additional orders it deems appropriate, including but not limited to the payment of restitution to any person harmed by the misconduct for which the petitioner was suspended.~~

~~(f) Readmission and Reinstatement Proceedings Before the Supreme Court. An attorney whose petition for readmission or reinstatement is denied by the Hearing Board may proceed before the Supreme Court in a manner identical to that outlined in C.R.C.P. 251.27.~~

~~(g) Successive Petitions. No petition for reinstatement under this Rule shall be accepted within two years following a denial of a previous petition for reinstatement filed on behalf of the same person.~~

~~(h) Public Information. Notwithstanding the provisions of C.R.C.P. 251.31, and any Rule relating to the confidentiality of Bar admissions, petitions for reinstatement and applications for readmission shall be matters of public record.~~

~~Any hearing held under sections (a) and (d) of this Rule shall be open to the public.~~

~~(i) Cost Deposit. Petitions for readmission or reinstatement under this Rule shall be accompanied by a cost deposit of $500 to be used to pay all expenses connected with the reinstatement proceedings. If such costs should exceed $500, the Supreme Court, the Presiding Disciplinary Judge or the presiding officer of the Hearing Board may enter an order requiring the petitioner to supply an additional deposit. Upon the completion of proceedings held pursuant to this Rule an accounting shall be rendered and any portion of the cost deposit unexpended shall be returned to the petitioner.~~

(j) Reinstatement on Stipulation. Provided the petition for reinstatement under section (c) of this rule is filed within 28 days prior to the expiration of the period of suspension or 91 days (13 weeks) if the period of suspension is longer than one year and provided the attorney seeking reinstatement and the Regulation Counsel, after any investigation the Regulation Counsel deems necessary, stipulate to reinstatement, the Regulation Counsel shall file with the Presiding Disciplinary Judge the stipulation containing such terms and conditions of reinstatement, if any, as may be agreed. Upon receipt of the stipulation, the Presiding Disciplinary Judge may approve the stipulation following an appearance by the attorney before the Presiding Disciplinary Judge and enter an order of reinstatement on the terms and conditions contained in the stipulation or reject the stipulation and order that a hearing be held by a Hearing Board as provided in section (d) of this rule.

Rule 251.30. Reserved.

REINSTATEMENT AFTER TRANSFER TO DISABILITY INACTIVE STATUS

(a) Reinstatement Upon Termination of Disability. An attorney who has been transferred to disability inactive status pursuant to C.R.C.P. 251.23 shall be entitled to petition for reinstatement at such time as the Supreme Court or the Presiding Disciplinary Judge may direct. The petition shall be filed with the Presiding Disciplinary Judge, and a copy shall be furnished to the Regulation Counsel. Such petition for reinstatement shall be granted upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is competent to resume the practice of law.

Upon receipt of a petition for reinstatement from disability inactive status, the Presiding Disciplinary Judge may take or direct such action as he or she deems necessary or proper to determine whether the attorney is again competent to practice law, including but not limited to the issuance of an order for an examination of the attorney by qualified medical experts designated by the Presiding Disciplinary Judge.

In addition, the Presiding Disciplinary Judge may direct that the petitioner re-establish proof of competence and learning in law, including certification by the state board of law examiners of the petitioner's successful completion of the examination for admission to practice law. If the petitioner remains on disability inactive status for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the petitioner's successful completion, within the previous twelve months, of the examination for admission to practice law and upon a showing by the petitioner of such other proof of professional competence as the Supreme Court or the Presiding Disciplinary Judge may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the attorney's transfer to disability inactive status tolls the five-year period until such time as the Presiding Disciplinary Judge rules on the petition.

~~When an attorney has been transferred to disability inactive status by an order in accordance with C.R.C.P. 251.23 and thereafter has been judicially declared to be competent, the Presiding Disciplinary Judge may dispense with any further evidence of the attorney's return to competence and may direct that the attorney be reinstated upon such terms as are deemed proper and advisable; provided, however, that if a disciplinary proceeding conducted pursuant to these rules and pending against the petitioner was deferred upon the petitioner's transfer to disability inactive status, such proceeding shall be resumed and the petitioner shall not be reinstated pending the final disposition of such proceeding.~~

~~(b) Reinstatement Proceedings. The Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, order that reinstatement proceedings identical to those provided for by C.R.C.P. 251.29(d) be conducted.~~

~~(c) Compensation of Medical Experts. The Presiding Disciplinary Judge may fix the compensation to be paid to any medical expert appointed by the Presiding Disciplinary Judge pursuant to this rule. The Supreme Court may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.~~

~~(d) Waiver of Doctor-Patient Privilege. For the purposes of any proceedings conducted pursuant to this Rule, the filing of a petition for reinstatement by an attorney who has been transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege between the attorney and any psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated the attorney in connection with the disability. By order of the Supreme Court the attorney may be required to disclose the name of every psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated the attorney in connection with the disability, and to furnish written consent for the disclosure by such persons of any information and records pertaining to such examination or treatment requested by the Supreme Court.~~

Rule 251.31. Reserved.

~~ACCESS TO INFORMATION CONCERNING PROCEEDINGS UNDER THESE RULES~~

~~(a) Availability of Information. Except as otherwise provided by these rules, all records, except (i) the work product, deliberations and internal communications of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Hearing Boards, and the Supreme Court, and (ii) the lists of clients and copies of client notices referred to in C.R.C.P. 251.28(d) (2), shall be available to the public after the committee determines that reasonable cause to believe grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, unless the complainant or the respondent obtains a protective order.~~

~~Unless otherwise ordered by the Supreme Court or the Presiding Disciplinary Judge, nothing in these rules shall prohibit the complaining witness, the attorney, or any other witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.~~

~~(b) Confidentiality. Before the filing and service of a complaint as provided in C.R.C.P. 251.14, the proceedings are confidential within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, and the Supreme Court, except that the pendency, subject matter, and status of an investigation under C.R.C.P 251.10 may be disclosed by the Regulation Counsel if:~~

~~(1) The respondent has waived confidentiality;~~

~~(2) The proceeding is based upon allegations that include either the conviction of a crime or discipline imposed by a foreign jurisdiction;~~

~~(3) The proceeding is based on allegations that have become generally known to the public;~~

~~(4) There is a need to notify another person or organization, including the fund for client protection, to protect the public, the administration of justice, or the legal profession; or~~

~~(5) A petition for immediate suspension has been filed pursuant to C.R.C.P. 251.8.~~

~~(c) Public Proceedings. When the committee determines that reasonable cause to believe that grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, or when a petition for reinstatement or readmission is filed, the proceeding is public except for:~~

~~(1) The deliberations of the Presiding Disciplinary Judge, the Hearing Board, or the Supreme Court; and,~~

~~(2) Information with respect to which a protective order has been issued.~~

~~(d) Proceedings Alleging Disability. In disability proceedings, all orders transferring an attorney to or from disability inactive status shall be matters of public record, but otherwise, disability proceedings shall be confidential and shall not be made public, except by order of the Supreme Court, the Presiding Disciplinary Judge, or a Hearing Board.~~

~~(e) Protective Orders. To protect the interests of a complainant, witness, third party, or respondent, the Presiding Disciplinary Judge or a Hearing Board, may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.~~

(f) Disclosure to Law Firms. When the Regulation Counsel obtains an order transferring the attorney to disability inactive status or immediately suspending the attorney, or is authorized to file a complaint as provided by C.R.C.P. 251.12, the attorney shall make written disclosure to the attorney's current firm and, if different, to the attorney's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within 14 days of the date of the order or of the date the Regulation Counsel notified the attorney that a disciplinary proceeding has been commenced.

(g) Pending Investigations. Except as provided by section (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings pending with the Regulation Counsel or before the committee.

(h) Cases Dismissed. Except as provided by section (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings that have been dismissed.

(i) Private Admonitions. Any public proceeding in which a private admonition is imposed as provided by C.R.C.P. 251.6 shall be public, as follows: the fact that private admonition is imposed shall be public information, but the private admonition itself shall not be disclosed.

(j) Production of Records Pursuant to Subpoena. The Regulation Counsel, pursuant to a valid subpoena, shall not permit access to files or records or furnish documents that are confidential as provided by these rules unless the Supreme Court orders otherwise. When counsel is permitted to disclose confidential documents contained in files or confidential records, a reasonable fee may be charged for identification of and photocopying the documents and records.

(k) Response to False or Misleading Statement. If public statements that are false or misleading are made about any disciplinary or disability case, the Regulation Counsel may disclose any information necessary to correct the false or misleading statements.

(l) Request for Nonpublic Information. A request for nonpublic information other than that authorized for disclosure under subsection (b) of this Rule shall be denied unless the request is from:

(1) An agency authorized to investigate the qualifications of persons for admission to practice law;

(2) An agency authorized to investigate the qualifications of persons for government employment;

(3) An attorney discipline enforcement agency;

(4) A criminal justice agency; or,

(5) An agency authorized to investigate the qualifications of judicial candidates. If a judicial nominating commission of the State of Colorado requests the information it shall be furnished promptly and the Regulation Counsel shall give written notice to the attorney that specified confidential information has been so disclosed.

(m) Notice to the Attorney. Except as provided in subsection (l)(5) of this Rule, if the Regulation Counsel is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of 21 days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Supreme Court requiring its release.

(n) Release Without Notice. If an agency otherwise authorized by section (l) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

(1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;

(2) The information is essential to that investigation; and

(3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

(o) Notice to National Regulatory Data Bank. The Regulation Counsel shall transmit notice of all public discipline imposed against an attorney, transfers to or from disability inactive status, and reinstatements to the National Regulatory Data Bank maintained by the American Bar Association.

(p) Duty of Officials and Employees. All officials and employees within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, and the Supreme Court shall conduct themselves so as to maintain the confidentiality mandated by this rule.

(q) Evidence of Crime. Nothing in these rules except for the admission of past misconduct protected by C.R.C.P. 251.13(i) shall be construed to preclude any person from giving information or testimony to authorities authorized to investigate criminal activity.

(r) For matters that are confidential under subsection (b) of this rule and that involve allegations of sexual harassment, Regulation Counsel's investigation records regarding the sexual

harassment allegations, not otherwise privileged or protected by court rule or court order, shall be available to the complainant and respondent, subject to the provisions of C.R.C.P. 251.33.

COMMITTEE COMMENT

The confidentiality rule set forth in C.R.C.P. 251.31(b) seeks to strike a balance between the protection of attorneys against publicity predicated upon unfounded accusations and the protection of clients and prospective clients and the effective administration of justice from harm caused by attorneys who are unwilling or unable to fulfill their professional obligations. C.R.C.P. 251.31(b) also recognizes that restrictions on confidentiality no longer serve their purpose, when allegations that would ordinarily be confidential have become generally known through disclosure in the public record, publicity or otherwise.

The Regulation Counsel frequently receives inquiries from judges, clients or prospective clients and the media asking if an attorney is the subject of a pending disciplinary investigation. Ordinarily, this rule prohibits the Regulation Counsel from providing information about a pending investigation or even confirming that an investigation is pending. C.R.C.P. 251.31(b) sets forth exceptions when the Regulation Counsel may reveal the pendency, subject matter, and status of an investigation under C.R.C.P. 251.10.

Certain exceptions are clear. For example, when the attorney has waived confidentiality or when the proceeding against the attorney is based on a criminal conviction, discipline imposed on the attorney in another jurisdiction, or a petition for immediate suspension filed by the Regulation Counsel against the attorney under C.R.C.P. 251.8.

Other exceptions require the Regulation Counsel to exercise discretion. C.R.C.P. 251.31(b)(3) requires the Regulation Counsel to determine whether otherwise confidential allegations against an attorney have become generally known. Factors that the Regulation Counsel should consider in these circumstances include but are not limited to the nature and extent of media coverage, the nature and extent of inquiries from the media and the public, the nature and status of any related judicial proceedings, the number of people believed to have knowledge of the allegations, and the seriousness of the allegations.

Another important exception requiring the Regulation Counsel to exercise discretion is C.R.C.P. 251.31(b)(4), which allows disclosure when there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession. In determining whether a need to notify exists, the Regulation Counsel should consider factors including but not limited to the nature and seriousness of the conduct under investigation, the attorney's prior disciplinary history and whether the attorney has previously been disciplined for conduct similar to the alleged conduct under investigation, and the potential harm to a Client or prospective client, the public or the judicial system. In those instances in which the Regulation Counsel determines, that disclosure is permitted based on C.R.C.P. 251.31(b)(4) alone, the Regulation Counsel is authorized to disclose the pendency, subject matter, and status of an

~~investigation in response to inquiry, but also to disclose this information affirmatively to those persons having a need to know the information in order to avoid potential harm.~~

Rule 251.32. Reserved.

~~GENERAL PROVISIONS~~

~~(a) Quorum. A majority of the members of the committee or a Hearing Board shall constitute a quorum of such body, and the action of a majority of those present and comprising such a quorum shall be the action of the committee or Hearing Board.~~

~~(b) Notice and Service of Process. Except as may be otherwise provided by these Rules or by order of the Supreme Court, notice shall be in writing, and the giving of notice and service of process shall be sufficient when made either personally upon the attorney or by certified mail, sent to the attorney at both the attorney's last known address as provided by the attorney pursuant to C.R.C.P. 227 or such later address as may be known to the person effecting service.~~

~~If the attorney is not licensed to practice law in this state but was specially admitted by a court of this state for a particular proceeding, notice and service shall be effected as provided in this section, and if service is by certified mail, it shall be made to the attorney's last known address.~~

~~(c) Number of Copies Filed. Unless otherwise provided in these rules, in all cases where a party files documents with the Presiding Disciplinary Judge or a Hearing Board, the committee, or the Regulation Counsel, an original and three copies must be filed. When documents are filed with the Supreme Court, an original and ten copies must be filed.~~

~~(d) Costs.~~

~~(1) Disciplinary Proceedings. In all cases where discipline is imposed by the Hearing Board, it may assess against the respondent all or any part of the costs incurred in connection with the disciplinary proceedings. If the Supreme Court imposes discipline, the Supreme Court may also assess against the respondent all or any part of the costs of the proceedings. If the committee imposes discipline as provided by these rules, it may also assess against the respondent all or any part of the costs of the proceedings.~~

~~(2) Reinstatement and Readmission Proceedings After Discipline. An attorney who petitions for reinstatement from a suspension or readmission after disbarment must bear the cost of such proceedings, as required by C.R.C.P. 251.29(i).~~

~~(3) Disability Proceedings. The Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court, in its discretion, may order the attorney to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered.~~

~~(4) Reinstatement Proceedings After Transfer to Disability Inactive Status. The Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court, in its discretion, may order an attorney who petitions for reinstatement after transfer to disability inactive status to pay the cost of all or any part of the proceedings conducted pursuant to C.R.C.P. 251.30, including the cost of any examinations ordered.~~

~~(e) Immunity. Testimony given in disciplinary proceedings or communications relating to attorney misconduct, lack of professionalism or disability made to the Supreme Court, the committee, the Regulation Counsel, the Presiding Disciplinary Judge, members of the Hearing Board, mediators acting pursuant to C.R.C.P. 251.3(c)(11), or monitors enlisted to assist with probation or diversion, as authorized by C.R.C.P. 251.13, shall be absolutely privileged and no lawsuit shall be predicated thereon. If the matter is confidential as provided in these rules, and if the person who testified or communicated does not maintain confidentiality, then the testimony or communications shall be qualifiedly privileged, such that an action may lie against the person whose testimony or communications were made in bad faith or with reckless disregard of their truth or falsity. Persons performing official duties under the provisions of this Chapter, including but not limited to the Presiding Disciplinary Judge and staff; members of the Hearing Board; the committee; the Regulation Counsel and staff; mediators appointed by the Supreme Court pursuant to C.R.C.P. 251.3(c)(11); monitors enlisted to assist with diversion as authorized by C.R.C.P. 251.13; members of the Bar working in connection with disciplinary proceedings or under the direction of the Presiding Disciplinary Judge, or the committee; and health care professionals working in connection with disciplinary proceedings shall be immune from suit for all conduct in the course of their official duties.~~

~~(f) Termination of Proceedings. No disciplinary or disability proceeding may be terminated except as provided by these Rules.~~

~~(g) Pending Litigation. All disciplinary proceedings which involve complaints with material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may in the discretion of the committee, the Presiding Disciplinary Judge, or a Hearing Board be deferred until the conclusion of such prosecution.~~

~~Disciplinary proceedings involving complaints with material allegations which are substantially similar to those made against the respondent in pending civil litigation may in the discretion of the committee, the Presiding Disciplinary Judge, or a Hearing Board be deferred until the conclusion of such litigation. If the disciplinary proceeding is deferred pending the conclusion of civil litigation, the respondent shall make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation. If the respondent fails to take steps to assure a prompt disposition of the civil litigation, the disciplinary proceeding may be immediately resumed.~~

~~The acquittal of a respondent on criminal charges or a verdict or judgment in the respondent's favor in civil litigation involving substantially similar material allegations shall not alone justify the termination of disciplinary proceedings pending against the respondent upon the same material allegations.~~

~~(h) Protective Appointment of Counsel. When an attorney has been transferred to disability inactive status; or when an attorney has disappeared; or when an attorney has died; or when an attorney has been suspended or disbarred and there is evidence that the attorney has not complied with the provisions of C.R.C.P. 251.28, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is known to exist, the chief judge of any judicial district in which the attorney maintained his office, upon the request of the Regulation Counsel, shall appoint legal counsel to inventory the files of the lawyer in question and to take any steps necessary to protect the interests of the attorney in question and the attorney's clients. Counsel appointed pursuant to this Rule shall not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the order of the court that appointed the counsel to make such inventory.~~

~~(i) Statute of Limitations. A request for investigation against an attorney shall be filed within five years of the time that the complaining witness discovers or reasonably should have discovered the misconduct. There shall be no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.~~

Rule 251.33. Reserved.

~~EXPUNCTION OF RECORDS~~

~~(a) Expunction--Self-Executing. Except for records relating to proceedings that have become public pursuant to C.R.C.P. 251.31, all records relating to proceedings conducted pursuant to these Rules, which proceedings were dismissed, shall be expunged from the files of the committee, the Presiding Disciplinary Judge, and Regulation Counsel three years after the end of the year in which the dismissal occurred.~~

~~(b) Definition. The terms "expunge" and "expunction" shall mean the destruction of all records or other evidence of any type, including, but not limited to, the request for investigation, the response, Investigator's notes, and the report of investigation.~~

~~(c) Notice to Respondent. If proceedings conducted pursuant to these Rules (or their predecessor) were commenced, the attorney in question shall be given prompt notice of the expunction.~~

~~(d) Effect of Expunction. After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which~~

have been expunged, the committee or the Regulation Counsel shall respond by stating that no record of the proceedings exists. The attorney in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The attorney in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed and that the record of the proceeding was expunged pursuant to this Rule. After a response as provided in this Rule is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged need be made.

(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the attorney in question and opportunity to such attorney to be heard, the Regulation Counsel may request that records which would otherwise be expunged under this Rule be retained for such additional period of time not to exceed three years as the committee deems appropriate. The Regulation Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

Rule 251.34. Reserved.

ADVISORY COMMITTEE

(a) Advisory Committee. The Supreme Court Advisory Committee is hereby established. The Advisory Committee shall serve as a permanent committee of the Supreme Court.

(1) Members. The Advisory Committee shall be composed of the Chair and Vice-Chair of the Attorney Regulation Committee. Two Supreme Court justices who serve as liaison to the attorney regulation system, eight members of the Bar, and a member of the public shall also serve as members of the Advisory Committee. The membership shall include one member from the Colorado Bar Association's Ethics Committee, one Respondent Bar member of the Colorado Bar Association's Attorney Regulation Policy Committee, and one member of the Hearing Board pool. Diversity shall be a consideration in making the appointments.

The members of the Advisory Committee shall serve at the pleasure of the Supreme Court and may be dismissed from the Advisory Committee at any time by order of the Supreme Court. A member of the Advisory Committee may resign at any time.

(2) Vacancy. In the event of a vacancy on the Advisory Committee, the Supreme Court shall fill the vacancy to serve at the pleasure of the Supreme Court.

(3) Chair. The court shall appoint a member of the Advisory Committee to serve as its chair. The chair shall exercise overall supervisory control of the Advisory Committee.

~~(4) Reimbursement of Advisory Committee Members. The members of the Advisory Committee shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.~~

~~(b) Powers and Duties of the Advisory Committee. The Advisory Committee shall be authorized and empowered to act in accordance with these Rules and to:~~

~~(1) Assist the Supreme Court in making appointments as described in these Rules;~~

~~(2) Oversee the management committee in the coordination of administrative matters within all programs of the attorney regulation system. The management committee shall be composed of the Clerk of the Supreme Court, who shall serve as its chair, the Regulation Counsel, and the Presiding Disciplinary Judge. The management committee's functions are limited to considering administrative matters;~~

~~(3) Review the productivity, effectiveness, and efficiency of the Supreme Court's attorney regulation system including that of the Presiding Disciplinary Judge and peer assistance programs and report its findings to the Supreme Court;~~

~~(4) Review the resources of the system for the purpose of making recommendations to the Supreme Court;~~

~~(5) Periodically report to the Supreme Court on the operation of the Advisory Committee;~~

~~(6) Recommend to the Supreme Court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings;~~

~~(7) Assist the Supreme Court in such matters as the court may direct; and~~

~~(8) Repealed eff. July 1, 2001.~~

~~(9) Select one or more health assistance programs as designated providers.~~

~~To be eligible for designation by the Advisory Committee, an attorney's health assistance program shall provide for the education of attorneys with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary; offer assistance to an attorney in identifying physical, emotional, or psychological problems; evaluate the extent of physical, emotional, or psychological problems and refer the attorney for appropriate treatment; monitor the status of an attorney who has been referred for treatment; provide counseling and support for the attorney referred for treatment; agree to receive referrals from the Advisory Committee or the Regulation Counsel; and agree to make their services available to all active licensed Colorado attorneys.~~

~~Nothing in this section or section 9.5 shall be construed to create any liability on the Advisory Committee or the Supreme Court for the actions of the Advisory Committee in funding assistance programs, and no civil action may be brought or maintained against the committee or the Supreme Court for an injury alleged to have been the result of the activities of any committee-selected assistance program or court approved lawyers' peer assistance program, or the result of an act or omission of an attorney participating in or referred by a committee-selected assistance program.~~

~~(9.5) Make recommendations concerning approval of lawyers' peer assistance program.~~

~~A. Any lawyers' peer assistance program that wishes to provide services to Colorado lawyers and have protection from the reporting requirements of Colo. RPC 8.3, must be approved by the Colorado Supreme Court. To request such approval, a description of the program must be submitted to the Advisory Committee who shall then review the program and make a recommendation to the Colorado Supreme Court as to approval.~~

~~B. The description shall contain the following information:~~

~~i. The type of organization, e.g. corporation, limited liability company, etc.;~~

~~ii. The mission statement for the program;~~

~~iii. The funding for the program;~~

~~iv. A list of the volunteers and/or paid employees, together with their qualifications and backgrounds, working for or together with the program; and,~~

~~v. An explanation of the type and frequency of training for the volunteers and/or paid employees.~~

~~C. Approval of a lawyer peer assistance program is for a period of two years subject to revocation at any time by the Colorado Supreme Court. In order to be reapproved, the program must file a request for renewal with the Clerk of the Colorado Supreme Court, containing the information listed in subparagraph B, and explain any changes that occurred in the program since its initial approval by the Colorado Supreme Court. The Clerk shall then forward the request for renewal to the Advisory Committee for recommendations to the Colorado Supreme Court. Unless renewed by the Colorado Supreme Court at the conclusion of the two years, the program shall lose its approved status.~~

~~(10) Adopt such practices as may from time to time become necessary to govern the internal operation of the Advisory Committee as approved by the Supreme Court.~~

Rule 252. [NO CHANGE]

Rule 253. Lawyers' Peer Assistance Programs

(a) Approval. Lawyers' peer assistance programs approved under this rule are not subject to the reporting requirements of Colo. RPC 8.3. The supreme court grants approval of lawyers' peer assistance programs. Approval of a lawyers' peer assistance program is for a period of five years. The supreme court may revoke approval at any time.

