

RULE CHANGE 2009(03)

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**

C.R.C.P. 251.8. 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 an-attorney is causing or has caused immediate and substantial public or private harm and because the attorney:

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

(B) has converted property or funds;

(C) has abandoned clients; or

~~(D) or because the attorney has engaged in conduct which poses an immediate threat to the effective administration of justice., the Supreme Court may order the attorney's license to practice law immediately suspended.~~

(b) through (c) [No Change]

**C.R.C.P. 251.31. Access to Information Concerning
Proceedings Under These Rule**

(a) Availability of Information. [No Change]

(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) [No Change]

(2) [No Change]

(3) The proceeding is based on allegations that have become generally known to the public; ~~or~~

(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) through (q) [No Change]

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.

Amended and adopted by the Court, En Banc, February 5, 2009, effective immediately.

By the Court:

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

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