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.