(b) Procedure. To request approval, a program must submit a request to the Supreme Court Advisory Committee on the Practice of Law (Advisory Committee), care of the clerk of the supreme court. The Advisory Committee will review the request and make a recommendation to the supreme court. The supreme court may grant or reject the request.

(c) Information in Request. The request must contain the following information:

(1) The type of organization, for example a corporation, limited liability company, or non-profit organization;

(2) The program's mission statement;

(3) The program's funding sources;

(4) A list of the program's volunteers and paid employees, and a description of the qualifications and background of each volunteer or employee; and

(5) An explanation of the type and frequency of training for the volunteers and paid employees.

(d) Reapproval. To seek reapproval, the program must file a request for reapproval with the Advisory Committee, care of the clerk of the supreme court. The request for reapproval should be filed no less than three months before the approval period is set to terminate. The request must explain any significant changes that occurred in the program since the supreme court first approved the program. The Advisory Committee will review the request and make a recommendation to the supreme court. The supreme court may grant or reject the request.

CHAPTER 20: RULES GOVERNING LAWYER DISCIPLINE AND DISABILITY PROCEEDINGS, PROTECTIVE APPOINTMENT OF COUNSEL, CONTINUING LEGAL AND JUDICIAL EDUCATION, ATTORNEYS' FUND FOR CLIENT PROTECTION, AND LAWYER ASSISTANCE PROGRAMS

Rule 241. Terminology

For purposes of C.R.C.P. 242 through C.R.C.P. 244, the following definitions apply:

"Administrative fee" is an amount equal to the civil filing fee in Colorado district courts, which is assessed to defray the costs of proceedings under C.R.C.P. 242.

"Advisory Committee" refers to the Supreme Court Advisory Committee on the Practice of Law, as identified in C.R.C.P. 242.3.

"Complaining witness" means a person who submits a request for investigation to the Regulation Counsel under C.R.C.P. 242.13(a)(1).

"Conviction" refers to any determination in a criminal matter, including at a federal, state, municipal, or other level, that a person is guilty, whether the determination rests on a verdict of guilty, a judicial finding of guilt, a plea of guilty, an Alford plea, or a plea of nolo contendere, irrespective of (1) whether entry of judgment or imposition of the sentence is suspended or deferred by the court, (2) whether the person is appealing the determination, and (3) whether sentencing has occurred.

"Costs" are those costs made available in civil cases, and may include travel expenses incurred by Hearing Board members and witnesses, fees for court reporters, fees for expert witnesses, and fees for independent medical examinations. "Costs" may also include expenses incurred during an investigation.

"Crime" refers to any offense that is punishable by imprisonment.

"Disciplinary proceeding" means any investigative or judicial proceeding under C.R.C.P. 242 except (1) preliminary investigations under C.R.C.P. 242.13 and (2) proceedings involving nondisciplinary suspensions under C.R.C.P. 242.23 and C.R.C.P. 242.24.

"Expunge" and "expungement" refer to the destruction of all files, records, and other items of any type in a given proceeding.

"Final decision" means an order entered or opinion issued under C.R.C.P. 242.23 (decision on petition for or reinstatement from nondisciplinary suspension based on noncompliance with child support or paternity order), C.R.C.P. 242.31 (disciplinary opinion), C.R.C.P. 242.39 (opinion on petition for disciplinary reinstatement or readmission), C.R.C.P. 243.6 (decision on transfer to

disability inactive status), or C.R.C.P. 243.10 (decision on petition for reinstatement from disability inactive status), or a dispositive order entered by the Presiding Disciplinary Judge under C.R.C.P. 12 or 56 that imposes a sanction or dismisses a disciplinary or disability proceeding.

“Including” means including but not limited to.

“Lawyer” means any person who is or has been (1) licensed to practice law or otherwise authorized to practice law in any jurisdiction in the United States; (2) a “foreign attorney” as defined in C.R.C.P. 205.5(1); or (3) a “foreign legal consultant” as defined in C.R.C.P. 204.2. The terms “lawyer” and “attorney” are used interchangeably.

“Law firm” refers to a partnership, professional company, sole proprietorship, or other entity through which any lawyer renders legal services; it also refers to a corporation, organization, or government office in which the lawyer renders legal services.

“Mail” and “mailing” mean the sending of a document or other item through the U.S. Postal Service, through a commercial delivery service, or by electronic means.

“Notice,” “notify,” and derivatives of those terms are addressed in C.R.C.P. 242.42(a).

“Proceeding,” for purposes only of C.R.C.P. 242, means any investigative or judicial proceeding under C.R.C.P. 242, including preliminary investigations under C.R.C.P. 242.13 and matters involving nondisciplinary suspensions under C.R.C.P. 242.23 and C.R.C.P. 242.24.

“Regulation Committee” refers to the Legal Regulation Committee, as identified in C.R.C.P. 242.4.

“Regulation Counsel” refers to the Attorney Regulation Counsel, as identified in C.R.C.P. 242.5.

“Respondent” means a lawyer in a disciplinary proceeding under C.R.C.P. 242.

“Restitution” means the return of fees, money, or other things of value that were paid or entrusted to a lawyer.

“Rules Governing the Practice of Law” refers to Chapters 18 through 20 of the Colorado Rules of Civil Procedure.

“Serious crime” means any felony; any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; an attempt or conspiracy to commit such a crime; or solicitation of another to commit such a crime.

“Supreme court” refers to the Colorado Supreme Court.

“This part” means a grouping of several sections of a rule under a Roman numeral heading, for example “Part VIII. Appeals to the Supreme Court.”

“This rule” means all sections of the broader rule in which the reference is found, for example C.R.C.P. 242 or C.R.C.P. 243.

“This section” means a single section of a rule, for example C.R.C.P. 242.1.

“This subsection” means a portion of a section, for example C.R.C.P. 242.1(a) or C.R.C.P. 242.1(a)(1).

“Tribunal” means a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when, after the party or parties are given the opportunity to present evidence or legal argument, a neutral official renders a binding legal judgment directly affecting a party’s interests in a particular matter.

Rule 242. Rules Governing Lawyer Disciplinary Proceedings

Preamble

The supreme court regulates the practice of law to promote the public interest as stated in the Preamble to the Rules Governing the Practice of Law. The following rules establish the procedures to determine, in the public interest, the appropriate resolution when a lawyer is alleged to have violated the Colorado Rules of Professional Conduct or engaged in other conduct that constitutes grounds for discipline.

Part I. Jurisdiction

Rule 242.1. Jurisdiction and Standards of Conduct

(a) Jurisdiction. Jurisdiction under this rule exists over the following persons:

(1) A lawyer admitted, certified, or otherwise authorized to practice law in Colorado, regardless of where the lawyer's conduct occurs or where the lawyer resides; and

(2) A lawyer not admitted to practice law in Colorado who provides or offers to provide any legal services in Colorado, including a lawyer who practices in Colorado pursuant to federal or tribal law.

(b) Applicable Rules and Standards of Conduct. The persons identified in subsection (a) above are governed by the Rules Governing the Practice of Law, including the Colorado Rules of Professional Conduct.

COMMENT

C.R.C.P. 242.1(a)(2) is intended to confer regulatory jurisdiction over lawyers who are domiciled in Colorado, who maintain a law office in Colorado, or who hold themselves out as practicing law in Colorado by virtue of using a Colorado address. The phrase "any legal services in Colorado" is intended to refer broadly to the place where the legal services are rendered or where their effects are felt.

Part II. Entities Within the Legal Regulation System

Rule 242.2. Supreme Court

The Colorado Supreme Court (supreme court) exercises jurisdiction over all matters arising under the Rules Governing the Practice of Law. The supreme court has plenary power to review any determination made in a proceeding under this rule and to enter any order in such a proceeding. The supreme court also has appellate jurisdiction as set forth in C.R.C.P. 242.33.

Rule 242.3. Advisory Committee

(a) Permanent Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is a permanent committee of the supreme court.

(b) Membership and Meeting Provisions.

(1) Members and Liaison Justices. Two supreme court justices serve as non-voting liaisons to the Advisory Committee. The Advisory Committee comprises up to 13 volunteer members, including a Chair and Vice-Chair. Members other than the Chair and Vice-Chair serve one term of up to seven years. The supreme court appoints the members. Diversity must be a consideration in making appointments. At least nine of the members must be lawyers admitted to practice in Colorado and at least two of the members must be nonlawyers. Members' terms should be staggered to provide, so far as possible, for the expiration each year of the term of at least one member. Members must include:

(A) The Chairs (or the annual designees) of the following committees: the Regulation Committee, the Law Committee, the Character and Fitness Committee, the Continuing Legal and Judicial Education Committee, and the Board of Trustees for the Colorado Attorneys' Fund for Client Protection;

(B) A member of the Colorado Bar Association's Ethics Committee;

(C) A member of the Standing Committee on the Rules of Professional Conduct; and

(D) A Colorado lawyer who has represented respondents in proceedings under this rule.

(2) Dismissal, Resignation, and Vacancy. Advisory Committee members serve at the pleasure of the supreme court, and the supreme court may dismiss them at any time. An Advisory Committee member may resign at any time. The supreme court will fill any vacancies.

(3) Chair and Vice-Chair. The supreme court appoints members of the Advisory Committee to serve as Chair and Vice-Chair. The Chair and Vice-Chair may serve in their respective roles for up to an additional seven years after their initial membership term, such that each may serve a total of 14 years on the Advisory Committee. The Chair and Vice-Chair must not represent a

party in a proceeding under this rule during the Chair's or Vice-Chair's term of service. The Chair and Vice-Chair serve at the pleasure of the supreme court.

(4) Quorum. A majority of the members of the Advisory Committee constitutes a quorum, and the action of a majority of those present and comprising a quorum constitutes the official action of the Advisory Committee.

(5) Reimbursement. Advisory Committee members are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Powers and Duties. The Advisory Committee is authorized and empowered to act in accordance with this rule, including by:

(1) Assisting the supreme court to make appointments under this rule, including appointments to the supreme court's permanent committees under the Rules Governing the Practice of Law and to the pool of Hearing Board members;

(2) Reviewing the productivity, effectiveness, efficiency, and resources of the legal regulation system, including the Office of the Presiding Disciplinary Judge, the Office of the Attorney Regulation Counsel, the Colorado Attorneys' Fund for Client Protection, the Colorado Lawyer Assistance Program, and the Colorado Attorney Mentoring Program, and to report findings and recommendations to the supreme court;

(3) Adopting practices needed to govern the internal operation of the Advisory Committee, subject to the supreme court's approval;

(4) Developing and overseeing programs consistent with the Preamble to the Rules Governing the Practice of Law;

(5) Periodically reporting to the supreme court on the operation of the Advisory Committee;

(6) Recommending to the supreme court proposed changes to the Rules Governing the Practice of Law and the CLJE Committee's Regulations Governing Mandatory Legal and Judicial Education, *see* C.R.C.P. 250.3(1);

(7) Recommending to the supreme court, under C.R.C.P. 253 and procedures adopted by the Advisory Committee, whether to approve lawyers' peer assistance programs; and

(8) Assisting in any matters the supreme court directs.

COMMENT

The Advisory Committee's powers and duties do not include making inquiries or providing oversight as to specific cases or matters. The Advisory Committee may develop protocols to govern other aspects of the legal regulation system. For example, the Advisory Committee has

protocols to govern the handling of complaints about the conduct of the Regulation Counsel and staff of the Regulation Counsel. The Advisory Committee's protocols may be found at the Regulation Counsel's website.

Rule 242.4. Legal Regulation Committee

(a) Permanent Committee. The Legal Regulation Committee (Regulation Committee) is a permanent committee of the supreme court.

(b) Membership and Meeting Provisions.

(1) Members. The Regulation Committee comprises at least nine members, including a Chair and Vice-Chair. At least six of the members must be lawyers admitted to practice in Colorado and at least two of the members must be nonlawyers. The supreme court appoints the members with the assistance of the Advisory Committee. Diversity must be a consideration in making appointments. Members serve one term of seven years. Members' terms should be staggered to provide, so far as possible, for the expiration each year of the term of at least one member. So far as possible, appointments should be made to ensure an odd number of members.

(2) Dismissal, Resignation, and Vacancy. Regulation Committee members serve at the pleasure of the supreme court, and the supreme court may dismiss them at any time. A Regulation Committee member may resign at any time. The supreme court will fill any vacancies.

(3) Chair and Vice-Chair. With the assistance of the Advisory Committee, the supreme court appoints the Chair and Vice-Chair from the membership of the Regulation Committee. The Chair and Vice-Chair may serve in their respective roles for up to an additional seven years after their initial membership term, such that each may serve a total of 14 years on the Committee. The Chair and Vice-Chair serve at the pleasure of the supreme court.

(4) Quorum. A majority of the members of the Regulation Committee constitutes a quorum, and the action of a majority of those present and comprising a quorum constitutes the official action of the Regulation Committee.

(5) Reimbursement. Regulation Committee members are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Powers and Duties. The Regulation Committee is authorized and empowered to act in accordance with this rule, including by:

(1) Making determinations in accordance with C.R.C.P. 242.16;

(2) Adopting practices needed to govern the internal operation of the Regulation Committee, subject to the supreme court's approval;

(3) Periodically reporting to the Advisory Committee on the operation of the Regulation Committee; and

(4) Recommending to the Advisory Committee proposed changes to C.R.C.P. 242.

(d) Disqualification. A Regulation Committee member must refrain from making determinations under C.R.C.P. 242.16 or otherwise taking part in a disciplinary proceeding in which a judge, similarly situated, would be required to disqualify. A Regulation Committee member must also refrain from making determinations under C.R.C.P. 242.16 or otherwise taking part in a disciplinary proceeding in which a lawyer associated with the member's law firm is in any way connected with the matter pending before the Regulation Committee.

(e) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or assist with investigations and prosecutions in accordance with C.R.C.P. 242.5(d).

Rule 242.5. Regulation Counsel

(a) Regulation Counsel. The supreme court appoints an Attorney Regulation Counsel (Regulation Counsel) who serves at the pleasure of the supreme court and who represents the People of the State of Colorado in proceedings under this rule.

(b) Qualifications. The Regulation Counsel must be a lawyer admitted to practice in Colorado with at least five years of experience in the practice of law. The Regulation Counsel must not hold other public office or engage in the private practice of law while serving as the Regulation Counsel.

(c) Powers and Duties. The Regulation Counsel, under a budget approved by the supreme court, is authorized and empowered to act in accordance with this rule, including by:

(1) Maintaining and supervising a permanent, central office for the filing and processing of requests for investigation in disciplinary matters and claims in Colorado Attorneys' Fund for Client Protection matters;

(2) Hiring and supervising a staff to carry out the duties of the Regulation Counsel;

(3) Adopting practices needed to govern the internal operation of the Office of the Regulation Counsel;

(4) Periodically reporting to the supreme court on the operation of the Office of the Regulation Counsel;

(5) Conducting investigations, dismissing matters, offering diversion, and reporting to the Regulation Committee;

(6) Prosecuting disciplinary actions, including reciprocal discipline actions, as provided in this rule;

(7) Negotiating dispositions of proceedings as provided in this rule;

(8) Prosecuting interim and nondisciplinary suspension proceedings as provided in this rule;

(9) Prosecuting contempt proceedings for violations of orders directing lawyers to cease practicing law and prosecuting other contempt proceedings under this rule;

(10) Participating in and presenting recommendations reflecting the public interest in reinstatement and readmission proceedings under this rule;

(11) Maintaining records of matters before the Regulation Committee;

(12) Recommending to the Advisory Committee any proposed changes to the Rules Governing the Practice of Law; and

(13) Performing such other duties as the supreme court may direct.

(d) Special Counsel. Special counsel appointed under C.R.C.P. 242.4(e) must act in accordance with this rule. When a special counsel is appointed, the special counsel is empowered in that proceeding to take all actions that fall within the scope of the appointment and that are normally entrusted to the Regulation Counsel.

(e) Former Regulation Counsel. Former Regulation Counsel or a former member of the Regulation Counsel's staff must not represent anyone in a proceeding that was pending under the Rules Governing the Practice of Law during that person's term of service.

COMMENT

C.R.C.P. 242.5(e) is intended to have a broader reach than Colo. RPC 1.11(a).

Rule 242.6. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The supreme court appoints one or more Presiding Disciplinary Judges to serve at the pleasure of the supreme court.

(b) Qualifications. The Presiding Disciplinary Judge must be a lawyer admitted to practice law in Colorado with at least five years of experience in the practice of law. The Presiding Disciplinary Judge must not hold other public office while serving as Presiding Disciplinary Judge.

(c) Powers and Duties of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge, under a budget approved by the supreme court, is authorized and empowered to act in accordance with this rule, including by:

(1) Maintaining and supervising a permanent, central office;

(2) Hiring and supervising a staff to carry out the duties of the Presiding Disciplinary Judge;

(3) Presiding over disciplinary and other proceedings as provided in Chapters 18-20, including by ruling on legal and other issues consistent with the general authority conferred upon courts under the Colorado Rules of Civil Procedure, administering oaths and affirmations in proceedings, imposing disciplinary sanctions on lawyers as provided in this rule, and reinstating or readmitting lawyers to the practice of law;

(4) Adopting practices needed to govern the internal operation of the Office of the Presiding Disciplinary Judge;

(5) Periodically reporting to the Advisory Committee on the operation of the Office of the Presiding Disciplinary Judge;

(6) Recommending to the Advisory Committee any proposed changes to the Rules Governing the Practice of Law;

(7) Recommending to the Advisory Committee appointments to the pool of Hearing Board members;

(8) Where issuance of a subpoena for use in another jurisdiction's disciplinary or disability proceeding has been approved in that jurisdiction, issuing a subpoena governed by C.R.C.P. 45 to compel the attendance of a witness or the production of documents in the Colorado county where the witness resides, or is employed, or elsewhere as agreed by the witness; and

(9) Performing such other duties as the supreme court may direct.

(d) Disqualification. The Presiding Disciplinary Judge must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify. No lawyer currently affiliated by employment with the Presiding Disciplinary Judge may represent anyone in a proceeding under the Rules Governing the Practice of Law so long as the Presiding Disciplinary Judge is serving in that role. If the Presiding Disciplinary Judge has been disqualified, the clerk of the Presiding Disciplinary Judge will select a presiding officer from among the available Colorado lawyers in the Hearing Board pool. The presiding officer must act in accordance with this rule. When a presiding officer is selected to serve in a proceeding under this rule, the presiding officer is empowered in that proceeding to take all actions normally entrusted to the Presiding Disciplinary Judge.

(e) Former Presiding Disciplinary Judges. A former presiding disciplinary judge or a former member of that judge's staff is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 242.7. Hearing Boards

(a) Authority. Hearing Boards are empowered to act in accordance with this rule.

(b) Membership Provisions.

(1) Members. The supreme court, with the assistance of the Advisory Committee, will appoint a diverse pool of Colorado lawyers and nonlawyers to the Hearing Board pool. Appointees serve terms of six years. Terms should be staggered to provide, so far as possible, for the regular expiration of the terms of an equal number of members. Appointees may serve no more than two consecutive terms.

(2) Dismissal, Resignation, and Vacancy. Members of the Hearing Board pool serve at the pleasure of the supreme court. Members of the Hearing Board pool may resign at any time. The supreme court may fill any vacancies.

(3) Reimbursement. Members of Hearing Boards are entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in performing their official duties.

(c) Hearings Before Hearing Boards. A Hearing Board in a disciplinary proceeding comprises the Presiding Disciplinary Judge and two other members, one of whom must be a Colorado lawyer, who are selected at random by the clerk of the Presiding Disciplinary Judge from among the available members of the Hearing Board pool. If the original Hearing Board is not available to decide an issue entrusted to it in a later phase of a proceeding, a Hearing Board consisting of the Presiding Disciplinary Judge and two members of the Hearing Board pool may decide the issue.

(d) Disqualification. Members of Hearing Boards must refrain from taking part in a disciplinary proceeding in which a judge, similarly situated, would be required to disqualify. Hearing Board members must also refrain from taking part in a disciplinary proceeding where a lawyer associated with the member's law firm is in any way connected with the proceeding pending before the Hearing Board. Members of Hearing Boards must not represent a respondent in a proceeding under this rule during their term of service in the Hearing Board pool.

(e) Former Member of Hearing Board. A former Hearing Board member is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 242.8. Immunity

(a) Prohibition Against Lawsuit Based on Communication Under this Rule. A lawyer may not institute a civil lawsuit against any person based on a request for investigation, testimony in a proceeding under this rule, or other written or oral communications made in a proceeding under this rule to entities within the legal regulation system, those entities' members or employees, or persons acting on their behalf, including monitors and health care professionals.

(b) Immunity for Entities Within Legal Regulation System. All entities within the legal regulation system and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Part III. Scope

Rule 242.9. Grounds for Discipline

An act or omission that violates the Colorado Rules of Professional Conduct, this rule, or an order entered under this rule, or an act or omission that is grounds for discipline under rules in another jurisdiction, may constitute grounds for discipline.

Rule 242.10. Forms of Discipline and Other Dispositions

(a) Forms of Discipline. When grounds for discipline against a lawyer have been established, one of the following sanctions will be imposed in accordance with the American Bar Association Standards for Imposing Lawyer Sanctions, unless inconsistent with this rule:

(1) Disbarment. Disbarment is the revocation of a lawyer's license or authority to practice law in Colorado. A disbarred lawyer may not petition for readmission under C.R.C.P. 242.39 for at least eight years after the disbarment takes effect.

(2) Suspension. Suspension is the temporary removal of a lawyer's authority to practice law in Colorado, subject to the lawyer's reinstatement under C.R.C.P. 242.38 or C.R.C.P. 242.39. Suspension is imposed for a definite period of time not to exceed three years. A suspension may be stayed in whole or in part.

(3) Public Censure. Public censure is a published reprimand that declares a lawyer's conduct is grounds for discipline but that does not prohibit the lawyer from practicing law. Conditions may be attached to a public censure. Failure to comply with conditions constitutes grounds for discipline against the lawyer.

(4) Private Admonition. A private admonition is an unpublished reprimand that declares a lawyer's conduct is grounds for discipline but that does not prohibit the lawyer from practicing law. Conditions may be attached to a private admonition. Failure to comply with conditions constitutes grounds for discipline against the lawyer. Nothing in this rule precludes consideration and disclosure of the private admonition in a future disciplinary proceeding. A private admonition may be imposed in one of three ways:

(A) Admonition by Regulation Committee. The Regulation Committee may issue a letter privately admonishing a respondent under C.R.C.P. 242.16(a). When such a letter is issued, the proceeding, including the admonition, will remain confidential except as provided in C.R.C.P. 242.16(f).

