

**Rule Change 2004 (18)**

**The Colorado Rules of Civil Procedure**

**Chapter 20**

The changes to the following rules are effective as of January 1, 2005:

Rule 251.15. Answer -- Filing, Failure to Answer, Default  
Rule 251.16. Presiding Disciplinary Judge  
Rule 251.18. Hearings Before the Hearing Board  
Rule 251.19. Findings of Fact and Decision  
Rule 251.21. Discipline Imposed by Foreign Jurisdiction  
Rule 251.34. Advisory Committee

**Amended and Adopted by the Court, En Banc, September 30, 2004, effective January 1, 2005.**

**BY THE COURT:**

**Justice Michael L. Bender  
Colorado Supreme Court**

**Justice Nathan B. Coats  
Colorado Supreme Court**

**Rule Change 2004(18)**

**COLORADO RULES OF CIVIL PROCEDURE**

**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**

**Rule 251.15. Answer -- Filing, Failure to Answer, Default**

**(a) [No Change]**

**(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.

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**Rule 251.16. Presiding Disciplinary Judge**

**(a) and (b) [No Change]**

**(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) through (8) **[No Change]**

(9) Preside over sanctions hearings pursuant to C.R.C.P. 251.15(b) and C.R.C.P. 251.19(c).

**(d) and (e) [No Change]**

#### Rule 251.18. Hearings Before the Hearing Board

(a) [No Change]

(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 thirty (30) 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) through (e) [No Change]

(f) **Procurement of Evidence During Hearing.**

(1) through (4) (D) (v) [No Change]

(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.

(4) (D) (vii) through (G) [No Change]

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**Rule 251.19. Findings of Fact and Decision**

(a) and (b) [No Change]

(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 fifteen (15) 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 251.21. Discipline Imposed by Foreign Jurisdiction**

(a) through (d) [No Change]

(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 251.34. 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, foureight 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

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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.

**(a) (2) through (b) [No Change]**

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