(B) Admonition by Presiding Disciplinary Judge on Stipulation. The Presiding Disciplinary Judge may impose private admonition by approving a stipulation under C.R.C.P. 242.19. The stipulation is confidential. The Presiding Disciplinary Judge's order approving the stipulation and imposing the admonition is confidential. All other files and records relating to any phase of the proceeding are public, including the notice that the respondent was admonished, which must indicate whether any claims against the respondent were dismissed.

(C) Admonition in Opinion by Presiding Disciplinary Judge or Hearing Board. The Presiding Disciplinary Judge or a Hearing Board may impose private admonition by opinion after a hearing has been held. The opinion itself is confidential. All other files and records relating to any phase of the proceeding are public, including the notice that the respondent was admonished, which must indicate whether any claims against the respondent were dismissed.

(b) Other Dispositions Under this Rule. Other types of dispositions and orders under this rule include:

(1) Probation. A lawyer may be placed on probation in conjunction with a stayed suspension as provided in C.R.C.P. 242.18.

(2) Diversion. A lawyer may agree to participate in a diversion program under C.R.C.P. 242.17.

(3) Interim and Nondisciplinary Suspensions. A lawyer's license to practice law in Colorado may be suspended on a temporary basis as provided in C.R.C.P. 242.22 through C.R.C.P. 242.24.

(4) Restitution and Costs. A lawyer may be ordered to pay restitution and costs in conjunction with a disciplinary proceeding or a protective appointment of counsel proceeding.

(5) Readmission and Reinstatement. A lawyer may be readmitted from disbarment or reinstated from suspension as provided in C.R.C.P. 242.38 and C.R.C.P. 242.39.

(6) Contempt. A lawyer may be held in contempt as provided in C.R.C.P. 242.40.

(c) Disposition Under C.R.C.P. 232. A disbarred lawyer who is alleged to have violated a disbarment order may also be subject to a contempt proceeding under C.R.C.P. 232 (Rules Governing Unauthorized Practice of Law Proceedings).

COMMENT

A stayed suspension under this rule is imposed in conjunction with a period of probation. A lawyer is permitted to practice law during the "stayed" portion of a suspension. As an example, if a lawyer's license is suspended for one year, with three months served and nine months stayed upon completion of a two-year period of probation, the lawyer initially will be suspended for three months, then the lawyer normally will be reinstated subject to the conditions imposed for the two-year period of probation. If the lawyer is found to have violated a condition of probation during the two-year period of probation, the lawyer's license normally will be suspended for the

additional nine months under C.R.C.P. 242.18(f). A stayed suspension is an appropriate form of discipline only when the lawyer is eligible for probation under C.R.C.P. 242.18(b).

Rule 242.11. Duties to Report Misconduct and Convictions

(a) Judges' Reporting Duties. Judges' duties to report professional misconduct by a lawyer are governed by Rule 2.15 of the Colorado Code of Judicial Conduct. The clerk of any Colorado court in which a conviction was entered against a lawyer should transmit a certificate thereof to the Regulation Counsel within 14 days after the date of the conviction.

(b) Lawyers' Reporting Duties. Lawyers' duties to report professional misconduct by another lawyer or a judge are governed by Colo. RPC 8.3.

(c) Duty to Self-Report Charges and Convictions.

(1) Self-Reporting. A lawyer who is charged with a serious crime must notify the Regulation Counsel of the charges in writing within 14 days thereof. A lawyer who is convicted of a crime must notify the Regulation Counsel in writing of the conviction in writing within 14 days thereof.

(2) Traffic Offenses. The requirement to report convictions in subsection (c)(1) above does not apply to misdemeanor traffic offenses that do not involve the use of alcohol or drugs, or to traffic ordinance violations that do not involve the use of alcohol or drugs.

(d) Duty to Self-Report Discipline or Resignation in Another Jurisdiction. A lawyer subject to this rule who has been publicly disciplined in another jurisdiction, or who has resigned or otherwise voluntarily surrendered the lawyer's license to practice law in connection with a disciplinary proceeding in another jurisdiction, must notify the Regulation Counsel in writing of such action within 14 days of the order imposing public discipline or the resignation or surrender of license.

COMMENT

All judges who are lawyers, even those not subject to the Code of Judicial Conduct, have duties to report convictions under this rule, in addition to any duty set forth in the Colorado Rules of Judicial Discipline. See also CJC 1.1 with respect to judges. C.R.C.P. 242.11(d) is not intended to require reporting of reciprocal discipline by a lawyer who was reciprocally disciplined in another jurisdiction based on discipline originating in Colorado.

Rule 242.12. Rule of Limitation

Disciplinary sanctions or diversions may not be based on conduct reported more than five years after the date the conduct is discovered or reasonably should have been discovered. But there is

no rule of limitation where the allegations involve fraud, conversion, or conviction of a serious crime, or where the lawyer is alleged to have concealed the conduct.

Part IV. Investigation and Pre-Complaint Resolutions

Rule 242.13. Request for Investigation

(a) Requesting an Investigation. Requests for investigation, which cannot be made anonymously, may be made:

(1) By any person and directed to the Regulation Counsel;

(2) By a judge of any court of record and directed to the Regulation Counsel;

(3) By the Regulation Committee on its own motion and directed to the Regulation Counsel; or

(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the Regulation Committee.

(b) Preliminary Investigation.

(1) On receiving a request for investigation under subsection (a) above, the Regulation Counsel must conduct a preliminary investigation to decide:

(A) Whether the lawyer is subject to C.R.C.P. 242.1(a) and whether an allegation has been made that, if proved, would constitute grounds for discipline; and if so,

(B) Whether to formally investigate the matter under C.R.C.P. 242.14 or to address the matter by means of a diversion program under C.R.C.P. 242.17.

(2) If requested to do so, the lawyer must submit to the Regulation Counsel a written response to the allegations within 21 days. The Regulation Counsel may require the lawyer to provide a copy of the written response to the complaining witness, except when a protective order entered under C.R.C.P. 242.41(e) restricts the disclosure of information or when the Regulation Counsel otherwise determines that certain information should not be disclosed to the complaining witness.

(3) The Regulation Counsel's decision under subsection (b)(1) above is an exercise of discretion that may take into account numerous factors, including the availability of admissible and credible evidence to support the allegation, the presumptive form of discipline provided by the American Bar Association Standards for Imposing Lawyer Sanctions if the allegation is proven, and the likelihood that additional education of the lawyer will address any concerns of future misconduct. The Regulation Counsel's decision under subsection (b)(1) above is final. The Regulation Counsel will inform the complaining witness of the decision. The complaining witness is not entitled to review or appeal of that decision.

Rule 242.14. Formal Investigation of Allegations

(a) Commencement of Investigation.

(1) Initiation. A formal investigation may commence if the Regulation Counsel decides to investigate under C.R.C.P. 242.13(b)(1)(B) or if the Regulation Counsel receives notice that a lawyer has been convicted of a crime, other than serious crimes (which are addressed in C.R.C.P. 242.15(c)).

(2) Notice. When the Regulation Counsel commences a formal investigation under this section 242.14, the Regulation Counsel must give the respondent notice of the investigation and the allegations against the respondent.

(3) Response. If requested to do so, the respondent must submit to the Regulation Counsel a written response to the allegations within 21 days. The Regulation Counsel may require the respondent to provide a copy of the written response to the complaining witness, except when a protective order entered under C.R.C.P. 242.41(e) restricts the disclosure of information or when the Regulation Counsel otherwise determines that certain information should not be disclosed to the complaining witness.

(b) Procedures for Investigation.

(1) Investigator. A member of the Regulation Counsel's staff, a member of the Regulation Committee, or a special counsel appointed under C.R.C.P. 242.4(e) may act as investigator. The investigator must promptly investigate the allegations, which may include conducting interviews and procuring evidence.

(2) Subpoenas.

(A) Issuance. During an investigation, the Regulation Counsel or the Chair of the Regulation Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, and to compel the production of relevant documents and other evidence.

(B) Production of Required Records. A respondent must produce records required to be kept under Colo. RPC 1.15D in response to a subpoena duces tecum that is issued under this section 242.14 and that requests such records.

(C) Standards. Subpoenas issued under this section 242.14 and challenges thereto are subject to C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(c) Stipulation to Discipline or Diversion During Investigation. While a matter is under formal investigation, the respondent and the Regulation Counsel may enter into a stipulation to discipline as provided in C.R.C.P. 242.19 or to diversion as provided in C.R.C.P. 242.17. If a stipulation provides for diversion or private admonition, the parties must submit the stipulation to the Regulation Committee for approval. If a stipulation provides for public discipline, the parties must submit the stipulation to the Presiding Disciplinary Judge for approval. When a stipulation has been submitted and approved under this section 242.14, no determination or written report under subsection (d) below is required.

(d) Results of Investigation. After an investigation by the Regulation Counsel's staff, the Regulation Counsel must make a determination under C.R.C.P. 242.15. After an investigation conducted by an investigator who is not a member of the Regulation Counsel's staff, the investigator will submit a written report of investigation and recommendation to the Regulation Committee for a determination under C.R.C.P. 242.16.

COMMENT

For purposes of C.R.C.P. 45 a respondent subject to an investigation is considered a party, but a complaining witness is not considered a party.

Rule 242.15. Determination by Regulation Counsel

(a) Conclusion of Investigation. At the end of a formal investigation, the Regulation Counsel, using discretion, will take one of the following actions:

(1) Request that the Regulation Committee authorize the Regulation Counsel to file a complaint;

(2) Request that the Regulation Committee impose private admonition;

(3) Request that the Regulation Committee direct the matter to a diversion program;

(4) Request that the Regulation Committee place the matter in abeyance; or

(5) Dismiss the matter.

(b) Regulation Committee Review of Dismissal by Regulation Counsel. If the Regulation Counsel dismisses a matter at the end of a formal investigation, the Regulation Counsel must promptly notify the complaining witness and the respondent. If the complaining witness submits a request to the Regulation Counsel within 35 days of the notice, the Regulation Committee must review the Regulation Counsel's decision. If the Regulation Committee finds in such a review that the Regulation Counsel's decision to dismiss the matter was not an abuse of discretion, the Regulation Committee must sustain the dismissal and provide the complaining witness with a written explanation of its decision. If the Regulation Committee finds that the Regulation Counsel's decision was an abuse of discretion, the Regulation Committee must take action in accordance with C.R.C.P. 242.16(a)-(b).

(c) Direct Filing of Complaint. If the Regulation Counsel receives notice that a lawyer has been publicly disciplined in another jurisdiction or that a lawyer has been convicted of a serious crime, the Regulation Counsel may directly file a complaint against the lawyer as provided in C.R.C.P. 242.21 and C.R.C.P. 242.25(c), as applicable. Such proceedings are not governed by C.R.C.P. 242.13, C.R.C.P. 242.14, or subsection (a) above.

Rule 242.16. Determination by Regulation Committee

(a) Action By Regulation Committee. On receiving a request from the Regulation Counsel under C.R.C.P. 242.15 or a recommendation from another investigator under C.R.C.P. 242.14(d), the Regulation Committee must determine whether there is reasonable cause to believe that grounds for discipline exist and, using its discretion and evaluating the considerations listed in subsection (b) below, will take one of the following actions:

(1) Authorize the Regulation Counsel to file a complaint;

(2) Impose private admonition;

(3) Direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program;

(4) Place the matter in abeyance;

(5) Direct further investigation; or

(6) Dismiss the matter.

(b) Considerations in Taking Action. In making a determination under subsection (a) above, considerations for the Regulation Committee include:

(1) Whether it is reasonable to believe that misconduct warranting discipline can be proved by clear and convincing evidence;

(2) The level of injury or potential injury caused by the alleged misconduct;

(3) Whether the respondent previously has been disciplined; and

(4) Whether the alleged misconduct may warrant public discipline.

(c) Private Admonition by Regulation Committee.

(1) Contents. When the Regulation Committee privately admonishes a respondent, it must admonish the respondent in writing, state the basis for the admonition, and promptly notify the respondent of the admonition.

(2) Costs. On issuing a private admonition, the Regulation Committee must assess against the respondent the administrative fee and may assess against the respondent all or any part of the costs of the proceeding.

(3) Challenges. To challenge a private admonition by the Regulation Committee, a respondent must, within 21 days after notice of the admonition, submit a written demand that the Regulation Committee vacate the admonition. When the admonition is vacated, the Regulation Counsel may file a complaint against the lawyer. If a complaint is filed, a public disciplinary proceeding will go forward as otherwise provided in this rule.

(d) Notice to Respondent. After the Regulation Committee's decision to authorize the filing of a complaint, to direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program, to place a matter in abeyance, to direct further investigation, or to dismiss a matter, the Regulation Counsel must promptly notify the respondent of the decision.

(e) Respondent's Duty to Disclose to Law Firm. Within 14 days of receiving notice under subsection (d) above of the Regulation Committee's authorization to file a complaint, the respondent must disclose in writing that authorization to the respondent's current law firm as defined in C.R.C.P. 241 and, if different, to the respondent's law firm at the time of the alleged misconduct.

(f) Notice to Complaining Witness. Within 28 days after the Regulation Committee's decision to authorize the filing of a complaint, to direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program, or to dismiss a matter, the Regulation Counsel must notify the complaining witness of the decision. If the admonition has not been vacated at the end of the 21-day period provided in subsection (c)(3) above, the Regulation Counsel must notify the complaining witness that the respondent has been privately admonished. The contents of the private admonition may not be disclosed to the complaining witness.

Part V. Diversion, Probation, Stipulations, Resignation, and Reciprocal Discipline

Rule 242.17. Diversion

(a) Overview. Diversion is not a form of discipline. Diversion is designed to address lesser misconduct when a lawyer may benefit from guidance to improve the lawyer's skills or ethical infrastructure or to manage a behavioral health issue, including a mental health or substance use issue.

(b) Eligibility. A lawyer is eligible to participate in a diversion program only if it is unlikely that the lawyer will harm the public during the program, the Regulation Counsel can adequately supervise the terms of diversion, and the lawyer's participation in the program is likely to benefit the lawyer and serve the public interest. A matter generally will not be diverted under this section when:

(1) The presumptive form of discipline is greater than public censure under the American Bar Association Standards for Imposing Lawyer Sanctions;

(2) The conduct involves dishonesty, deceit, fraud, or misrepresentation, including misappropriation of funds or property of a client or another person;

(3) The conduct involves a serious crime;

(4) The conduct involves domestic violence, elder abuse, or child abuse;

(5) The conduct resulted in or is likely to result in a client's or another person's loss of money, legal rights, or property rights, unless restitution is made a term of diversion;

(6) The lawyer has been publicly disciplined in the last three years;

(7) The conduct is of the same nature as misconduct for which the lawyer has been disciplined in the last five years; or

(8) The conduct involves a pattern of similar misconduct.

(c) Diversion Agreement.

(1) Contents. If a lawyer agrees to an offer of diversion, the terms of the diversion must be set forth in a written agreement between the lawyer and the Regulation Counsel. The agreement must specify the general purpose of the diversion, the requirements of the diversion, how compliance will be monitored, the length of the diversion period, required payment of costs, and any required payment of restitution. Terms may include one or more of the following: mediation, fee arbitration, law office management assistance, continuing legal education courses, trust account school, ethics school, passing the multistate professional responsibility examination, referral to the Colorado Lawyer Assistance Program, assessment of and treatment for medical or

behavioral health issues including mental health and substance use issues, and monitoring of the lawyer's practice or accounting procedures. The Regulation Counsel will monitor the lawyer's compliance with the diversion agreement.

(2) Procedure.

(A) When the Regulation Counsel decides under C.R.C.P. 242.13 not to formally investigate a matter, the Regulation Counsel has discretion to offer the lawyer the opportunity to participate in a diversion program.

(B) After the Regulation Counsel has decided under C.R.C.P. 242.13 to formally investigate a matter but before the Regulation Counsel has filed a complaint, a diversion agreement must be submitted to the Regulation Committee for approval. If the Regulation Committee rejects the diversion agreement, the disciplinary proceeding will go forward as otherwise provided in this rule.

(C) In reviewing a matter presented by the Regulation Counsel under C.R.C.P. 242.16(a), the Regulation Committee may direct the Regulation Counsel to offer the respondent the opportunity to participate in a diversion program.

(D) After the Regulation Counsel has filed a complaint but before a hearing has been held, a diversion agreement must be submitted to the Presiding Disciplinary Judge for approval. If the Presiding Disciplinary Judge rejects a diversion agreement, the disciplinary proceeding will go forward as otherwise provided in this rule.

(3) Effect of Diversion. When a diversion agreement is approved, the underlying disciplinary proceeding is placed in abeyance pending successful completion of the diversion program.

(d) Costs and Administrative Fee. The respondent must pay the administrative fee and all costs incurred in connection with participating in a diversion program. If the Regulation Counsel prevails in a hearing before the Presiding Disciplinary Judge involving allegations that a respondent breached a diversion agreement, the respondent may be required to pay all or any part of the reasonable costs of the proceeding.

(e) Effect of Successful Completion of Diversion.

(1) Pre-complaint Matters. If the Regulation Counsel finds that the respondent successfully completed a diversion program in a matter in which a complaint was not filed, the Regulation Counsel must dismiss the matter and expunge the files and records thereof under C.R.C.P. 242.43.

(2) Post-complaint Matters. If the Regulation Counsel finds that the respondent successfully completed a diversion program in a matter in which a complaint was filed, the Regulation Counsel must promptly notify the Presiding Disciplinary Judge of the successful completion.

The Presiding Disciplinary Judge will dismiss the matter. The files and records of the matter will not be expunged.

(f) Breach of Diversion Agreement. Whether a diversion agreement has been breached is determined as follows:

(1) Diversion Agreement Entered After Preliminary Investigation. If the Regulation Counsel believes that a lawyer breached a diversion agreement that the Regulation Counsel offered at the conclusion of a preliminary investigation under C.R.C.P. 242.13, the Regulation Counsel must notify the lawyer and give the lawyer an opportunity to respond. The Regulation Counsel then may decide that the original agreement should remain in effect; offer to modify the diversion requirements; or terminate the diversion agreement, remove the proceeding from abeyance, and proceed with the disciplinary proceeding as otherwise provided in this rule.

(2) Diversion Agreement Approved by Regulation Committee. If the Regulation Counsel believes that a respondent breached a diversion agreement that was approved by the Regulation Committee under C.R.C.P. 242.16(a)(3), the Regulation Counsel must notify the Regulation Committee of the alleged breach and request relief. The Regulation Counsel must also notify the respondent, who must be afforded an opportunity to respond. Either party may request a hearing before the Presiding Disciplinary Judge.

(A) Hearings and Burden of Proof. At a hearing before the Presiding Disciplinary Judge, the Regulation Counsel has the burden by a preponderance of the evidence to establish a material breach of the diversion agreement and to justify the relief requested. The respondent has the same burden to establish that the breach was justified. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45.

(B) Report. After a hearing, the Presiding Disciplinary Judge will prepare a report setting forth findings of fact and recommendations for the Regulation Committee.

(C) Relief. The Regulation Committee may direct that the original agreement remain in effect; direct the Regulation Counsel to offer the respondent an opportunity to participate in a diversion program with modified requirements; terminate the diversion agreement, remove the disciplinary proceeding from abeyance, and impose a private admonition; or terminate the diversion agreement, remove the disciplinary proceeding from abeyance, and authorize the Regulation Counsel to file a complaint.

(3) Diversion Agreement Approved by Presiding Disciplinary Judge. If the Regulation Counsel believes that a respondent breached a diversion agreement that was approved by the Presiding Disciplinary Judge under C.R.C.P. 242.17(c)(2)(D), the Regulation Counsel must notify the Presiding Disciplinary Judge of the alleged breach and request relief. The Regulation Counsel must also notify the respondent, who must be afforded an opportunity to respond. Either party may request a hearing before the Presiding Disciplinary Judge.

(A) Hearings and Burden of Proof. At a hearing before the Presiding Disciplinary Judge, the Regulation Counsel has the burden by a preponderance of the evidence to establish a material breach and to justify the relief requested. The respondent has the same burden to establish that a breach was justified. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45.

(B) Decision. After a hearing, the Presiding Disciplinary Judge will prepare findings of fact and render a decision. The Presiding Disciplinary Judge may terminate the diversion agreement and remove the disciplinary proceeding from abeyance or direct that the original agreement remain in effect.

(g) Confidentiality.

(1) Files and Records.

(A) Pre-complaint Matters. Files and records relating to a matter in which diversion is entered before a complaint is filed are not available to the public.

(B) Post-complaint Matters. Files and records relating to a matter in which diversion is entered after a complaint is filed, including an order dismissing the underlying case, are available to the public. But the diversion agreement itself and any order approving the diversion agreement are not available to the public.

(C) Publishing. For educational purposes, the Regulation Counsel or the Presiding Disciplinary Judge may publish anonymous summaries of matters in which diversion has been entered in pre-complaint or post-complaint matters so long as there is no reasonable likelihood that a reader will be able to ascertain the identity of the lawyer.

(2) Admissions of Misconduct. A lawyer's admissions of misconduct to a treatment provider or a practice monitor while in a diversion program are confidential, but only if the misconduct occurred before the lawyer entered the diversion program.

Rule 242.18. Probation

(a) Overview. Probation is a form of discipline that allows a respondent who has been found to have committed misconduct to continue practicing law subject to supervision when the respondent would benefit from conditions designed to improve the respondent's skills or ethical infrastructure or to manage a behavioral health issue, including a mental health or substance use issue. An order of probation must specify the conditions of probation. Probation must be imposed for a specified period of time in conjunction with a suspension, which may be stayed in whole or in part. A period of probation must not exceed three years, unless the Presiding Disciplinary Judge grants an extension on motion by either party.

(b) Eligibility. Probation may be imposed only when a respondent:

(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;

(2) Is able to practice law without undermining public confidence in the legal system; and

(3) Has not committed misconduct for which the presumptive form of discipline is disbarment.

(c) Conditions. Conditions must take into consideration the nature and circumstances of the respondent's misconduct and the respondent's history and health status. A mandatory condition of probation is that the respondent must not commit further violations of the Colorado Rules of Professional Conduct during the period of probation. Other conditions may include one or more of the following:

(1) Periodic reporting to the Regulation Counsel;

(2) Monitoring of the respondent's law practice or accounting procedures;

(3) Establishing a relationship with a lawyer-mentor;

(4) Satisfactory completion of a course of study;

(5) Achieving a passing score on the multistate professional responsibility examination;

(6) Payment of restitution;

(7) Evaluation or treatment of medical or behavioral health issues, including mental health or substance use issues;

(8) Evaluation or treatment in a program for disorders related to sexual misconduct;

(9) Evaluation or treatment in a program for addressing matters relating to family violence, including domestic partner, elder, and child abuse;

(10) Compliance with civil or criminal court orders;

(11) Abstinence from or limitations on the use of alcohol or drugs; and

(12) Payment of expenses associated with probationary conditions.

(d) Monitoring. The Regulation Counsel must monitor the respondent's compliance with the conditions of probation.

(e) Termination. Probation does not terminate until the Presiding Disciplinary Judge enters an order of termination. To seek timely termination of probation, a respondent must file with the Presiding Disciplinary Judge, no earlier than 28 days before the date probation is scheduled to

terminate, an affidavit attesting to whether the respondent has complied with each term of probation. Within 14 days of that filing, unless otherwise ordered, the Regulation Counsel must file either a notice that the Regulation Counsel does not object to the termination of probation or a motion to revoke probation. On receiving notice that the Regulation Counsel does not object to termination of probation, the Presiding Disciplinary Judge will enter an order terminating probation. An order of termination takes effect no earlier than the date probation is scheduled to terminate.

(f) Violations.

(1) Initiation of Revocation Proceeding. If, while a respondent is on probation, the Regulation Counsel receives information that the respondent may have violated a condition of probation, the Regulation Counsel may move that the Presiding Disciplinary Judge order the respondent to show cause why the stay on the respondent's suspension should not be lifted.

(2) Continued Compliance. During a revocation proceeding, the respondent must continue to comply with the probationary conditions unless otherwise ordered.

(3) Hearing. The Presiding Disciplinary Judge may hold a revocation hearing on motion of either party or on the Presiding Disciplinary Judge's own initiative. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. At the hearing, the Regulation Counsel has the burden of establishing by a preponderance of the evidence that the respondent violated a condition of probation and to justify the relief requested. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence. When the alleged violation is the respondent's failure to pay restitution or costs, evidence of the failure to pay constitutes prima facie evidence of a violation.

(4) Order. After a hearing or after briefing if no hearing is held, the Presiding Disciplinary Judge will enter an order revoking probation, modifying the conditions or length of probation, or directing that probation remain in effect.

(5) Costs. If probation is revoked or modified, the Presiding Disciplinary Judge may assess against the respondent all or any part of the reasonable costs of the revocation proceeding.

(g) Independent Charges. The filing or the granting of a motion under subsection (f) above does not preclude the Regulation Counsel from filing independent disciplinary charges based on the same underlying conduct.

Rule 242.19. Stipulation to Discipline

(a) Overview. After the Regulation Committee has approved the filing of a complaint but before a disciplinary hearing, the Regulation Counsel and a respondent may enter into a stipulation to

discipline whereby the respondent conditionally admits to misconduct in exchange for a stipulated form of discipline.

(b) Contents. A stipulation to discipline must be sworn or affirmed by the respondent and notarized and must contain:

(1) The factual basis for the stipulation;

(2) An admission of misconduct that constitutes grounds for discipline;

(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the respondent is fully aware of the implications of the admission;

(4) An agreement that the respondent will pay the costs and the administrative fee of the proceeding; and

(5) A statement whether the respondent will pay restitution and in what amount.

(c) Procedure. A stipulation must be submitted to the Presiding Disciplinary Judge for review. Using discretion and in accordance with the considerations governing imposition of disciplinary sanctions, the Presiding Disciplinary Judge may either reject the stipulation and order that the disciplinary proceeding go forward as otherwise provided in this rule or approve the stipulation and enter an appropriate order.

(d) Rejected Stipulation. If a stipulation to discipline is rejected, the stipulation and any related motions, briefs, and orders will not be available to the public and will not be admissible in any disciplinary proceeding.

Rule 242.20. Resignation

As provided in C.R.C.P. 227(A)(8), the supreme court may permit a lawyer to resign from the practice of law in Colorado. The Regulation Counsel must inform the supreme court whether any disciplinary or disability matter involving the lawyer should preclude the lawyer's resignation and whether any pre-complaint proceeding pending against the lawyer under this rule should be dismissed. A lawyer may not resign if a complaint under C.R.C.P. 242.25 is pending against the lawyer. A lawyer who has been permitted to resign remains subject to the supreme court's jurisdiction as set forth in C.R.C.P. 242.1 as to the lawyer's previous or authorized practice of law in Colorado. Resignation under C.R.C.P. 227(A)(8) is not a form of discipline.

Rule 242.21. Reciprocal Discipline

(a) Standards. A final adjudication of misconduct constituting grounds for discipline issued in another jurisdiction conclusively establishes such misconduct for purposes of this rule and conclusively establishes that the same discipline should be imposed in Colorado, unless a party challenging imposition of that discipline establishes by clear and convincing evidence that:

(1) The procedure followed in the other jurisdiction did not comport with Colorado's requirements of due process of law;

(2) The proof upon which the other jurisdiction based its determination of misconduct is so infirm that the determination cannot be accepted;

(3) The imposition of the same discipline as was imposed in the other jurisdiction would result in grave injustice; or

(4) The misconduct proved warrants a substantially different form of discipline in Colorado.

(b) Procedures.

(1) Complaint. If a complaint is based on the respondent's public discipline in another jurisdiction, the Regulation Counsel must attach to the complaint a copy of the disciplinary order entered in the other jurisdiction. If the Regulation Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent must be given in the complaint.

(2) Answer. If the respondent intends to raise a defense listed in subsection (a) above, the respondent must file with the Presiding Disciplinary Judge, within 28 days after service of the complaint, an answer and a full copy of the record of the disciplinary proceeding in the other jurisdiction.

(3) Decision by Presiding Disciplinary Judge. The Presiding Disciplinary Judge may, without a hearing or a Hearing Board, issue a decision imposing the same discipline as was imposed by the other jurisdiction if:

(A) The Regulation Counsel does not seek substantially different discipline and the respondent does not challenge the order based on any of the defenses listed in subsection (a) above; or

(B) The matter can be resolved on a dispositive motion, such as a motion filed under C.R.C.P. 12, 55, or 56.

(4) Hearing and Decision by Hearing Board. A hearing before a Hearing Board must be conducted in accordance with the procedures set forth in C.R.C.P. 242.29 through C.R.C.P. 242.31. After the hearing, the Hearing Board must issue a decision imposing the same discipline as was imposed by the other jurisdiction unless the respondent establishes by clear and convincing evidence one or more of the four defenses listed in subsection (a) above or the Regulation Counsel establishes by clear and convincing evidence that substantially different discipline is warranted.

(5) Costs and Administrative Fee. If reciprocal discipline is imposed, the respondent must pay the administrative fee and may be ordered to pay all or any part of the reasonable costs of the proceeding.

(6) Effect of Stay in Other Jurisdiction. If the discipline imposed in the other jurisdiction has been stayed pending appeal there, reciprocal discipline cannot take effect in Colorado unless and until the stay in the other jurisdiction is lifted.

(c) Reinstatement and Readmission.

(1) Costs and Restitution Awarded in Originating Jurisdiction. A respondent who is reciprocally disciplined in Colorado must pay all costs and restitution ordered in the originating jurisdiction before petitioning for reinstatement or readmission to practice law in Colorado.

(2) Reinstatement or Readmission in Originating Jurisdiction. A respondent who is reciprocally disciplined in Colorado must be reinstated or readmitted in the originating jurisdiction before petitioning for reinstatement or readmission to practice law in Colorado under C.R.C.P. 242.39 unless the respondent shows good cause for not seeking reinstatement or readmission in the originating jurisdiction.

Part VI. Interim and Nondisciplinary Suspension

Rule 242.22. Interim Suspension for Alleged Serious Disciplinary Violations

(a) Overview. Interim suspension is the temporary suspension by the supreme court of a respondent's license to practice law while a disciplinary proceeding is pending against the respondent.

(b) Applicability. Although a respondent's license to practice law is not ordinarily suspended while a disciplinary proceeding is pending, the supreme court may suspend a respondent's license on an interim basis if there is reasonable cause to believe that:

(1) The respondent is causing or has caused substantial public or private harm; and

(2) The respondent has:

(A) Been convicted of a serious crime;

(B) Knowingly converted property or funds;

(C) Abandoned a client; or

(D) Engaged in conduct that poses a substantial threat to the administration of justice.

(c) Procedure.

(1) Initiation. To initiate an interim suspension proceeding under this section 242.22, the Regulation Counsel must file a petition with the Presiding Disciplinary Judge. The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that the alleged conduct occurred. The Regulation Counsel must serve a copy of the petition and affidavit on the respondent.

(2) Order to Show Cause. On receiving a properly supported petition for interim suspension, the Presiding Disciplinary Judge will order the respondent to show cause within 14 days why the petition should not be granted.

(3) Subpoenas. During a proceeding under this section 242.22, either party may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(4) Hearing. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. A hearing will take place within 14 days of the respondent's response to the show cause order. A record must be made of the hearing.

(5) Report. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact and a recommendation as to interim suspension.

(6) Supreme Court Decision. On receiving the Presiding Disciplinary Judge's report, the supreme court may suspend the respondent's license to practice law on an interim basis or discharge the show cause order. An order of interim suspension takes effect immediately, unless otherwise provided.

(d) Disclosure to Law Firms. In addition to a respondent's duties under C.R.C.P. 242.32, a respondent whose license is suspended on an interim basis under this section 242.22 must disclose in writing the interim suspension order to the respondent's current law firm as defined in C.R.C.P. 241 and, if different, to the respondent's law firm at the time of the misconduct giving rise to the matter. The disclosure must be made within 7 days of the supreme court's order.

(e) Related Disciplinary Proceeding.

(1) Direct Filing of Complaint. When the supreme court suspends a respondent's license on an interim basis and a complaint has not already been filed alleging the same misconduct, the Regulation Counsel must promptly file a complaint under C.R.C.P. 242.25. The disciplinary proceeding then will go forward as otherwise provided in this rule. In such proceedings, C.R.C.P. 242.14 through C.R.C.P. 242.16 do not apply.

(2) Accelerated Disposition. A respondent whose license has been suspended on an interim basis under this section 242.22 may exercise the right to an accelerated disposition of the disciplinary proceeding by filing a notice to that effect with the Presiding Disciplinary Judge. The matter then must proceed without appreciable delay.

(3) Termination of Interim Suspension. The interim suspension of a respondent's license under this section 242.22 terminates on resolution of a disciplinary proceeding alleging the same misconduct.

(f) Access to Information. Pre-complaint proceedings under this section 242.22 are confidential if the supreme court has not yet issued a final decision under this section or if the supreme court does not impose an interim suspension. But the files and records of the matter become public if the supreme court suspends a respondent's license under this section, if a complaint is filed alleging the same misconduct, or if C.R.C.P. 242.41 otherwise so provides.

(g) Automatic Reinstatement from Interim Suspension When Conviction Vacated. If a respondent subject to an interim suspension files a certificate showing that the criminal conviction on which the interim suspension was based has since been vacated, the Presiding Disciplinary Judge will terminate the interim suspension order. An order of termination under this subsection (g) does not affect any disciplinary proceeding pending against the respondent or

any discipline that has been imposed against the respondent based on the same underlying conduct.

Rule 242.23. Nondisciplinary Suspension for Noncompliance with Child Support or Paternity Orders

(a) Overview. Suspension under this section 242.23 is a temporary form of suspension designed to address certain types of lawyer noncompliance in child support and paternity proceedings. Suspension under this section is not a form of discipline and does not bar disciplinary action based on the same underlying conduct. A lawyer whose license has been suspended under this section may be reinstated when the lawyer demonstrates compliance in such proceedings. Suspension under this section terminates on reinstatement under this section or on resolution of a disciplinary proceeding based on the same underlying misconduct.

(b) Applicability. This section 242.23 applies to a lawyer who:

(1) Is not in compliance with any child support order, including any administrative or court order requiring the payment of child support, child support arrears, child support debt, retroactive support, or medical support, whether or not such order is combined with an order for maintenance; or

(2) Is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding.

(c) Procedure.

(1) Initiation. To initiate a proceeding under this section 242.23, the Regulation Counsel must file a petition for suspension with the Presiding Disciplinary Judge. The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that one or more of the circumstances set forth in subsection (b) above exists. The Regulation Counsel must serve a copy of the petition and affidavit on the lawyer.

(2) Order to Show Cause. On receiving a properly supported petition for suspension, the Presiding Disciplinary Judge will order the lawyer to show cause within 21 days why the petition should not be granted.

(3) Subpoenas. During a proceeding under this section 242.23, either party may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(4) Hearing. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. A hearing will take place within 14 days of the lawyer’s response to the show cause order.

(5) Decision.

(A) Issuance. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will issue an order setting forth findings of fact and a decision. The Presiding Disciplinary Judge will suspend the lawyer's license if the Regulation Counsel proves the allegations of the petition by a preponderance of the evidence, unless the lawyer establishes one of the defenses listed in subsection (B) below by a preponderance of the evidence. An order of suspension under this section 242.23 takes effect immediately, unless otherwise provided.

(B) Defenses.

(i) The following are valid defenses:

(a) The lawyer has paid the past-due obligation;

(b) The lawyer has negotiated a payment plan approved by the court or the state child support enforcement agency or other agency with jurisdiction over the child support order;

(c) A bona fide disagreement is currently before a trial court or an agency concerning the amount of the child support debt, arrearage balance, retroactive support due, or amount of the past-due child support when combined with maintenance;

(d) The lawyer has complied with the subpoena or warrant;

(e) The lawyer was not served with the subpoena or warrant; or

(f) The subpoena or warrant had a technical defect.

(ii) The inappropriateness of an underlying child support order and the lawyer's inability to comply with such an order are not valid defenses.

(d) Disclosure to Law Firm. In addition to a lawyer's duties under C.R.C.P. 242.32, a lawyer whose license is suspended under this section 242.23 must disclose in writing the suspension order to the lawyer's current law firm as defined in C.R.C.P. 241. The disclosure must be made within 14 days of the order.

(e) Access to Information. Proceedings under this section 242.23 are confidential if the Presiding Disciplinary Judge has not yet issued a final decision under this section or does not suspend a lawyer's license. But the files and records of the matter become public if the Presiding Disciplinary Judge suspends a lawyer's license under this section, if a complaint is filed based on the same underlying allegations, or if C.R.C.P. 242.41 otherwise so provides.

(f) Reinstatement.

(1) Petition. A lawyer whose license has been suspended under this section 242.23 is eligible for reinstatement if, as applicable, the lawyer pays the past-due obligations; enters into a payment plan approved by the court, the state child support enforcement agency, or other agency with jurisdiction over the child support order; complies with the warrant or subpoena; or is no longer subject to subsection (b) above as a result of an appellate decision in the lawyer's favor. To seek reinstatement, the lawyer must file with the Presiding Disciplinary Judge a verified petition containing evidence of compliance.

(2) Procedure. After receiving a petition for reinstatement, the Regulation Counsel has 21 days to conduct an investigation, unless the Presiding Disciplinary Judge grants the Regulation Counsel additional time. The lawyer must cooperate in the investigation. At the end of the investigation period, the Regulation Counsel must file an answer. The Presiding Disciplinary Judge will hold a hearing if requested by either party or if the Presiding Disciplinary Judge deems one necessary. The lawyer bears the burden of establishing the right to be reinstated by a preponderance of the evidence. The Presiding Disciplinary Judge may order reinstatement or deny reinstatement. Reinstatement under this subsection (f) does not affect any disciplinary proceeding pending against the respondent or any disciplinary sanction imposed for the respondent's conduct.

(g) Appeal. A decision of the Presiding Disciplinary Judge under subsection (c)(5) or subsection (f)(2) above is final, and an appeal may be initiated under C.R.C.P. 242.34.

Rule 242.24. Nondisciplinary Suspension for Failure to Cooperate

(a) Overview. Suspension under this section 242.24 is a temporary form of suspension designed to address noncooperation by a respondent in a disciplinary investigation. A respondent whose license is suspended under this section may be reinstated when the respondent rectifies the conduct at issue. Suspension under this section is not a form of discipline, does not bar disciplinary action based on the respondent's noncooperation, and is distinct from any disciplinary suspension that may be imposed based on the same underlying conduct.

(b) Applicability. Although a respondent's license to practice law is not ordinarily suspended during a disciplinary investigation, a respondent's license may be suspended during an investigation of alleged serious misconduct if there is reasonable cause to believe that the respondent has not cooperated, as described in subsection (c)(1)(A) below.

(c) Procedure.

(1) Initiation.

(A) To initiate a proceeding under this section 242.24, the Regulation Counsel must file a petition for suspension with the supreme court alleging that the respondent:

(i) Has failed to respond to a lawful demand for information relating to a disciplinary investigation and has not interposed a good-faith objection to responding; or

(ii) Has not produced information or records subpoenaed by the investigator and has not interposed a good-faith objection to producing the information or records.

(B) The petition must be supported by an affidavit setting forth facts giving rise to reasonable cause to believe that the alleged serious misconduct under investigation occurred and that the respondent has failed to cooperate as set forth in subsection (c)(1)(A) above. The affidavit must also describe the investigator's efforts to obtain the respondent's cooperation.

(C) The Regulation Counsel must serve a copy of the petition and affidavit on the respondent.

(2) Order to Show Cause. On receiving a properly supported petition for suspension, the supreme court may order the respondent to show cause within 14 days why the petition should not be granted.

(3) Hearing. If the respondent responds to the show cause order, either party may request a hearing. The supreme court may refer the matter to the Presiding Disciplinary Judge for resolution of contested factual matters and a hearing, for which subpoenas may be issued. A hearing will take place within 14 days of the supreme court's order of referral.

(4) Report. Within 7 days after any hearing, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact and a recommendation. The report must make findings as to the allegations and the applicability of any defenses, including inability to comply or a good-faith objection to response or production.

(5) Decision. After considering the petition, any response to the show cause order, and any report from the Presiding Disciplinary Judge, the supreme court may suspend the respondent's license to practice law until further order of the supreme court or entry of a final order in the underlying disciplinary proceeding, whichever occurs earlier; deny the petition; or enter any other appropriate order. An order of suspension under this section 242.24 takes effect immediately, unless otherwise provided.

(d) Disclosure to Law Firm. In addition to a respondent's duties under C.R.C.P. 242.32, a respondent whose license is suspended under this section 242.24 must disclose in writing the suspension order to the respondent's current law firm as defined in C.R.C.P. 241. The disclosure must be made within 14 days of the supreme court's order.

(e) Access to Information. Pre-complaint proceedings under this section 242.24 are confidential if the supreme court has not yet issued a final decision under this section or does not suspend a respondent's license. But the files and records of the matter become public if the supreme court suspends a respondent's license under this section, if a complaint is filed based on the allegations underlying the petition filed under this section, or if C.R.C.P. 242.41 otherwise so provides.

(f) Reinstatement. A respondent whose license was suspended under this section 242.24 may petition the supreme court for reinstatement. The respondent's petition must show that the

respondent has rectified the conduct alleged in the petition or that the respondent has otherwise complied with any directions issued by the supreme court. The respondent must provide a copy of the petition to the Regulation Counsel, who must respond within 7 days. The supreme court may reinstate the respondent's license to practice law, deny the petition, or enter any other appropriate order. Reinstatement under this subsection (f) does not affect any disciplinary proceeding pending against the respondent or any disciplinary sanction imposed for the respondent's noncooperation.

COMMENT

C.R.C.P. 242.24 addresses problems caused by the relatively few lawyers who fail to cooperate in a disciplinary investigation. The intent of this rule is to ensure that lawyers comply with the rules governing the legal profession, in this case the duty to cooperate in a disciplinary investigation. See Colo. RPC 8.1(b); Colo. RPC 8.4(d). This section is intended to promote communication between the lawyer and the investigator. The rule is not designed to threaten or punish lawyers who have a good reason for not complying with investigative requests, such as an inability to comply or a good-faith objection to production. For example, a lawyer will not be suspended under this section merely because the lawyer is out of the office on vacation when a disciplinary investigation is initiated.

Part VII. Procedure for Formal Disciplinary Proceedings

Rule 242.25. Complaint

(a) Contents and Filing of Complaint and Citation.

(1) To initiate a formal disciplinary proceeding, the Regulation Counsel must file a complaint and citation with the Presiding Disciplinary Judge. Complaints are filed in the name of the People of the State of Colorado.

(2) The complaint must set forth clearly and with particularity the alleged rule violations and the conduct giving rise to those claims.

(3) The citation must direct the respondent to file an answer to the complaint within 28 days after service.

(b) Service of Complaint. The Regulation Counsel must promptly serve on the respondent a copy of the complaint and citation as provided in C.R.C.P. 242.42(b). The Regulation Counsel must promptly file with the Presiding Disciplinary Judge proof of service of the complaint and citation.

(c) Complaints Involving Criminal Conduct. If a complaint is based on the respondent's conviction of a crime, the Regulation Counsel must present proof of the conviction with the complaint. A conviction is not a prerequisite to filing a disciplinary proceeding based on alleged criminal conduct.

Rule 242.26. Answer

A respondent must file an answer or a motion under C.R.C.P. 12(b) with the Presiding Disciplinary Judge, and provide a copy to the Regulation Counsel, within 28 days after service of the complaint and citation. The answer must either admit or deny each allegation in the complaint as provided in C.R.C.P. 8(b). In addition, the answer must set forth any affirmative defenses. If a respondent files a motion under C.R.C.P. 12(b), the Regulation Counsel must file a response thereto within 14 days. The respondent must file any reply within 7 days thereafter. If the Presiding Disciplinary Judge denies a motion under C.R.C.P. 12(b), the respondent must file an answer within 14 days of the denial.

Rule 242.27. Failure to Answer and Default

(a) Motion for and Entry of Default. If a respondent does not timely file an answer, the Regulation Counsel will move for entry of default. For good cause shown, the Presiding Disciplinary Judge may grant the respondent leave to file an untimely answer. If the Presiding Disciplinary Judge enters default, the properly pleaded allegations and claims in the complaint will be deemed admitted.

(b) Sanctions Hearing. After default is entered, a sanctions hearing will be held under C.R.C.P. 242.30 to determine the appropriate sanction. If, 14 days after entry of default, neither the respondent nor the Regulation Counsel has requested a sanctions hearing before a Hearing Board, then the sanctions hearing will be held solely before the Presiding Disciplinary Judge. At the sanctions hearing, the respondent may appear and present evidence and arguments about the appropriate sanction.

(c) Notice. The respondent and the complaining witness must be given at least 28 days' notice of the sanctions hearing in accordance with C.R.C.P. 242.29(b).

(d) Opinion. After the sanctions hearing, an opinion will be issued under C.R.C.P. 242.31.

Rule 242.28. Alleged Inability to Defend Proceeding

During a disciplinary proceeding under C.R.C.P. 242, the respondent, the respondent's counsel, the Regulation Counsel, or the Presiding Disciplinary Judge may raise an issue as to the respondent's ability to defend the proceeding. In that event, the Presiding Disciplinary Judge may under this section 242.28 issue an interim stay of the disciplinary proceeding in accordance with the disability procedures set forth in C.R.C.P. 243.7. After following those procedures, the Presiding Disciplinary Judge may under this section 242.28 place the disciplinary proceeding in abeyance, lift the interim stay, or take other actions in accordance with C.R.C.P. 243.7. An interim stay or abeyance governs all phases of a disciplinary proceeding, including the respondent's response to a request for investigation, investigative interviews of the respondent, and investigative activities that implicate the respondent's rights under C.R.C.P. 45 or other rules.

Rule 242.29. Prehearing Matters

(a) Applicability and Overview. This section 242.29 governs prehearing procedures in disciplinary proceedings under part VII of this rule and in reinstatement and readmission proceedings under C.R.C.P. 242.39. This section also governs prehearing procedures after entry of default under C.R.C.P. 242.27 unless inconsistent with that section. Except as otherwise provided in this rule or by court order, all proceedings governed by this section must be conducted in accordance with the Colorado Rules of Civil Procedure.

(b) Notice. Other than for sanctions hearings under C.R.C.P. 242.27(b) and reinstatement and readmission matters, notice must be given no fewer than 56 days (8 weeks) before a hearing. The Presiding Disciplinary Judge has discretion to establish a different timeframe for notice.

(1) Notice to Respondent. The Presiding Disciplinary Judge must notify the respondent of the place, date, and time of the hearing and of the respondent's rights to be represented by counsel at the respondent's own expense, to cross-examine witnesses, and to present argument and evidence.

(2) Notice to Complaining Witness. The Regulation Counsel must give a complaining witness notice of the place, date, and time of the hearing. The notice must state that the complaining witness has a right to attend the hearing, subject to a sequestration order or protective order.

(c) Subpoenas. Either party to a disciplinary proceeding may request that the clerk of the Presiding Disciplinary Judge issue subpoenas under C.R.C.P. 45. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge.

(d) Discovery.

(1) Scope. C.R.C.P. 26 applies where not inconsistent with this rule. C.R.C.P. 16 does not apply to disciplinary proceedings.

(2) Meeting. No later than 14 days after an answer is filed, the parties must confer in person or remotely about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(3) Disclosures. No later than 28 days after an answer is filed, each party must disclose:

(A) The name and, if known, the address, telephone number, and email address of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific information that each such individual is known or believed to possess;

(B) A listing, together with a copy or a description by category, of the subject matter and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the claims and defenses of any party; and

(C) A statement as to whether the party plans to use expert witnesses and, if so, the experts' fields of expertise.

(4) Expert Witnesses. The parties must exchange any expert witness reports at least 56 days (8 weeks) before the hearing, or as otherwise ordered by the Presiding Disciplinary Judge. A report must contain the elements required by the applicable Colorado Rules of Civil Procedure.

(5) Limitations. Except by order of the Presiding Disciplinary Judge for good cause shown, and subject to the proportionality factors in C.R.C.P. 26(b)(1), discovery is limited as follows:

(A) The Regulation Counsel may take one deposition of the respondent (or the petitioner, as applicable) and of two other persons in addition to depositions of experts as provided in C.R.C.P. 26. The respondent (or the petitioner, as applicable) may take three depositions in addition to depositions of experts as provided in C.R.C.P. 26. Depositions are generally governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45, unless otherwise inconsistent with this rule. A record must be made of depositions.

(B) Written interrogatories, requests for production of documents, and requests for admission are governed by C.R.C.P. 26(b)(2), 33, 34, and 36, unless otherwise inconsistent with this rule.

(C) Interview notes created as part of a preliminary investigation under C.R.C.P. 242.13 are deemed to be prepared in anticipation of litigation or for trial under the work product doctrine.

(6) Modifying the Scope of Discovery. The Presiding Disciplinary Judge may modify discovery limitations in accordance with C.R.C.P. 26(b)(2)(F).

(7) Supplementation of Discovery. The parties must supplement disclosures, discovery responses, and expert reports and statements in accordance with C.R.C.P. 26(e).

(e) Dispositive Motions. Proceedings governed by this section 242.29 may be resolved on dispositive motions, such as motions filed under C.R.C.P. 12, 55, or 56.

(f) Order for Independent Medical Examination. When a physical or behavioral health condition or disorder of the respondent becomes an issue in a disciplinary proceeding, the Presiding Disciplinary Judge, on motion of the Regulation Counsel or on the Presiding Disciplinary Judge's own initiative, may order the respondent to submit to a physical or mental examination by a suitable examiner. The Presiding Disciplinary Judge may order the examination only after finding that reasonable cause exists for the examination and after notice to the respondent. The respondent will be provided the opportunity to respond to the Regulation Counsel's motion or to request reconsideration of the Presiding Disciplinary Judge's order, and either party may request a hearing on the limited issue of whether reasonable cause exists for an examination. Any hearing must be held within 14 days of the request. The cost of an examination must initially be paid by the Regulation Counsel if the Regulation Counsel requests the order for the examination, or by the Office of the Presiding Disciplinary Judge if the examination is ordered on the Presiding Disciplinary Judge's own initiative. Either party may request that the Presiding Disciplinary Judge enter a protective order to preserve the confidentiality of results of the examination. If discipline is imposed against a respondent in the proceeding, the respondent may be assessed the cost of the examination as part of the costs ordered under C.R.C.P. 242.31(a)(3).

Rule 242.30. Disciplinary Hearings

(a) Overview. Disciplinary hearings take place before a Hearing Board or before the Presiding Disciplinary Judge, as provided in this part VII. Disciplinary hearings are public unless subject to a protective order.

(b) Standards Governing Hearings.

(1) Procedure. Except as otherwise provided in this rule, hearings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in Colorado.

(2) Evidence. Except as otherwise provided in this rule, hearings must be conducted in accordance with the Colorado Rules of Evidence. Except as otherwise provided in this rule, orders entered by other tribunals are admissible but do not serve as conclusive proof of any disputed fact.

(3) Burden of Proof. Proof as to rule violations, affirmative defenses, and eligibility for reinstatement or readmission must be by clear and convincing evidence. The Regulation Counsel has the burden to prove aggravating factors in disciplinary hearings, while the respondent has the burden to prove mitigating factors.

(4) Privilege Against Self-Incrimination. A respondent cannot be required to testify or to produce records over the respondent's objection if doing so would violate the respondent's constitutional privilege against self-incrimination.

(5) Adverse Inferences.

(A) Invocation of Privilege Against Self-Incrimination. If a respondent refuses to testify or to produce records based on invocation of the privilege against self-incrimination, an adverse inference in favor of the Regulation Counsel may be drawn as to related disciplinary claims.

(B) Failure to Produce Records Subject to Colo. RPC 1.15D. If a respondent does not produce records that are required to be kept under Colo. RPC 1.15D, an adverse inference in favor of the Regulation Counsel may be drawn as to disciplinary claims related to those records.

(c) Complaining Witnesses. The complaining witness in a disciplinary proceeding has the right to attend the hearing, subject to a sequestration order or protective order. The Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, permit the complaining witness to testify about injury caused by the alleged misconduct.

(d) Record of Hearing. A record must be made of hearings under this section 242.30.

Rule 242.31. Findings of Fact and Decision

(a) Opinion of the Hearing Board.

(1) Opinion. After a hearing, the Hearing Board will first determine whether the Regulation Counsel has proved any claims of misconduct. If the Hearing Board finds that the respondent committed misconduct, the Hearing Board will determine the sanction to be imposed. The Hearing Board will issue an opinion setting forth its findings of fact, conclusions of law, and decision.

(2) Disposition of Case. In its opinion, the Hearing Board may:

(A) Dismiss the complaint if no claims of misconduct have been proved; or

(B) Impose private admonition, public censure, suspension, or disbarment.

(3) Other Orders. Where the Hearing Board finds that the respondent committed misconduct, the Hearing Board must order the respondent to pay the administrative fee. The Hearing Board may also enter other appropriate orders, including requiring the respondent to comply with conditions of probation, to make restitution, to pay attorney's fees or costs incurred in related protective appointment of counsel proceedings, or to pay all or any part of the reasonable costs of the disciplinary proceeding. If the Hearing Board suspends the respondent from the practice of law for one year or less, the Hearing Board may require that the respondent seek reinstatement, if at all, by petition under C.R.C.P. 242.39 rather than by affidavit under C.R.C.P. 242.38.

(4) Participation of Hearing Board Members. Two members of the Hearing Board are required to issue an opinion. The opinion must be signed. Members of the Hearing Board may append to the opinion a dissent or concurrence.

(5) Timing. The Hearing Board generally will issue its opinion within 56 days (8 weeks) after the hearing.

(6) Effective Date. Disciplinary sanctions take effect upon entry of an order and notice of discipline, which generally enters 35 days after issuance of the opinion, unless applicable rules provide otherwise.

(7) Post-hearing Relief. Within 14 days after the opinion issues, a party may move the Hearing Board for post-hearing relief under C.R.C.P. 59. If the Hearing Board members consent, the Presiding Disciplinary Judge may sign the order ruling on post-hearing relief on the members' behalf.

(8) Finality. For purposes of this section 242.31, a Hearing Board's opinion is a final decision, and the time for filing a notice of appeal begins as set forth in C.R.C.P. 242.34. Unless the supreme court stays, vacates, reverses, or modifies a Hearing Board's opinion, the opinion is considered an order of the supreme court.

(b) Opinion of the Presiding Disciplinary Judge. The provisions governing a Hearing Board's opinion in subsection (a) above also govern an opinion or other final decision entered by the Presiding Disciplinary Judge without a Hearing Board.

COMMENT

Disciplinary sanctions are based on consideration of the American Bar Association Standards for Imposing Lawyer Sanctions. Opinions issued under section 242.31 do not serve as binding precedent but may have persuasive value and provide guidance in future decisions.

Rule 242.32. Lawyer's Required Actions After Disbarment, Disciplinary or Nondisciplinary Suspension, or Resignation

(a) Applicability.

(1) Lawyers Subject. The duties listed in this section 242.32 apply to lawyers when they become subject to:

(A) A final decision assigning a sanction of disbarment or suspension, unless fully stayed, under C.R.C.P. 242.31 or C.R.C.P. 242.21;

(B) An order approving a stipulation to disbarment or suspension, unless fully stayed, under C.R.C.P. 242.19;

(C) An order imposing an interim or a nondisciplinary suspension under C.R.C.P. 242.22 through C.R.C.P. 242.24; or

(D) An order permitting a lawyer to resign under C.R.C.P. 227(A)(8).

(2) Effect of Pending Appeals and Motions for Stay. A lawyer is not normally exempted from the duties listed in this section 242.32 during an appeal of a final decision or order. But the period for the lawyer to comply with the duties listed in this section stops running upon the filing of a motion for post-hearing relief under C.R.C.P. 59 or the filing of a motion for stay pending appeal under C.R.C.P. 242.35. If a motion for post-hearing relief is denied, the lawyer must complete the duties set forth in this section within 14 days of the denial. If a motion for stay is denied, the lawyer must complete the duties within 14 days of the denial unless, during that 14-day period, the lawyer files a motion for stay with the supreme court, in which case the period for the lawyer to comply with the duties listed in this section stops running while the motion is pending. If the supreme court denies the motion for stay, the lawyer must complete the duties within 14 days of the denial.

(b) Winding Up Affairs. After the entry of a final decision or other order listed in subsection (a)(1) above, the lawyer may not accept any new case, legal matter, or offer of employment as a lawyer. During any period between the entry of such a decision or order and the date the sanction takes effect, the lawyer may wind up or conclude any matters that were pending as of the decision's or order's entry, provided that the lawyer complies with Colo. RPC 1.4. On or before the date the sanction takes effect, the lawyer must surrender to each client any documents and property to which the client is entitled.

(c) Notice to Current Clients.

(1) A lawyer subject to this section 242.32 must, no later than 14 days after entry of the final decision or order identified in subsection (a)(1) above, send to each client whom the lawyer represents in a matter pending as of the entry of the final decision or order the following:

(A) A copy of the final decision or order identified in subsection (a)(1) above;

(B) Notice of the sanction imposed and the lawyer's inability to continue the representation after the date the sanction takes effect; and

(C) Notice of the client's need to seek any desired legal services from another lawyer and any right to seek appointment of counsel.

(2) The lawyer must maintain records showing that the lawyer sent the notices required under subsection (c)(1) above and written confirmation that each client received notice. If the lawyer is unable to obtain written confirmation that a client received notice, the lawyer must maintain proof that the lawyer sent notice by certified mail to the client's last-known mailing address.

(d) Additional Duties in Litigation Matters.

(1) A lawyer subject to this section 242.32 who represents a client before a tribunal in a pending matter, where there is no active co-counsel and where no substitution of counsel has been filed, must further state in the notice provided under subsection (c) above the following:

(A) That the client bears the responsibility to keep the tribunal and the parties informed where service may be effected;

(B) The possible adverse consequences if the client refuses to comply with all rules and orders of the tribunal;

(C) Any pending deadlines or court dates; and

(D) If the client is not a natural person, that it must be represented by counsel in any court proceeding unless it is a closely held entity and first complies with C.R.S. section 13-1-127.

(2) A lawyer subject to this section 242.32 who represents a client before a tribunal in a pending matter must, no later than 14 days after sending a notice under subsection (1) above, notify in writing any opposing counsel of:

(A) The final decision or order identified in subsection (a)(1), including any sanction imposed;

(B) The lawyer's inability to continue the representation after the date the sanction takes effect; and

(C) Where there is no active co-counsel and where no substitution of counsel has been filed, the client's address and, if known, the client's telephone number and email address.

(3) If substitute counsel does not enter an appearance before the date the sanction takes effect, the lawyer must notify the tribunal in which the proceeding is pending of the lawyer's withdrawal.

(e) Notification of Other Jurisdictions. A lawyer subject to this section 242.32 must, no later than 14 days after entry of the final decision or order identified in subsection (a)(1) above, notify every other jurisdiction in which the lawyer is admitted, certified, or otherwise authorized to practice law of the final decision or order in question and provide to the other jurisdiction a copy thereof.

(f) Affidavit Filed With the Presiding Disciplinary Judge. Unless otherwise ordered, within 14 days after the date the sanction takes effect the lawyer must file an affidavit with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. The lawyer must file an affidavit even if the lawyer does not have an active practice. The affidavit must list all pending matters in which the lawyer serves as counsel, list all clients notified under subsection (c) above, attach a copy of each such notice, and:

(1) Attest whether the lawyer is in full compliance with the final decision or order in question and this section 242.32;

(2) Attest whether the lawyer has notified every other jurisdiction in which the lawyer is admitted, certified, or otherwise authorized to practice law of the final decision or order in question; and

(3) In the case only of lawyers subject to an order of disbarment or an order permitting a lawyer to resign under C.R.C.P. 227(A)(8), provide the lawyer's mailing address and any email address to which communications may be sent.

(g) Registration Statements and Fees During Suspension. Lawyers subject to a final decision imposing a sanction of suspension unless fully stayed, an order approving a stipulation to suspension unless fully stayed, or an order imposing an interim or a nondisciplinary suspension under C.R.C.P. 242.22 through C.R.C.P. 242.24 must file a registration statement under C.R.C.P. 227 for five years after the date the sanction takes effect, or until the lawyer is reinstated. The statement must provide the lawyer's mailing address and any email address to which communications may be sent. But the lawyer need not pay the annual registration fee unless and until the lawyer is reinstated.

(h) Duty to Maintain Records. A lawyer subject to this section 242.32 must maintain records of the lawyer's compliance with this section.

(i) Noncompliance. Noncompliance with this section 242.32 may be grounds for additional discipline or denial of reinstatement or readmission.

Part VIII. Appeals to Supreme Court

Rule 242.33. Overview of Appeals

(a) Appellate Jurisdiction. A party may seek appellate review by the supreme court of any final decision as defined in C.R.C.P. 241.

(b) Governing Provisions. Except as otherwise provided in this part VIII, and to the extent practicable, appeals will be conducted in accordance with the general provisions in C.A.R. 25 (filing and service), 26 (computation and extension of time), 27 (motions), 28 (briefs), 28.1 (briefs in cases involving cross-appeals), 29 (brief of an amicus curiae), 30 (e-filing), 31 (serving and filing briefs), 32 (form of briefs and appellate documents), 34 (oral argument), 36 (entry and service of judgment), 38 (sanctions), 39 (costs), and 42 (voluntary dismissal).

(c) Standard of Review. The supreme court reviews conclusions of law de novo and findings of fact for clear error. The supreme court reviews a sanction to determine whether it bears no relation to the misconduct, is manifestly excessive or insufficient in relation to the needs of the public, or is otherwise unreasonable.

(d) Regulation Counsel. Appeals on behalf of the People of the State of Colorado under this part VIII are prosecuted or defended, as applicable, by the Regulation Counsel.

Rule 242.34. Initiation of Appeal

(a) Overview. To initiate an appeal, a party must timely file a notice of appeal with the supreme court and serve an advisory copy on the Presiding Disciplinary Judge. After that filing, the supreme court has exclusive jurisdiction over the appeal except as otherwise provided in this rule.

(b) Contents of Notice of Appeal. Except as otherwise provided in this part VIII, the notice of appeal and any notice of cross-appeal should conform to the requirements set forth in C.A.R. 3(d). A notice of cross-appeal also must identify the party initiating the cross-appeal and all cross-appellees. Content of the notice of appeal is not jurisdictional.

(c) Timing.

(1) Validity of Appeal. An appellant’s failure to timely file a notice of appeal affects the appeal’s validity. An appellant’s failure to timely take any other step does not affect the appeal’s validity, though it is a basis for other action by the supreme court, including dismissing the appeal.

(2) Initial Deadline. The notice of appeal must be filed with the supreme court within 21 days of entry of the final decision from which the party appeals. If a timely notice of appeal is filed, the appellee may file a notice of cross-appeal within 14 days of the filing of the initial notice of appeal, or within the time otherwise provided in this subsection (c), whichever period last expires.

(3) Motions Under C.R.C.P. 59.

(A) The Hearing Board or the Presiding Disciplinary Judge, as applicable, continues to have jurisdiction to decide a motion under C.R.C.P. 59 even if a notice of appeal has been filed, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within 49 days (7 weeks) of the filing. During that time, all proceedings in the supreme court are stayed, and the effect of the final decision is also stayed.

(B) The running of the time for filing a notice of appeal is terminated as to both parties by a timely motion filed by either party under C.R.C.P. 59.

(C) The full time for filing a notice of appeal begins to run and is to be computed from the entry of any of the following orders made on a timely motion:

(i) Granting or denying a motion under C.R.C.P. 59 to amend or make additional findings of fact, whether or not an alteration of the final decision would be required if the motion were granted;

(ii) Granting or denying a motion under C.R.C.P. 59 to alter or amend the final decision;

(iii) Denying a motion for a new hearing under C.R.C.P. 59; or

(iv) Expiration of an extension of time granted by the Presiding Disciplinary Judge to file a motion for post-hearing relief under C.R.C.P. 59, when no motion is filed.

(4) Extensions. On a showing of excusable neglect, the supreme court may extend a party's time for filing a notice of appeal for a period not to exceed 28 days from the expiration of the time otherwise provided in this subsection (c). Such an extension may be granted before or after the time otherwise provided in this subsection (c) has expired. But if a request for an extension is made after the prescribed time has expired, it must be made by motion with such notice as the supreme court deems appropriate.

(d) Filing and Docketing.

(1) Fee. The appellant must pay the clerk of the supreme court the applicable docket fee for civil proceedings when filing the notice of appeal or when filing any documents with the supreme court, if those documents are filed before the notice of appeal. The applicable docket fee for an appellee in civil proceedings must be paid on entry of appearance for the appellee.

(2) Docketing. The clerk of the supreme court will docket the appeal on receiving the appellant's docket fee or, if the appellant is authorized to proceed in forma pauperis, at the written request of that party. The matter will be docketed as:

SUPREME COURT, STATE OF COLORADO

Case No.

ORIGINAL PROCEEDING IN DISCIPLINE [OR DISABILITY]

IN THE MATTER OF [the name of the LAWYER]

(e) Leave to Proceed In Forma Pauperis. A party may file with the Presiding Disciplinary Judge a motion for leave to proceed on appeal in forma pauperis. The motion must be accompanied by an affidavit showing the party's inability to pay costs. If the motion is granted, the party may proceed without prepaying fees or costs or giving security. The party may file briefs and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

Rule 242.35. Stay Pending Appeal

(a) Procedure. A party may move the Hearing Board or the Presiding Disciplinary Judge, as applicable, to stay the operation of a final decision pending appeal. The entity that issued the final decision is the entity with authority to decide the motion. The motion must be filed on or before the date on which the notice of appeal is due under C.R.C.P. 242.34.

(b) Applicability. It is within the discretion of the Hearing Board or the Presiding Disciplinary Judge, as applicable, to grant a motion for stay pending appeal. The Hearing Board or the Presiding Disciplinary Judge, as applicable, must make findings of fact and determine whether to grant the stay, with or without conditions. In making the findings and determination, the Hearing Board or the Presiding Disciplinary Judge, as applicable, will consider the parties' submissions, the final decision's findings of fact, and evidence adduced at any applicable hearing. A respondent subject to disbarment is presumed ineligible for a stay. A respondent who is required to petition for reinstatement under C.R.C.P. 242.39 will not be granted a stay unless the Hearing Board or the Presiding Disciplinary Judge, as applicable, finds that the respondent's practice of law during the appeal is unlikely to harm the public and that the granting of a stay would not undermine public confidence in the legal system. A respondent who is not required to petition for reinstatement under C.R.C.P. 242.39 will be granted a stay unless the Regulation Counsel establishes that the respondent's practice of law during the appeal would pose an unreasonable risk of harm to the public.

(c) Seeking Relief from Supreme Court. Either party may move the supreme court for relief from an order entered under subsection (b) above within 14 days thereof. The motion must state the reasons for the relief requested and the facts relied upon, and must be accompanied by a copy of the final decision and the order entered under subsection (b). The supreme court will review the motion under an abuse of discretion standard.

(d) Jurisdiction Over Motion to Lift Stay. Although the supreme court has exclusive jurisdiction over an appeal, the Hearing Board or the Presiding Disciplinary Judge, as applicable, retains jurisdiction to issue, modify, or lift a stay pending appeal that was issued under subsection (b) above. The Hearing Board or the Presiding Disciplinary Judge, as applicable, may lift a stay if conditions attached to the stay no longer protect the public or if the respondent has failed to comply with the conditions imposed. If the Hearing Board that issued the final decision subject to appeal is unavailable, the Presiding Disciplinary Judge may decide the matter.

Rule 242.36. Record on Appeal

(a) Composition of the Record on Appeal. The record on appeal in all cases must consist of:

(1) All documents filed with and orders entered by the Presiding Disciplinary Judge or Hearing Board as of the filing of a notice of appeal or any amended notice of appeal; and

(A) Any transcripts designated by a party as set forth in subsection (d) below;

(B) Any tendered, non-admitted exhibits designated by a party; and

(C) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the clerk of the Presiding Disciplinary Judge as set forth in subsection (e) below.

(2) If a timely motion under C.R.C.P. 59 has been filed, the record must also include that motion, any response, and any resulting order.

(b) Format of the Record on Appeal.

(1) Electronic Record. If all or part of the record is maintained in electronic format by the clerk of the Presiding Disciplinary Judge, the clerk is authorized to transmit the record electronically in accordance with procedures established by the supreme court.

(2) Paper Record. If all or part of the record is transmitted in paper format, the original papers in the record must be submitted. The paper-filed portion of the record must be properly paginated and fully indexed and must be prepared and bound in accordance with procedures established by the supreme court.

(3) Certification by Clerk. The clerk of the Presiding Disciplinary Judge will certify the records of the Presiding Disciplinary Judge or the Hearing Board, as applicable.

(c) Transmission.

(1) Complete Record. The clerk of the Presiding Disciplinary Judge must transmit the record to the clerk of the supreme court when the record is complete. If the record will include any

transcripts, the clerk of the Presiding Disciplinary Judge will not transmit the record until transcripts are available.

(2) Time. The record on appeal must be transmitted to the supreme court within 63 days (9 weeks) after the date of filing of the notice of appeal unless the time is shortened or extended by order of the supreme court.

(A) For good cause shown, the supreme court may extend the time for transmitting the record. A request for extension must be made by the clerk of the Presiding Disciplinary Judge within the time originally prescribed or as previously extended.

(B) A request for an extension based on a court reporter's inability to complete the transcript must be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared and the date by which the transcript will be completed. If the reason stated in the affidavit for the reporter's inability to complete the record is the failure of the designating party to adequately arrange for payment of the transcripts, the designating party must file a response to the affidavit with the supreme court within 7 days.

(C) The supreme court may direct the clerk of the Presiding Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and may, on motion or on its own initiative, take other appropriate action regarding preparation and completion of the record.

(3) Oversized Exhibits. Documents of unusual bulk or weight and physical exhibits will not be transmitted by the clerk of the Presiding Disciplinary Judge unless directed to do so by the supreme court.

(4) Sexually Exploitative Material. Transmission of sexually exploitative material will be in accordance with Chief Justice Directive 16-03.

(d) Designation of Transcripts.

(1) Timing. If the appellant intends to include hearing transcripts in the record on appeal, the appellant must file a designation of transcripts with the clerk of the Presiding Disciplinary Judge and an advisory copy with the supreme court within 7 days of the date of filing the appellant's notice of appeal.

(2) Form. Form 8 must be used to file a designation of transcripts. A party designating transcripts must comply with the policies adopted by the supreme court and the Presiding Disciplinary Judge for designating transcripts.

(3) Contents Designated. The appellant must include in the record transcripts of all proceedings necessary for considering and deciding the issues on appeal. Unless the entire transcript is to be included, the appellant must include in the designation of transcript a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be

presented on appeal. The appellee may, within 14 days after filing the notice of appeal, file with the Presiding Disciplinary Judge, and provide an advisory copy to the supreme court, its own designation of transcripts if the appellee deems additional transcripts or parts thereof necessary.

(e) Statement of the Evidence or Proceedings. If the parties agree, or in cases where a transcript of the evidence or proceedings at a hearing is unavailable, the parties may file with the clerk of the Presiding Disciplinary Judge a statement of the evidence or proceedings in lieu of designating transcripts, and the clerk of the Presiding Disciplinary Judge must certify a statement of the evidence or proceedings in lieu of a transcript.

(f) Supplementing the Record on Appeal.

(1) Before Record is Transmitted. If any material part is omitted or missing from the record prepared by the clerk of the Presiding Disciplinary Judge or is misstated therein by error or accident before the record is transmitted to the supreme court, the parties may stipulate or the Presiding Disciplinary Judge may direct that the omission or misstatement be corrected.

(2) After Record is Transmitted. If any material part is omitted or missing from the record prepared by the clerk of the Presiding Disciplinary Judge by error or accident or is misstated therein after the record is transmitted to the supreme court, the supreme court, on motion or on its own initiative, may order that a supplemental record be certified and transmitted. Form 9 must be used by a party requesting to supplement the record after the record has been filed in the supreme court.

(g) Settling the Record on Appeal.

(1) If any difference arises as to whether the record truly discloses what occurred before the Presiding Disciplinary Judge or the Hearing Board, as applicable, or a portion of the record is not in the possession of the clerk of the Presiding Disciplinary Judge, the difference must be submitted to and settled by the Presiding Disciplinary Judge. The party moving to settle the record must file a motion with the supreme court to stay the appellate proceedings while the Presiding Disciplinary Judge considers the motion to settle the record.

(2) All other questions as to the form and content of the record must be presented to the supreme court.

(h) Filing of the Record. After timely receiving the record, the clerk of the supreme court will file the record. The clerk must immediately notify all parties of the record’s filing date.

Rule 242.37. Proceedings Before Supreme Court

(a) Briefs. The appellant must serve and file the opening brief within 28 days after the record is filed. The appellee must serve and file the answer brief within 28 days after service of the

opening brief. The appellant may serve and file a reply brief within 14 days after service of the answer brief.

(b) Oral argument. Oral argument may be allowed at the discretion of the court in accordance with C.A.R. 34.

(c) Disposition. The supreme court may resolve appeals under this rule by opinion or by order without opinion.

Part IX. Reinstatement and Readmission

Rule 242.38. Reinstatement on Affidavit

(a) Overview. A lawyer who has been suspended from the practice of law for a period of one year or less may be reinstated by order of the Presiding Disciplinary Judge, without following the procedures set forth in C.R.C.P. 242.39, unless the lawyer's order of suspension provides otherwise. A suspension does not terminate until the Presiding Disciplinary Judge enters an order of reinstatement.

(b) Procedure.

(1) Motion and Affidavit by Respondent. To seek reinstatement, a respondent must, no earlier than 28 days before the period of suspension is set to terminate, file a motion and an affidavit with the Presiding Disciplinary Judge under the case number used in the underlying disciplinary proceeding. The affidavit must state whether and how the respondent has fully complied with the order of suspension and with all applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, during the period of suspension. The respondent must submit a copy of the motion and affidavit to the Regulation Counsel.

(2) Procedure Where Regulation Counsel Does Not Oppose Reinstatement. If the Regulation Counsel does not oppose the respondent's reinstatement, the Regulation Counsel must so notify the Presiding Disciplinary Judge within 14 days after the respondent files the motion and affidavit. The Presiding Disciplinary Judge will then reinstate the respondent.

(3) Procedure Where Regulation Counsel Opposes Reinstatement.

(A) Requested Relief. If the Regulation Counsel has reason to believe that the respondent failed to comply with the order of suspension or an applicable provision of Chapter 20, the Regulation Counsel may oppose reinstatement by filing a response with the Presiding Disciplinary Judge within 14 days after the respondent files the motion and affidavit, requesting either:

(i) That the respondent's motion for reinstatement be denied with leave to refile on a showing that the respondent has cured the noncompliance; or

(ii) That the respondent's current order of suspension be continued pending a final decision in a new disciplinary proceeding.

(B) Reply. If the respondent opposes the requested relief, the respondent must file a reply within 7 days.

(C) Decision by the Presiding Disciplinary Judge. As soon as practicable after considering the parties' filings, and after holding any hearing the Presiding Disciplinary Judge deems necessary, the Presiding Disciplinary Judge will issue a decision, determining whether the Regulation Counsel has justified the relief requested.

(i) Denial with Leave to Refile. If the Regulation Counsel shows by a preponderance of the evidence that during the period of suspension the respondent failed to comply with the order of suspension or with any applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, it is within the Presiding Disciplinary Judge's discretion to deny the respondent's motion with leave to refile on a showing that the respondent has cured the noncompliance. The respondent may file a renewed motion and affidavit under subsection (b)(1) above.

(ii) Continuation of Suspension.

(a) If the Regulation Counsel shows by a preponderance of the evidence that during the period of suspension the respondent failed to comply with the order of suspension or with any applicable provisions of Chapter 20, including the Colorado Rules of Professional Conduct, the Presiding Disciplinary Judge may continue the respondent's current order of suspension pending a final decision in a new disciplinary proceeding brought to address that conduct if:

(1) The respondent is causing or has caused substantial public or private harm; and

(2) The respondent has, during the period of suspension:

(A) Been convicted of a serious crime based on conduct that occurred during the period of suspension, regardless of whether the respondent is appealing the conviction;

(B) Knowingly converted property or funds;

(C) Engaged in conduct that poses a substantial threat to the administration of justice; or

(D) Practiced law in violation of the order of suspension.

(b) If the Presiding Disciplinary Judge continues the respondent's current order of suspension, the respondent may request an accelerated disposition of the new disciplinary proceeding. The proceeding then must proceed without appreciable delay.

(c) Independent Charges. Regardless of the relief requested or granted under this rule, the Regulation Counsel may file independent disciplinary charges based on conduct that occurred during the period of the respondent's suspension.

(d) Failure to Timely File. A respondent who files an untimely motion and affidavit but whose suspension has been in effect for one year or less may be reinstated under the procedures outlined in subsection (b) above. A respondent who remains suspended for more than one year as a result of an untimely filing or a denial of reinstatement under subsection (b)(3)(C) above must seek reinstatement, if at all, under C.R.C.P. 242.39, unless on a showing of good cause the Presiding Disciplinary Judge grants a motion for extension of time to seek reinstatement under this section 242.38.

(e) Running of Time. If a respondent files a motion and affidavit under this section 242.38 within one year of the effective date of the respondent's suspension, the one-year period addressed in this section stops running until the Presiding Disciplinary Judge rules on the motion under subsection (b)(3)(C) above.

Rule 242.39. Petition for Readmission or Reinstatement After Discipline

(a) Overview.

(1) Readmission After Disbarment. A lawyer who has been disbarred may be eligible for readmission under this section 242.39 no less than eight years after the disbarment takes effect. To petition for readmission, the lawyer must have satisfied the supreme court's bar examination and MPRE requirements within the preceding eighteen months.

(2) Reinstatement After Suspension. Except as otherwise provided in C.R.C.P. 242.38, a lawyer must seek reinstatement under this section 242.39 if the lawyer was suspended in a disciplinary proceeding for more than one year or if the Hearing Board or Presiding Disciplinary Judge otherwise required that the lawyer seek reinstatement by petition under this section.

(b) Petition for Readmission or Reinstatement.

(1) Timing. A lawyer may not file a petition under this section 242.39 earlier than 91 days (13 weeks) before, as applicable, (A) the period of suspension is set to terminate or (B) eight years from the effective date of the lawyer's disbarment. A lawyer may not be reinstated or readmitted until the full disciplinary period has been served.

(2) Filing. A lawyer must file a verified petition with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. The lawyer will be designated as the petitioner and the Regulation Counsel as the respondent. The Presiding Disciplinary Judge will assign the proceeding a new case number.

(3) Contents. A petition must set forth:

(A) The date the order of discipline was entered and the effective date of the discipline;

(B) The date on which the petitioner filed any prior petitions for readmission or reinstatement and the disposition of the prior petitions;

(C) If applicable, a statement showing the amount and source of funds the petitioner used to pay restitution to any persons or to the Colorado Attorneys' Fund for Client Protection, and a statement showing the amount and source of funds the petitioner used to pay attorney's fees or costs related to protective appointment of counsel proceedings; and

(D) The evidence the petitioner intends to rely on to show that the petitioner meets the requirements set forth in subsection (d)(2) below.

(4) Lawyer Suspended for Five Years or Longer. Regardless of the length of the disciplinary suspension originally imposed, a lawyer who has remained suspended for five years or longer may not file a petition under this section 242.39 unless the lawyer has satisfied the supreme court's bar examination and MPRE requirements within the preceding eighteen months. But if a lawyer files a petition for reinstatement within five years of the effective date of the lawyer's suspension, the five-year period addressed in this subsection stops running until a final decision is issued on the petition and any appeal has been decided.

(5) Reinstatement or Readmission from Reciprocal Discipline. A lawyer subject to reciprocal discipline who wishes to seek reinstatement or readmission in Colorado must comply with the requirements of C.R.C.P. 242.21(c).

(c) Answer. After receiving a petition for reinstatement or readmission, the Regulation Counsel will conduct an investigation. The petitioner must cooperate in the investigation. The Regulation Counsel must file an answer to the petition within 21 days after receiving the petition. The answer must state any grounds for opposing the petition.

(d) Reinstatement and Readmission Proceedings.

(1) Procedures. Reinstatement and readmission proceedings are conducted in accordance with the procedures set forth in C.R.C.P. 242.29, and petitions are considered by a Hearing Board in accordance with the procedures set forth in C.R.C.P. 242.30.

(2) Requirements. The petitioner must prove by clear and convincing evidence that the petitioner:

(A) Has been rehabilitated, as measured by considerations including the circumstances and seriousness of the original misconduct, conduct since being disbarred or suspended, remorse and acceptance of responsibility, how much time has elapsed, restitution for any financial injury, and evidence that the petitioner has changed in ways that reduce the likelihood of future misconduct;

(B) Has complied with all applicable disciplinary orders and with all provisions of Chapter 20, including the Colorado Rules of Professional Conduct; and

(C) Is fit to practice law, as measured by the petitioner's satisfaction of the following eligibility requirements for the practice of law, as applicable:

(i) Honesty and candor with clients, lawyers, courts, regulatory authorities, and others;

(ii) The ability to reason logically, recall complex factual information, and accurately analyze legal problems;

(iii) The ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others;

(iv) The ability to use good judgment on behalf of clients and in conducting professional business;

(v) The ability to act with respect for and in accordance with the law;

(vi) The ability to exhibit regard for the rights and welfare of others;

(vii) The ability to comply with the Colorado Rules of Professional Conduct; state, local, and federal laws; regulations, statutes, and rules; and orders of tribunals;

(viii) The ability to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and others;

(ix) The ability to be honest and use good judgment in personal financial dealings and on behalf of clients and others; and

(x) The ability to comply with deadlines and time constraints.

(e) Hearing Board Opinion.

(1) Opinion. After a hearing, the Hearing Board will determine whether to grant or deny the petition for reinstatement or readmission. The Hearing Board will issue an opinion setting forth its findings of fact and decision.

(2) Participation of Hearing Board Members. Two members of the Hearing Board are required to issue an opinion. The opinion must be signed. Members of the Hearing Board may append to the opinion a dissent or concurrence.

(3) Timing. The Hearing Board generally will issue its opinion within 56 days (8 weeks) after the hearing.

(4) Effective Date. Reinstatement or readmission takes effect immediately on issuance of the opinion, unless otherwise ordered.

(5) Post-hearing Relief. Within 14 days of issuance of the Hearing Board's opinion, a party may move the Hearing Board for post-hearing relief under C.R.C.P. 59.

(6) Finality. For purposes of this section 242.39, a Hearing Board's opinion is a final decision, and the time for filing a notice of appeal begins as set forth in C.R.C.P. 242.34. Unless the supreme court stays, vacates, reverses, or modifies the Hearing Board's opinion, the opinion is considered an order of the supreme court.

(f) Successive Petitions. No petition for reinstatement or readmission under this section 242.39 may be filed within two years after issuance of a final decision denying a previous petition for reinstatement or readmission. But this subsection does not bar a petitioner from filing a new petition if the petitioner withdrew a previous petition before the hearing on that petition began.

(g) Costs and Deposit.

(1) Costs. The petitioner bears all reasonable costs of the proceeding and must also pay the administrative fee.

(2) Deposit. When filing a petition for readmission or reinstatement, the petitioner must tender to the Regulation Counsel a deposit of $500 to be used to pay the administrative fee and costs. If the administrative fee and costs exceed $500, the Presiding Disciplinary Judge may order the petitioner to provide an additional deposit. After a proceeding, the Presiding Disciplinary Judge will order the Regulation Counsel to render an accounting and to return to the petitioner any unexpended portion of the deposit.

(h) Reinstatement on Stipulation. If the petitioner and the Regulation Counsel agree to reinstatement, the parties may file a stipulation with the Presiding Disciplinary Judge. The stipulation must contain an agreement that the respondent will pay the administrative fee and any agreed-upon costs of the proceeding. The Presiding Disciplinary Judge may either approve the stipulation or reject it and order that a hearing be held before a Hearing Board under subsection (d) above. Parties are not permitted to stipulate to readmission. A readmission hearing must be held before a Hearing Board under subsection (d) above.

COMMENT

Under C.R.C.P. 242.39(a)(2), the requirement to petition for reinstatement applies: (1) when a lawyer has remained suspended for more than one year due to the lawyer's failure to timely seek reinstatement by affidavit under C.R.C.P. 242.38, even if the lawyer's ordered period of suspension was for less than one year and one day; (2) when, in connection with a single disciplinary proceeding, a lawyer serves a suspension that cumulatively totals more than one year due to revocation of the lawyer's probation, even if the lawyer does not serve the period of suspension continuously; and (3) when, in connection with separate disciplinary proceedings, a lawyer serves consecutive suspensions that cumulatively total more than one year. Interim suspensions and nondisciplinary suspensions that are contiguously served with a disciplinary suspension are not used to calculate the duration of the served disciplinary suspension for purposes of determining whether a lawyer must petition for reinstatement under C.R.C.P. 242.39(a)(2).

Part X. Contempt

Rule 242.40. Contempt During Proceeding

(a) Applicability. If, during a proceeding under this rule, a person knowingly obstructs an investigation, fails to comply with a subpoena, refuses to answer a proper question when testifying, or disrupts through misbehavior the Hearing Board or the Presiding Disciplinary Judge in the performance of authorized duties, the person may be held in contempt and sanctioned. Authority conferred under this section 242.40 is in addition to any other authority to issue sanctions. C.R.C.P. 107 does not govern contempt proceedings under this section.

(b) Procedure for Direct Contempt. If a person commits contemptuous conduct that the Presiding Disciplinary Judge sees or hears and that is so extreme no warning is necessary, or that has been repeated despite a warning to desist, the Presiding Disciplinary Judge may summarily punish the conduct by imposing reasonable sanctions, including a fine. In such a case, the Presiding Disciplinary Judge will enter an order on the record reciting the facts constituting the contempt, including a description of the conduct, and finding that the conduct is offensive to the authority and dignity of the tribunal. Before the Presiding Disciplinary Judge imposes sanctions, the person held in contempt has the right to respond to the charge of contempt, including making a statement in mitigation.

(c) Procedure for Indirect Contempt.

(1) Motion. A party may file with the Presiding Disciplinary Judge a motion for an order to show cause alleging that a person has, outside of the direct sight or hearing of the Hearing Board or Presiding Disciplinary Judge, as applicable, engaged in any of the conduct identified in subsection (a) above. The party must also serve the motion on the person alleged to be in contempt.

(2) Order to Show Cause. The Presiding Disciplinary Judge may enter an order to show cause directing the person alleged to be in contempt to appear at a specified time and place and to show cause why the person should not be held in contempt.

(3) Determination. If the Presiding Disciplinary Judge finds that the person has engaged in any of the conduct described in subsection (a) above, the Presiding Disciplinary Judge may hold the person in contempt and impose reasonable sanctions. The Presiding Disciplinary Judge also may order costs and reasonable attorney’s fees.

(d) Independent Charges. An allegation or a finding of contempt does not preclude the Regulation Counsel from filing independent disciplinary charges based on the same underlying conduct.

(e) Referral to Other Court. Nothing herein precludes the Regulation Counsel from referring a matter to another court of competent jurisdiction to commence other proceedings or to address other appropriate sanctions or remedies.

(f) Appeal. For the purposes of appeal, an order deciding the issue of contempt and sanctions is final.

Part XI. Information, Expungement, and General Provisions

Rule 242.41. Access to Information

(a) Public Information. Unless otherwise provided in this section, all files and records of the Regulation Counsel, the Presiding Disciplinary Judge, and the supreme court that relate to any phase of a disciplinary proceeding are available to the public after:

(1) A complaint is filed with the Presiding Disciplinary Judge;

(2) The Presiding Disciplinary Judge approves a stipulation to discipline that is submitted before the filing of a complaint;

(3) A petition for reinstatement or readmission is filed with the Presiding Disciplinary Judge;

(4) The Presiding Disciplinary Judge approves a stipulation to reinstatement that is submitted before the filing of a petition; or

(5) An interim or a nondisciplinary suspension is imposed before the filing of a complaint.

(b) Confidential Information. The following types of information are confidential and are not available to the public:

(1) Files and records of a proceeding in which none of the five events set forth in subsection (a) above has occurred, unless the respondent has waived confidentiality;

(2) Files and records of any proceeding that was dismissed before a complaint was filed, unless the respondent has waived confidentiality;

(3) Interview notes made during a preliminary investigation under C.R.C.P. 242.13;

(4) The work product, deliberations, privileged communications, and internal communications of the Office of the Regulation Counsel, the Advisory Committee, the Regulation Committee, the Office of the Presiding Disciplinary Judge, Hearing Boards, and the supreme court;

(5) Lists of pending matters, lists of clients, and copies of client notices referred to in C.R.C.P. 242.32(f);

(6) Information subject to a protective order under subsection (e) below; and

(7) Information otherwise made confidential under this rule.

(c) Subpoenaed Records. If the Regulation Counsel is served with a valid subpoena, the Regulation Counsel shall not permit access to files or records or furnish documents that are confidential under this rule unless the supreme court orders otherwise.

(d) Private Admonitions. Access to information in proceedings resulting in private admonition is governed by C.R.C.P. 242.10(a)(4).

(e) Protective Orders. On motion of any person and on a showing of good cause, the Presiding Disciplinary Judge may enter a protective order restricting the disclosure of specific information to protect a complaining witness, another witness, a third party, a respondent, or a petitioner from annoyance, embarrassment, oppression, or undue burden or expense. A protective order may direct that a proceeding, including a hearing, be conducted so as to preserve the confidentiality of certain information.

(f) Exceptions to Confidentiality During Investigation.

(1) Before the filing of a complaint, the Regulation Counsel may, to conduct an investigation, disclose information to a complaining witness or to another third party.

(2) Before the filing of a complaint, the Regulation Counsel may disclose the existence, subject matter, status, and resolution, if any, of an investigation if:

(A) The respondent has waived confidentiality;

(B) The investigation is based on the respondent's conviction of a crime or discipline by another jurisdiction;

(C) The investigation is based on allegations that have become generally known to the public;

(D) The disclosure is made solely to a confidential supreme court program, such as the Colorado Attorneys' Fund for Client Protection or the Colorado Lawyer Assistance Program;

(E) The disclosure is necessary to protect the public, the administration of justice, or the legal profession; or

(F) A petition for interim suspension based on the investigation has been filed under C.R.C.P. 242.22.

(g) Request for Confidential Information.

(1) Release With Notice.

(A) The Regulation Counsel may, on request, release information that is confidential under subsection (b) above to the following types of agencies:

(i) An agency authorized to investigate the qualifications of persons for admission to practice law;

(ii) An agency authorized to investigate the qualifications of persons for government employment;

(iii) A lawyer or judicial discipline enforcement agency;

(iv) An agency authorized to investigate criminal conduct; or

(v) An agency authorized to investigate the qualifications of judicial candidates.

(B) When the Regulation Counsel releases confidential information under this subsection (g)(1), the Regulation Counsel must send to the lawyer's registered address or other last-known address contemporaneous notice and a copy of the information released.

(2) Release Without Notice.

(A) The Regulation Counsel may release confidential information without notifying the lawyer if an agency listed in subsection (g)(1)(A) above requests the information and certifies that:

(i) The request is made in furtherance of an ongoing investigation of the lawyer;

(ii) The information is essential to that investigation; and

(iii) Disclosing to the lawyer the existence of the investigation would seriously prejudice that investigation.

(B) A certification made under subsection (g)(2)(A) above is deemed confidential.

(h) Release to Commission on Judicial Discipline. The Regulation Counsel may, on request, release to the Colorado Commission on Judicial Discipline information concerning a Colorado judge that is confidential under subsection (b) above without obtaining a waiver from the judge or notifying the judge.

(i) Response to False or Misleading Statement and Defense to Civil Suit. The Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disciplinary proceeding or to defend against litigation in which the Regulation Counsel is a named defendant.

(j) Confidential Matters Involving Allegations of Sexual Harassment. For matters that are confidential under this section 242.41 and that involve allegations of sexual harassment, the Regulation Counsel's investigation records regarding the sexual harassment allegations, not otherwise privileged or protected by court rule or court order, are available to the complaining witness and respondent, subject to the provisions of C.R.C.P. 242.43.

(k) Disclosure by Persons and Entities Other Than Disciplinary Entities. Unless otherwise ordered, nothing in this rule prohibits the complaining witness, any other witness, or the respondent from disclosing the existence of a proceeding under this section 242.41, from disclosing any documents or correspondence provided to those persons, or from providing testimony related to a proceeding under this rule.

(l) Duty of Officials and Employees. All officials, employees, and volunteers within the supreme court, the Advisory Committee, the Regulation Committee, the Office of the Regulation Counsel, the Office of the Presiding Disciplinary Judge, and the Hearing Board pool have an ongoing duty to maintain the confidentiality mandated by this rule.

(m) Publication of Opinions. The clerk of the Presiding Disciplinary Judge must release for publication opinions imposing public discipline, orders revoking probation, and opinions granting or denying reinstatement or readmission.

(n) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of orders of disbarment, suspension, or interim or nondisciplinary suspension.

(o) Notice to ABA National Lawyer Regulatory Data Bank. The Regulation Counsel must promptly transmit notice of all public discipline imposed and reinstatements and readmissions to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

COMMENT

C.R.C.P. 242.41 seeks to strike a balance between protecting lawyers against publicity predicated upon unfounded accusations and protecting clients, prospective clients, and the effective administration of justice from harm caused by lawyers who do not fulfill their professional obligations. C.R.C.P. 242.41 also recognizes that restrictions on confidentiality no longer serve a purpose when allegations that ordinarily would be confidential have become generally known through publicity, disclosure in the public record, or otherwise.

The Regulation Counsel frequently receives inquiries from judges, clients, prospective clients, and the media asking if a lawyer is the subject of a pending disciplinary investigation. Ordinarily, C.R.C.P. 242.41 prohibits the Regulation Counsel from providing information about a pending investigation or even confirming that an investigation is pending. C.R.C.P. 242.41(f)(2), however, sets forth several exceptions when the Regulation Counsel may reveal the existence, subject matter, status, and any resolution of an investigation.

Two such exceptions warrant further explanation. C.R.C.P. 242.41(f)(2)(C) requires the Regulation Counsel to determine whether otherwise confidential allegations against a lawyer have become generally known. Factors that the Regulation Counsel should consider in these circumstances include the nature and extent of media coverage, the nature and extent of inquiries from the media and the public, the nature and status of any related judicial proceedings, the number of people believed to have knowledge of the allegations, and the seriousness of the allegations.

Another exception is C.R.C.P. 242.41(f)(2)(E), which allows disclosure when necessary to protect the public, the administration of justice, or the legal profession. In determining whether a

need to notify exists, the Regulation Counsel should consider factors including the nature and seriousness of the conduct under investigation, the lawyer's prior disciplinary history, whether prior discipline was premised on conduct similar to the alleged conduct under investigation, and the potential harm to a client, a prospective client, the public, or the judicial system. In those instances in which the Regulation Counsel determines that disclosure is permitted under C.R.C.P. 242.41(f)(2)(E), the Regulation Counsel is authorized not only to disclose the existence, subject matter, status, and any resolution of an investigation in response to an inquiry, but also to disclose this information affirmatively to those persons having a need to know the information in order to avoid potential harm.

Rule 242.42. General Provisions

(a) Notice. Except as otherwise provided in this rule, notice must be in writing. Notice must be sent to the last-known mailing address of the recipient, unless the recipient consents to receiving notice by email. Notice is deemed effective the date notice is placed in the mail; placed in the custody of a delivery service; or emailed, if the recipient has consented to notice by email.

(b) Service of Process. When a pleading commencing a proceeding requiring service is filed under this rule, a lawyer may be served with process by personal service; by mail or email using the information provided by the lawyer under C.R.C.P. 227; by mail to any other address the lawyer has provided to the Regulation Counsel; or, if the lawyer is not admitted in Colorado, by mail or email to the lawyer's address of registration in any jurisdiction where the lawyer's registration is active. Service is deemed effective on the date that the lawyer is personally served, that the pleading is placed in the mail, or that the email is sent.

(c) Application of Civil Rules of Procedure. Except as otherwise provided in this rule, proceedings before the Presiding Disciplinary Judge or a Hearing Board are governed by the Colorado Rules of Civil Procedure.

(d) Proof of Conviction. Except as otherwise provided in this rule, a court-certified copy of the judgment of conviction or order showing that a lawyer has been convicted in that court of a crime, as defined in C.R.C.P. 241, conclusively establishes the conviction and proves the lawyer's commission of that crime for purposes of this rule.

(e) Related Litigation.

(1) Substantially Similar Criminal Cases. A disciplinary proceeding that involves material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may, in the discretion of the Regulation Committee or the Presiding Disciplinary Judge, as applicable, be placed in abeyance until the criminal prosecution concludes.

(2) Substantially Similar Civil Cases. A disciplinary proceeding that involves material allegations substantially similar to the material allegations made against the respondent in pending civil litigation may, in the discretion of the Regulation Committee or the Presiding Disciplinary Judge, as applicable, be placed in abeyance until the civil litigation concludes. If the disciplinary proceeding is placed in abeyance and the respondent fails to make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation, the Regulation Counsel may request that the Regulation Committee or the Presiding Disciplinary Judge, as applicable, promptly resume the disciplinary proceeding.

(3) Effect of Favorable Criminal or Civil Disposition. A criminal or civil disposition favorable to the respondent does not bar disciplinary action against the respondent based on the same or substantially similar material allegations. Nothing in this section 242.42 precludes a respondent from seeking relief from a final decision under this rule based on a favorable disposition in a criminal or civil proceeding.

Rule 242.43. Expungement of Records

(a) Records Subject to Expungement. Except for records of proceedings that have become public under C.R.C.P. 242.41, all records of proceedings that were dismissed must be expunged from the files of the Regulation Committee and the Regulation Counsel five years after the end of the calendar year in which the dismissal occurred. When a respondent successfully completes a diversion agreement in a disciplinary proceeding that did not result in the filing of a complaint, all files and records from that proceeding must be expunged five years after the end of the calendar year in which the diversion was completed. But if a new request for investigation is filed against the respondent before an existing diversion file is expunged, the Regulation Counsel may wait to expunge the file until the new proceeding has been resolved. Files and records that notify the Regulation Counsel of a lawyer's conviction of a crime need not be expunged.

(b) Effect of Expungement. The Regulation Committee and the Regulation Counsel must respond to any general or specific inquiry concerning the existence of a proceeding the records of which have been expunged by stating that no record of a proceeding exists.

(c) Extension of Time to Retain Records. The Regulation Counsel may apply in writing to the Regulation Committee for permission to retain files and records that would otherwise be expunged under this section 242.43 for an additional period of time not to exceed three years. After giving the lawyer in question notice and an opportunity to respond in writing, the Regulation Committee may grant the request on a finding of good cause. Through the same procedure, the Regulation Committee may grant additional extensions.

COMMENT

C.R.C.P. 242.43(b) governs only how the Regulation Committee and the Regulation Counsel should respond to an inquiry concerning the existence of proceedings the records of which have

been expunged. That subsection does not address how lawyers should respond to such an inquiry. Other legal authorities or requirements may govern how a lawyer should respond depending on the context in which the inquiry arises.

Rule 243. Rules Governing Lawyer Disability Proceedings

Rule 243.1. Disability Jurisdiction

Disability jurisdiction exists under this rule over the following persons:

(a) A lawyer admitted, certified, or otherwise authorized to practice law in Colorado, regardless of where the lawyer's conduct occurs or where the lawyer resides; and

(b) A lawyer not admitted to practice law in Colorado who provides or offers to provide any legal services in Colorado, including a lawyer who practices in Colorado pursuant to federal or tribal law.

Rule 243.2. Relevant Entities

(a) Supreme Court. The supreme court has plenary and appellate authority under this rule. The supreme court has the authority to review any determination made in disability proceedings and to enter any order in such proceedings.

(b) Advisory Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is authorized to act with respect to this rule in accordance with the powers and duties set forth in C.R.C.P. 242.3(c).

(c) Regulation Counsel. The Attorney Regulation Counsel (Regulation Counsel) represents the People of the State of Colorado in proceedings under this rule. The Regulation Counsel is authorized to act in disability proceedings in accordance with the powers and duties set forth in C.R.C.P. 242.5(c) and to perform the duties set forth in this rule.

(d) Presiding Disciplinary Judge. The Presiding Disciplinary Judge is authorized to act in disability proceedings in accordance with the powers and duties set forth in C.R.C.P. 242.6(c) and to perform the duties set forth in this rule.

(e) Hearing Boards. Hearing Boards are authorized to act in accordance with the powers and duties set forth in C.R.C.P. 242.7 as to consolidated disciplinary and disability reinstatement proceedings.

Rule 243.3. Immunity

(a) Prohibition Against Lawsuit Based on Proceeding Under this Rule. A lawyer may not institute a civil lawsuit against any person based on testimony in a proceeding under this rule or other written or oral communications made to relevant entities described in this rule, those entities' members or employees, or persons acting on their behalf, including monitors and health care professionals.

(b) Immunity for Entities. All entities described in this rule and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 243.4. Standard and Effect

(a) Standard. A lawyer is disabled under this rule and may be transferred to disability inactive status if the lawyer is unable to competently fulfill professional responsibilities as a result of a physical or behavioral health condition or disorder, including a mental, cognitive, emotional, substance use, or addictive issue.

(b) Effect. While a lawyer is on disability inactive status, the lawyer must not practice law. Disability inactive status is not a form of discipline. The pendency of a disability proceeding or a lawyer's transfer to disability inactive status does not stay a disciplinary proceeding against the lawyer, unless such an order is entered under C.R.C.P. 242.28 (governing alleged inability to defend disciplinary proceedings).

Rule 243.5. Judicial Duties to Report Lawyer Disability

A judge's duty to report a lawyer's disability is governed by Rule 2.14 of the Colorado Code of Judicial Conduct.

Rule 243.6. Transfer to Disability Inactive Status

(a) Procedure and Determination.

(1) Petition Filed by Regulation Counsel.

(A) Petition. If the Regulation Counsel has reason to believe that a lawyer is disabled, the Regulation Counsel may file a petition with the Presiding Disciplinary Judge alleging that the lawyer is disabled and requesting an order requiring the lawyer to undergo an independent medical examination or an order transferring the lawyer to disability inactive status. The Regulation Counsel must promptly serve on the lawyer a copy of the petition and file with the Presiding Disciplinary Judge proof of service.

(B) Show Cause Order. Unless the Regulation Counsel files an affidavit setting forth facts that clearly and convincingly show the lawyer is unable to respond, the Presiding Disciplinary Judge must afford the lawyer an opportunity to show cause in writing why the requested relief should not be granted.

(C) Determination. After considering the lawyer's response, the Presiding Disciplinary Judge may issue appropriate orders, such as ordering an independent medical examination of the lawyer by a qualified examiner designated by the Presiding Disciplinary Judge. If the Presiding Disciplinary Judge finds clear and convincing evidence that the lawyer is disabled, the Presiding Disciplinary Judge will transfer the lawyer to disability inactive status.

(2) Petition Premised on Reciprocal Disability.

(A) Duty to Notify. A lawyer who is transferred to disability inactive status in another jurisdiction must promptly inform the Regulation Counsel of the transfer.

(B) Petition. On learning that a lawyer has been transferred to disability inactive status in another jurisdiction, the Regulation Counsel may file with the Presiding Disciplinary Judge a certified copy of the order, accompanied by a petition for the lawyer's transfer to disability inactive status. The Regulation Counsel must promptly serve on the lawyer a copy of the petition and file with the Presiding Disciplinary Judge proof of service.

(C) Show Cause Order. Unless the Regulation Counsel files an affidavit setting forth facts that clearly and convincingly show the lawyer is unable to respond, the Presiding Disciplinary Judge must afford the lawyer an opportunity to show cause in writing why reciprocal transfer to disability inactive status should not be ordered.

(D) Answer. To contest transfer to disability inactive status, the lawyer must file with the Presiding Disciplinary Judge an answer asserting at least one of the defenses in subsection (E) below and a full copy of the record of the disability proceeding in the other jurisdiction.

(E) Determination. The Presiding Disciplinary Judge will order the lawyer's transfer to disability inactive status unless the lawyer demonstrates by clear and convincing evidence that (i) the procedure followed in the other jurisdiction did not comport with Colorado's requirements of due process of law; (ii) the reason for the original transfer to disability inactive status no longer exists; or (iii) the proof upon which the other jurisdiction based its determination of disability is so infirm that the determination of the other jurisdiction cannot be accepted. In all other respects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, should be transferred to disability inactive status conclusively establishes the disability for purposes of this rule.

(3) Petition Premised on Order of Commitment, Guardianship, or Judicial Declaration of Incompetence. On learning that a lawyer is subject to a valid and current order of commitment, is under guardianship, or is subject to a judicial declaration of incompetence to stand trial, the Regulation Counsel may file with the Presiding Disciplinary Judge a petition seeking the lawyer's transfer to disability inactive status, accompanied by proof of the basis for the petition. On receiving a properly supported petition, the Presiding Disciplinary Judge may transfer the lawyer to disability inactive status. The Presiding Disciplinary Judge must send notice of the transfer to the lawyer or, where applicable, to the lawyer's guardian or the director of the facility to which the lawyer has been committed.

(4) Verified Notice Filed By Lawyer. If a lawyer believes that she or he is disabled, the lawyer must, if able, file with the Presiding Disciplinary Judge a verified notice setting forth the basis

for the assertion of disability accompanied by proof thereof. On receiving a properly supported notice, the Presiding Disciplinary Judge will transfer the lawyer to disability inactive status.

(5) Allegation of Inability to Defend. After an allegation of inability to defend a disciplinary proceeding has been raised under C.R.C.P. 243.7, the Presiding Disciplinary Judge may transfer a respondent to disability inactive status either:

(A) If the respondent has raised the issue of disability as provided in C.R.C.P. 243.7(d)(1); or

(B) If, subject to the procedures in C.R.C.P. 243.7(f), clear and convincing evidence shows that the respondent is disabled within the meaning of C.R.C.P. 243.4(a).

(b) Service of Process. When a petition is filed under this rule, a lawyer may be served with process by personal service; by mail or email using the information provided by the lawyer under C.R.C.P. 227; by mail to any other address the lawyer has provided to the Regulation Counsel; or, if the lawyer is not admitted in Colorado, by mail or email to the lawyer's address of registration in any jurisdiction where the lawyer's registration is active. Service is deemed effective on the date that the lawyer is personally served, that the petition is placed in the mail, or that the email is sent.

(c) Hearings. Either party may request a hearing on the issue of whether the lawyer should be transferred to disability inactive status. The Presiding Disciplinary Judge also has discretion to hold a hearing to address any issue in a disability proceeding. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Disability hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board. Except as otherwise provided in this rule, disability proceedings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the lawyer has a fair opportunity to rebut hearsay evidence.

(d) Privilege Against Self-Incrimination and Adverse Inferences. A lawyer cannot be required to testify or to produce records over the lawyer's objection if doing so would violate the lawyer's constitutional privilege against self-incrimination. But in proceedings under this rule, the Presiding Disciplinary Judge may draw an adverse inference from a lawyer's failure to testify or to produce records. The Presiding Disciplinary Judge may also draw an adverse inference from a lawyer's disregard of orders issued in a disability proceeding.

(e) Confidentiality. An order transferring a lawyer to disability inactive status is available to the public. Otherwise, disability proceedings, files, and records are confidential and are not available to the public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or

misleading public statements made during a disability proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

(f) Costs. The Regulation Counsel bears the costs of petitioning for a lawyer's transfer to disability inactive status, including examination costs, unless the Presiding Disciplinary Judge exercises discretion to order otherwise.

Rule 243.7. Alleged Inability to Defend Disciplinary Proceeding

(a) Overview. This section 243.7 sets forth the standards and procedures that apply when an issue is raised under C.R.C.P. 242.28 as to whether a respondent is able to defend a pending disciplinary proceeding. The Presiding Disciplinary Judge may initially direct the respondent to undergo an independent medical examination and may issue an interim stay of the disciplinary proceeding. Then, after considering all relevant information, the Presiding Disciplinary Judge may place a disciplinary proceeding in abeyance as provided below.

(b) Standard. A respondent is deemed unable to defend a disciplinary proceeding if the respondent has a medical, mental, or cognitive condition that renders the respondent unable to prepare or present a defense.

(c) Initiation.

(1) Under C.R.C.P. 242.28, the respondent, the respondent's counsel, the Presiding Disciplinary Judge, or the Regulation Counsel may raise an issue as to the respondent's ability to defend the proceeding.

(2) If the issue of inability to defend is raised as to a respondent who is unrepresented, the Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, appoint counsel to represent the respondent in a proceeding under this section 243.7 to determine whether the respondent is able to defend the disciplinary proceeding.

(d) Procedure. Depending on the entity raising the issue, the following procedures apply, subject to the Presiding Disciplinary Judge's discretion to adopt a different procedure:

(1) By Respondent. If a respondent or respondent's counsel alleges that the respondent is unable to defend a disciplinary proceeding:

(A) The Presiding Disciplinary Judge will direct the respondent to undergo an independent medical examination on the issues of whether the respondent is able to defend the disciplinary proceeding and to competently fulfill professional responsibilities;

(B) The Presiding Disciplinary Judge will issue an interim stay of the disciplinary proceeding under C.R.C.P. 242.28, which the Presiding Disciplinary Judge may subsequently lift on a showing of good cause;

(C) The Presiding Disciplinary Judge will treat a respondent's allegation of inability to defend as a waiver of the physician-patient and psychologist-client privileges under C.R.S. section 13-90-107(d) and (g) between the lawyer and any professional who has examined or treated the lawyer for any condition related to the alleged inability to defend; and

(D) The Presiding Disciplinary Judge will treat the allegation as a stipulation to the respondent's transfer to disability inactive status and will transfer the respondent to disability inactive status under C.R.C.P. 243.6(a)(5)(A).

(2) By Presiding Disciplinary Judge. If the Presiding Disciplinary Judge believes the respondent may be unable to defend a disciplinary proceeding, the Presiding Disciplinary Judge will follow the procedures set forth in subsections (d)(1)(A)-(B) above.

(3) By Regulation Counsel. If the Regulation Counsel moves to place a disciplinary proceeding in abeyance due to the respondent's inability to defend the disciplinary proceeding, where the respondent has already been transferred to disability inactive status, the Presiding Disciplinary Judge may grant the request without requiring the Regulation Counsel to provide proof or information about the disability in question.

(e) Hearings. The Presiding Disciplinary Judge has discretion to hold a hearing to address any issue in a proceeding under this section 243.7. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board. Except as otherwise provided in this rule, proceedings under this section must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence.

(f) Decision. After reviewing the report of an independent medical examination and any other relevant information, and after holding any hearing the Presiding Disciplinary Judge deems necessary, the Presiding Disciplinary Judge will, in the Presiding Disciplinary Judge's discretion, take one or more of the following actions:

(1) Transfer the respondent to disability inactive status under C.R.C.P. 243.6(a)(5) and place the disciplinary proceeding in abeyance under C.R.C.P. 242.28, if the Presiding Disciplinary Judge finds it is more likely than not that the respondent is unable to defend the proceeding or finds that justice otherwise so requires;

(2) Lift the interim stay on the disciplinary proceeding and order under C.R.C.P. 242.28 that the proceeding go forward with or without also transferring the respondent to disability inactive status under C.R.C.P. 243.6(a)(5); or

(3) Enter any other appropriate order, including an order directing further examination of the respondent, an order continuing the disciplinary proceeding, or an order immediately reinstating the respondent from disability inactive status without following the procedures set forth in C.R.C.P. 243.10(b).

(g) Subsequent Removal of Proceeding from Abeyance.

(1) If the respondent is subsequently reinstated from disability inactive status under C.R.C.P. 243.10, the Presiding Disciplinary Judge will remove the respondent's disciplinary proceeding from abeyance under C.R.C.P. 242.28.

(2) If the respondent has not been reinstated from disability inactive status under C.R.C.P. 243.10, the Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, remove a disciplinary proceeding from abeyance under C.R.C.P. 242.28 if:

(A) A preponderance of the evidence establishes that the respondent is able to defend the proceeding; or

(B) The Presiding Disciplinary Judge otherwise determines that justice so requires.

(h) Confidentiality. An order transferring a lawyer to disability inactive status is available to the public. Otherwise, disability proceedings, files, and records are not public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disability proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

(i) Costs and Fees. The Presiding Disciplinary Judge, in the Presiding Disciplinary Judge's discretion, may order the respondent to pay all or any part of the costs arising under this section 243.7, including examination costs. Fees for appointed counsel may be paid by the Office of the Presiding Disciplinary Judge, and the Presiding Disciplinary Judge may condition reinstatement from disability inactive status on reimbursement of all or any part of those fees. Fees for appointed counsel are subject to payment caps as established by judicial policy governing analogous proceedings.

(j) Automatic Abeyance and Removal of Proceeding from Abeyance. If a respondent in a pending disciplinary proceeding has been transferred to disability inactive status under C.R.C.P. 243.6(a)(3), the Regulation Counsel must request that the Presiding Disciplinary Judge place a pending disciplinary proceeding in abeyance under C.R.C.P. 242.28. The Presiding Disciplinary Judge will grant a proper request. The Presiding Disciplinary Judge will remove the disciplinary proceeding from abeyance under C.R.C.P. 242.28 if the respondent is reinstated from disability inactive status.

Rule 243.8. Notices After Transfer to Disability Inactive Status

(a) Notice to Clients and Parties; Filing of Affidavit. A lawyer who is transferred to disability inactive status must, if able, comply with C.R.C.P. 242.32(b)-(i).

(b) Disclosure to Law Firm. A lawyer who is transferred to disability inactive status must, if able, disclose in writing the order to the lawyer's current law firm within 14 days of the order.

(c) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of a final order transferring a lawyer to disability inactive status.

(d) Notice to ABA National Regulatory Data Bank. The Regulation Counsel must promptly transmit notice of a final order transferring a lawyer to disability inactive status to the National Regulatory Data Bank maintained by the American Bar Association.

Rule 243.9. Resignation

As provided in C.R.C.P. 227(A)(8), the supreme court may permit a lawyer to resign from the practice of law in Colorado. The Regulation Counsel must inform the supreme court whether any disciplinary or disability matter involving the lawyer should preclude the lawyer's resignation.

Rule 243.10. Reinstatement After Transfer to Disability Inactive Status

(a) Overview and Eligibility. The Presiding Disciplinary Judge considers petitions for reinstatement from disability inactive status under the standards set forth in subsection (b) below. If the lawyer has remained on disability inactive status for five years or longer, the lawyer must have satisfied the supreme court's bar examination and MPRE requirements within the eighteen months preceding the filing of the petition. But if a lawyer petitions for reinstatement within five years of the effective date of the lawyer's transfer to disability inactive status, the five-year period addressed in this subsection stops running until a final order is issued and any appeals have been decided.

(b) Procedure and Standards.

(1) Disability Cases Arising in Colorado.

(A) Standards. Unless a lawyer was transferred to disability inactive status based on reciprocal disability, a lawyer may be reinstated if the lawyer demonstrates by clear and convincing evidence that the lawyer is competent to resume the practice of law and meets the following eligibility requirements, as may be applicable to the facts of the matter, for the practice of law:

(i) Honesty and candor with clients, lawyers, courts, regulatory authorities, and others;

(ii) The ability to reason logically, recall complex factual information, and accurately analyze legal problems;

(iii) The ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others;

(iv) The ability to use good judgment on behalf of clients and in conducting professional business;

(v) The ability to act with respect for and in accordance with the law;

(vi) The ability to exhibit regard for the rights and welfare of others;

(vii) The ability to comply with the Colorado Rules of Professional Conduct; state, local, and federal laws; regulations, statutes, and rules; and orders of a tribunal;

(viii) The ability to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and others;

(ix) The ability to be honest and use good judgment in personal financial dealings and on behalf of clients and others; and

(x) The ability to comply with deadlines and time constraints.

(B) Petition by Lawyer.

(i) A lawyer seeking reinstatement from disability inactive status must file a properly verified petition with the Presiding Disciplinary Judge and provide a copy to the Regulation Counsel. Within 14 days of receiving the petition, the Regulation Counsel must file a response indicating whether the Regulation Counsel objects to reinstatement, intends to stipulate to reinstatement, or believes further investigation is needed.

(ii) After receiving a petition and response, the Presiding Disciplinary Judge may order the lawyer to undergo an independent medical examination by a qualified examiner designated by the Presiding Disciplinary Judge.

(iii) The Presiding Disciplinary Judge has discretion to order reinstatement proceedings procedurally analogous to those set forth in C.R.C.P. 242.39. But the Presiding Disciplinary Judge considers reinstatement petitions from disability inactive status without a Hearing Board.

(iv) After considering the relevant information and holding any hearing, the Presiding Disciplinary Judge may grant or deny reinstatement.

(C) Stipulation to Reinstatement. Either before or after the filing of a petition, the parties may file a stipulated agreement that the lawyer should be reinstated from disability inactive status. After considering the relevant information and holding any hearing, the Presiding Disciplinary Judge may approve or reject the stipulation.

(2) Reciprocal Disability.

(A) Summary Reinstatement Premised on Reinstatement in Originating Jurisdiction. If a lawyer was transferred to disability inactive status under C.R.C.P. 243.6(a)(2) and has since been reinstated to practice law in the jurisdiction in which the reciprocal disability proceeding originated, the lawyer may file a petition seeking reinstatement, accompanied by a certified copy of the order reinstating the lawyer in the originating jurisdiction. Provided that the lawyer has not remained on disability inactive status under this rule for more than five years, the Presiding Disciplinary Judge may summarily reinstate the lawyer.

(B) No Reinstatement in Originating Jurisdiction. If a lawyer's petition demonstrates that good cause exists for not seeking reinstatement in the originating jurisdiction, the Presiding Disciplinary Judge may allow a lawyer subject to reciprocal disability to seek reinstatement in Colorado under subsection (b)(1) above without having been reinstated in the originating jurisdiction. A lawyer seeking reinstatement under this provision must attach to the petition for reinstatement a complete record of the disability proceeding in the originating jurisdiction and must certify in the petition that the lawyer was not subject in the originating jurisdiction to any disciplinary proceedings, including a disciplinary investigation, at the time the lawyer was transferred to disability inactive status.

(c) Disability Reinstatement Hearings. Disability reinstatement hearings are conducted by the Presiding Disciplinary Judge, sitting without a Hearing Board, except as provided in subsection (d) below. The clerk of the Presiding Disciplinary Judge may issue subpoenas under C.R.C.P. 45. Except as otherwise provided in this rule, reinstatement proceedings must be conducted in accordance with the Colorado Rules of Civil Procedure and civil trial practice in this state. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the lawyer has a fair opportunity to rebut hearsay evidence.

(d) Consolidated Disability and Disciplinary Reinstatement Proceedings. If a lawyer concurrently petitions for reinstatement from disability inactive status and reinstatement or readmission in a disciplinary case, the Presiding Disciplinary Judge may, if the lawyer consents, consolidate the proceedings. If so, a Hearing Board will consider both petitions together under C.R.C.P. 242.39, and the consolidated proceedings will be public.

(e) Costs. Unless the Presiding Disciplinary Judge orders otherwise, a lawyer may not file a petition for reinstatement under this section 243.10 until the lawyer has paid the costs incurred in the underlying disability proceeding, including the cost of any examinations ordered.

(f) Waiver of Privilege. For purposes of this rule, when a lawyer petitions for reinstatement from disability inactive status, the lawyer thereby waives the physician-patient and psychologist-client privileges under C.R.S. section 13-90-107(d) and (g) between the lawyer and any professional who has examined or treated the lawyer in connection with the disability. The Presiding Disciplinary Judge may order the lawyer to identify professionals who have examined or treated the lawyer in connection with the disability. The Presiding Disciplinary Judge may also order the lawyer to provide written consent for those professionals to disclose information and records pertaining to the lawyer's examination or treatment.

(g) Confidentiality. An order reinstating a lawyer from disability inactive status is available to the public. Otherwise, disability reinstatement proceedings, files, and records are confidential and are not available to the public, except by order of the supreme court or the Presiding Disciplinary Judge. All entities described in this rule and all individuals working or volunteering on behalf of those entities have an ongoing duty to maintain the confidentiality mandated by this rule. But the Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a disability reinstatement proceeding or to defend against litigation in which the Regulation Counsel is a named defendant. A lawyer may release information arising from the lawyer's own disability reinstatement proceeding or authorize the Regulation Counsel to release such information, unless the information is made confidential by rule or order.

Rule 243.11. Notices After Reinstatement

(a) Notice of Order to the Courts. The clerk of the supreme court must promptly notify all courts within the supreme court's jurisdiction of a final order of reinstatement from disability inactive status.

(b) Notice to ABA National Regulatory Data Bank. The Regulation Counsel must transmit notice of reinstatement from disability inactive status to the National Regulatory Data Bank maintained by the American Bar Association.

Rule 243.12. Post-Hearing Relief and Appeals

(a) Post-hearing Relief. Within 14 days of entry of a final order in a disability proceeding under this rule, including a disability reinstatement proceeding, a party may move for post-hearing relief under C.R.C.P. 59.

(b) Appellate Review. A party may seek appellate review by the supreme court of a final decision in a proceeding under this rule. Part VIII of C.R.C.P. 242 governs appellate review.

(c) Stay Pending Appeal. If reinstatement is granted, the Regulation Counsel may at any time move the supreme court for a stay pending appeal. The supreme court should grant the stay if the Regulation Counsel demonstrates the stay is necessary to protect the public.

(d) Confidentiality. Proceedings under this section are confidential.

Rule 243.13. Contempt During Proceeding

(a) Applicability. If, during a proceeding under this rule, a person knowingly obstructs an investigation, fails to comply with a subpoena, refuses to answer a proper question when testifying, or disrupts through misbehavior the Presiding Disciplinary Judge in the performance of authorized duties, the person may be held in contempt and sanctioned. Authority conferred under this section 243.13 is in addition to any other authority to issue sanctions. C.R.C.P. 107 does not govern contempt proceedings under this section.

(b) Procedure for Direct Contempt. If a person commits contemptuous conduct that the Presiding Disciplinary Judge sees or hears and that is so extreme no warning is necessary, or that has been repeated despite a warning to desist, the Presiding Disciplinary Judge may summarily punish the conduct by imposing reasonable sanctions, including a fine. In such a case, the Presiding Disciplinary Judge will enter an order on the record reciting the facts constituting the contempt, including a description of the conduct, and finding that the conduct is offensive to the authority and dignity of the tribunal. Before the Presiding Disciplinary Judge imposes sanctions, the person held in contempt has the right to respond to the charge of contempt, including making a statement in mitigation.

(c) Procedure for Indirect Contempt.

(1) Motion. A party may file with the Presiding Disciplinary Judge a motion for an order to show cause alleging that a person has, outside of the direct sight or hearing of the Presiding Disciplinary Judge, as applicable, engaged in any of the conduct identified in subsection (a) above. The party must also serve the motion on the person alleged to be in contempt.

(2) Order to Show Cause. The Presiding Disciplinary Judge may enter an order to show cause directing the person alleged to be in contempt to appear at a specified time and place and to show cause why the person should not be held in contempt.

(3) Determination. If the Presiding Disciplinary Judge finds that the person has engaged in any of the conduct described in subsection (a) above, the Presiding Disciplinary Judge may hold the person in contempt and impose reasonable sanctions. The Presiding Disciplinary Judge also may order costs and reasonable attorney’s fees.

(d) Disciplinary Charges. An allegation or a finding of contempt does not preclude the Regulation Counsel from filing disciplinary charges under C.R.C.P. 242 based on the same underlying conduct.

(e) Referral to Other Court. Nothing herein precludes the Regulation Counsel from referring a matter to another court of competent jurisdiction to commence other proceedings or to address other appropriate sanctions or remedies.

(f) Appeal. For the purposes of appeal, an order deciding the issue of contempt and sanctions is final.

Rule 244. Protective Appointment of Counsel

Rule 244.1. Relevant Entities

(a) Supreme Court. The supreme court has plenary authority under this rule. The supreme court has the authority to review any determination made in protective appointment of counsel proceedings and to enter any order in such proceedings.

(b) Advisory Committee. The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is authorized to act with respect to C.R.C.P. 244 in accordance with the powers and duties set forth in C.R.C.P. 242.3(c).

(c) Regulation Counsel. The Attorney Regulation Counsel (Regulation Counsel) is authorized to act in accordance with the powers and duties set forth in C.R.C.P. 242.5(c) as to protective appointment of counsel proceedings.

(d) Judicial District Chief Judge. The chief judge of any judicial district in which the lawyer in question maintained an office or in which client files or property are located is authorized to enter orders under this rule, including orders necessary for appointed counsel to carry out appointed counsel's duties.

(e) Appointed Counsel. Appointed counsel is authorized to act in accordance with this rule and the chief judge's orders. Appointed counsel must be an actively practicing lawyer licensed in Colorado and in good standing.

Rule 244.2. Immunity

(a) Prohibition Against Lawsuit Based on Communication Under this Rule. A lawyer may not institute a civil lawsuit against any person based on written or oral communications made to relevant entities described in this rule, those entities' members or employees, or persons acting on their behalf.

(b) Immunity for Entities. All relevant entities described in this rule and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 244.3. Applicability

(a) This rule applies to lawyers who practice law in Colorado, whether or not admitted to practice law in Colorado, as well as the client property, including files and funds, and related law office management documents and other property, in the possession, custody, or control of those lawyers.

(b) The Regulation Counsel may seek protective appointment of counsel under this rule when:

(1) A lawyer:

(A) Has died;

(B) Has been transferred to disability inactive status;

(C) Cannot be located by the Regulation Counsel through the exercise of reasonable diligence; or

(D) Is subject to an order of suspension, disbarment, or interim or temporary suspension and the lawyer has not complied with the lawyer's duties under C.R.C.P. 242.32; or

(2) Other reasons requiring immediate protection of the lawyer's clients are shown.

Rule 244.4. Procedure

(a) Appointment. The Regulation Counsel may request that the chief judge of any judicial district in which the lawyer maintained an office or in which client property is located appoint counsel under this rule. On receiving such a request, the chief judge may appoint counsel under this rule.

(b) Scope of Duties. Appointed counsel may obtain and inventory client property, including files and funds; related law office management documents; and other property containing client information. Under the chief judge's supervision, appointed counsel will, as appropriate, provide client property to the appropriate person to the extent practicable; return law firm documents, property, and funds to the appropriate party; take additional steps necessary to discharge the lawyer's obligations under Colo. RPC 1.16(d); destroy remaining inactive or unclaimed client files; and destroy documents that contain confidential client information but are not part of the client's file. If ownership of client funds cannot be determined, appointed counsel will remit the funds to the Colorado Lawyer Trust Account Foundation, consistent with Colo. RPC 1.15B(k).

(c) Filing Fees. Appointed counsel is entitled to take the actions authorized under this section 244.4 without paying filing fees in district court.

(d) Client File Retention. Colo. RPC 1.16A (client file retention) does not apply to counsel appointed under this rule.

(e) Protection of Records. Appointed counsel must not disclose information contained in client files without the consent of the client to whom the files relate, except as necessary or permitted to carry out the court's order appointing counsel or to comply with other law or a court order. Appointed counsel may apply to the chief judge for leave to make limited disclosure of information when necessary for other legitimate purposes.

(f) Reimbursement. Consistent with applicable authorities, appointed counsel may seek reimbursement of attorney's fees and costs incurred in connection with this rule.

Rule 251.1. Reserved.

Rule 251.2. Reserved.

Rule 251.3. Reserved.

Rule 251.4. Reserved.

Rule 251.5. Reserved.

Rule 251.6. Reserved.

Rule 251.7. Reserved.

Rule 251.8. Reserved.

Rule 251.8.5. Reserved.

Rule 251.8.6. Reserved.

Rule 251.9. Reserved.

Rule 251.10. Reserved.

Rule 251.11. Reserved.

Rule 251.12. Reserved.

Rule 251.13. Reserved.

Rule 251.14. Reserved.

Rule 251.15. Reserved.

Rule 251.16. Reserved.

Rule 251.17. Reserved.

Rule 251.18. Reserved.

Rule 251.19. Reserved.

Rule 251.20. Reserved.

Rule 251.21. Reserved.

Rule 251.22. Reserved.

Rule 251.23. Reserved.

Rule 251.24. [NO CHANGE]

Rule 251.25. [NO CHANGE]

Rule 251.26. [NO CHANGE]

Rule 251.27. Reserved.

Rule 251.28. Reserved.

Rule 251.29. Reserved.

Rule 251.30. Reserved.

Rule 251.31. Reserved.

Rule 251.32. Reserved.

Rule 251.33. Reserved.

Rule 251.34. Reserved.

Rule 252. [NO CHANGE]

Rule 253. Lawyers' Peer Assistance Programs

(a) Approval. Lawyers' peer assistance programs approved under this rule are not subject to the reporting requirements of Colo. RPC 8.3. The supreme court grants approval of lawyers' peer assistance programs. Approval of a lawyers' peer assistance program is for a period of five years. The supreme court may revoke approval at any time.

(b) Procedure. To request approval, a program must submit a request to the Supreme Court Advisory Committee on the Practice of Law (Advisory Committee), care of the clerk of the supreme court. The Advisory Committee will review the request and make a recommendation to the supreme court. The supreme court may grant or reject the request.

(c) Information in Request. The request must contain the following information:

(1) The type of organization, for example a corporation, limited liability company, or non-profit organization;

(2) The program's mission statement;

(3) The program's funding sources;

(4) A list of the program's volunteers and paid employees, and a description of the qualifications and background of each volunteer or employee; and

(5) An explanation of the type and frequency of training for the volunteers and paid employees.

(d) Reapproval. To seek reapproval, the program must file a request for reapproval with the Advisory Committee, care of the clerk of the supreme court. The request for reapproval should be filed no less than three months before the approval period is set to terminate. The request must explain any significant changes that occurred in the program since the supreme court first approved the program. The Advisory Committee will review the request and make a recommendation to the supreme court. The supreme court may grant or reject the request.

Rules 250.3, 250.7, 254, 255

Rule 250.3. The Supreme Court Advisory Committee and the Continuing Legal and Judicial Education Committee

(1) Advisory Committee. The Supreme Court Advisory Committee (Advisory Committee) is a permanent committee of the Court. See C.R.C.P. 2425~~51~~.3~~4~~. The Advisory Committee oversees the coordination of administrative matters for all programs of the lawyer regulation process, including the continuing legal and judicial education program set forth in these rules. The Advisory Committee reviews the productivity, effectiveness, and efficiency of the continuing legal and judicial education program, and recommends to the Court proposed changes or additions to these rules and the CLJE Committee's Regulations Governing Mandatory Continuing Legal and Judicial Education.

(2) – (3) [NO CHANGE]

Rule 250.7. Compliance

(1) – (7) [NO CHANGE]

(8) Supreme Court Review.

(a) When the Court receives either a statement of noncompliance or the written decision of a CLJE Committee hearing, the Court will enter such order as it deems appropriate, which may include an order of administrative suspension from the practice of law in the case of registered lawyers or referral of the matter to the Colorado Commission on Judicial Discipline or the Denver County Court Judicial Discipline Commission in the case of judges.

(b) Orders suspending a lawyer for failure to comply with rules governing continuing legal education take effect on entry of the order, unless otherwise ordered.

(c) A lawyer who has been suspended under the rules governing continuing legal education need not comply with the requirements of C.R.C.P. 242.32(c) or C.R.C.P. 242.32(d) if the lawyer has sought reinstatement under the rules governing continuing legal education and reasonably believes that reinstatement will occur 14 days of the date of the order of suspension. If the lawyer is not reinstated within those 14 days, then the lawyer must comply with the requirements of C.R.C.P. 242.32(c) and C.R.C.P. 242.32(d).

(9) – (10) [NO CHANGE]

(11) Jurisdiction. All suspended and inactive lawyers remain subject to the jurisdiction of the Court as set forth in C.R.C.P. 2425~~51~~.1(a~~b~~) and C.R.C.P. 243.1.

Rule 254. Colorado Lawyer Assistance Program

(1) Colorado Lawyer Assistance Program. The Colorado Supreme Court hereby establishes an independent Colorado Lawyer Assistance Program ("COLAP"). The goal of such program is:

(a) To protect the interests of clients, litigants and the public from harm by judges and lawyers experiencing cognitive, emotional, mental health, substance use, or addiction issues (behavioral health issues);

(b) To assist members of the legal profession with behavioral health issues that negatively impact their career, ability to practice, and/or well-being; and

(c) To educate the bench, bar and law schools about behavioral health issues impacting members of the legal profession.

Such program and its Executive Director (Director) shall be under the supervision of the Supreme Court Advisory Committee (Advisory Committee) as set forth in C.R.C.P. 2425~~51~~.3~~4~~(c~~b~~)(2~~3~~). The Advisory Committee is a permanent committee of the Colorado Supreme Court. See C.R.C.P. 2425~~51~~.3~~4~~.

(2) – (6) [NO CHANGE]

(7) Immunity.

(a) Any person reporting information to COLAP employees or agents including volunteers recruited under ~~rule~~C.R.C.P. 254 shall be entitled to the immunities and presumptions under C.R.C.P. 2425~~51~~.8~~32(e)~~.

(b) COLAP members, employees and agents including volunteers recruited under ~~rule~~C.R.C.P. 254 shall be entitled to the immunities and presumptions under C.R.C.P. 2425~~51~~.8~~32(e)~~.

(c) COLAP members, employees and agents including volunteers recruited under rule are relieved of the duty of disclosure of information to authorities as imposed by Rule 8.3(a).

Comment to Rule: The confidentiality provision under 254(6) does not supersede state laws that impose a duty upon behavioral health and medical professionals to warn and protect should threats of imminent harm to self, others, or locations be communicated to them, or state laws requiring mandatory reporting of child and elder abuse or neglect.

Rule 255 – Colorado Attorney Mentoring Program

(1) Colorado Attorney Mentoring Program. The Colorado Supreme Court hereby establishes a Colorado Attorney Mentoring Program ("CAMP"). Through the fostering of mentoring relationships between lawyers seeking mentoring and experienced lawyer mentors, the goals of such program are to assist:

(a) - (g) [NO CHANGE]

(h) Lawyers in the appreciation of the law practice tradition of community service and pro bono activities.

CAMP and its director shall be under the supervision of the Supreme Court Advisory Committee ("Advisory Committee") as set forth in C.R.C.P. 2425~~1~~.3~~4~~(c~~b~~)(2~~3~~).

(2) – (5) [NO CHANGE]

Rule 250.3. The Supreme Court Advisory Committee and the Continuing Legal and Judicial Education Committee

(1) Advisory Committee. The Supreme Court Advisory Committee (Advisory Committee) is a permanent committee of the Court. See C.R.C.P. 242.3. The Advisory Committee oversees the coordination of administrative matters for all programs of the lawyer regulation process, including the continuing legal and judicial education program set forth in these rules. The Advisory Committee reviews the productivity, effectiveness, and efficiency of the continuing legal and judicial education program, and recommends to the Court proposed changes or additions to these rules and the CLJE Committee's Regulations Governing Mandatory Continuing Legal and Judicial Education.

(2) – (3) [NO CHANGE]

Rule 250.7. Compliance

(1) – (7) [NO CHANGE]

(8) Supreme Court Review.

(a) When the Court receives either a statement of noncompliance or the written decision of a CLJE Committee hearing, the Court will enter such order as it deems appropriate, which may include an order of administrative suspension from the practice of law in the case of registered lawyers or referral of the matter to the Colorado Commission on Judicial Discipline or the Denver County Court Judicial Discipline Commission in the case of judges.

(b) Orders suspending a lawyer for failure to comply with rules governing continuing legal education take effect on entry of the order, unless otherwise ordered.

(c) A lawyer who has been suspended under the rules governing continuing legal education need not comply with the requirements of C.R.C.P. 242.32(c) or C.R.C.P. 242.32(d) if the lawyer has sought reinstatement under the rules governing continuing legal education and reasonably believes that reinstatement will occur 14 days of the date of the order of suspension. If the lawyer is not reinstated within those 14 days, then the lawyer must comply with the requirements of C.R.C.P. 242.32(c) and C.R.C.P. 242.32(d).

(9) – (10) [NO CHANGE]

(11) Jurisdiction. All suspended and inactive lawyers remain subject to the jurisdiction of the Court as set forth in C.R.C.P. 242.1(a) and C.R.C.P. 243.1.

Rule 254. Colorado Lawyer Assistance Program

(1) Colorado Lawyer Assistance Program. The Colorado Supreme Court hereby establishes an independent Colorado Lawyer Assistance Program ("COLAP"). The goal of such program is:

(a) To protect the interests of clients, litigants and the public from harm by judges and lawyers experiencing cognitive, emotional, mental health, substance use, or addiction issues (behavioral health issues);

(b) To assist members of the legal profession with behavioral health issues that negatively impact their career, ability to practice, and/or well-being; and

(c) To educate the bench, bar and law schools about behavioral health issues impacting members of the legal profession.

Such program and its Executive Director (Director) shall be under the supervision of the Supreme Court Advisory Committee (Advisory Committee) as set forth in C.R.C.P. 242.3(c)(2). The Advisory Committee is a permanent committee of the Colorado Supreme Court. See C.R.C.P. 242.3.

(2) – (6) [NO CHANGE]

(7) Immunity.

(a) Any person reporting information to COLAP employees or agents including volunteers recruited under C.R.C.P. 254 shall be entitled to the immunities and presumptions under C.R.C.P. 242.8.

(b) COLAP members, employees and agents including volunteers recruited under C.R.C.P. 254 shall be entitled to the immunities and presumptions under C.R.C.P. 242.8.

(c) COLAP members, employees and agents including volunteers recruited under rule are relieved of the duty of disclosure of information to authorities as imposed by Rule 8.3(a).

Comment to Rule: The confidentiality provision under 254(6) does not supersede state laws that impose a duty upon behavioral health and medical professionals to warn and protect should threats of imminent harm to self, others, or locations be communicated to them, or state laws requiring mandatory reporting of child and elder abuse or neglect.

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(a) - (g) [NO CHANGE]

(h) Lawyers in the appreciation of the law practice tradition of community service and pro bono activities.

CAMP and its director shall be under the supervision of the Supreme Court Advisory Committee ("Advisory Committee") as set forth in C.R.C.P. 242.3(c)(2).

(2) – (5) [NO CHANGE]

Amended and Adopted by the Court, En Banc, May 20, 2021, effective for cases filed with the Presiding Disciplinary Judge or the Supreme Court on or after July 1, 2021, and as to all other matters covered by these rules, effective July 1, 2021.

By the Court:

Monica M. Márquez
Justice, Colorado Supreme Court