

Rule Change #2000(3)

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

Rule 251.8.5. Suspension for Nonpayment of Child Support,
or for Failure to Comply with Warrants Relating to
Paternity or Child Support Proceedings

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

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

(b) Petition for Suspension.

(1) Upon receipt of reliable information that an attorney is in arrears in payment under a child support order, or has failed to comply with subpoenas or warrants relating to paternity or child support proceedings, ~~r~~Regulation ~~c~~Counsel may~~shall promptly~~ file a petition for suspension with the p~~P~~residing d~~D~~isciplinary j~~J~~udge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause to believe that the attorney is in arrears on a child support order, or has failed to comply with a subpoena or a warrant relating to paternity or child support proceedings. A copy of the petition shall be served on the attorney pursuant to these rules.

(2) The p~~P~~residing d~~D~~isciplinary j~~J~~udge shall order the issuance of an order to show cause directing the attorney to show cause why the attorney's license to

practice law should not be immediately suspended, which order shall be returnable within thirty days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the presiding disciplinary judge shall enter an order immediately suspending the attorney from the practice of law, unless within the thirty-day period:~~if~~ the attorney has paid~~fails to pay the~~ the past-due obligation, negotiated~~negotiate~~ a payment plan approved by the court or the state child support enforcement agency or agency having jurisdiction over the child support order~~approved by a court~~, requested a hearing before the presiding disciplinary judge, or complied with the warrant or subpoena. ~~or file a motion to modify the court ordered support obligation within the thirty day period.~~

(3) If a response to the orders to show cause is timely filed and the attorney or the regulation counsel requests a hearing before the presiding disciplinary judge on the petition, ~~said~~ the hearing shall be held within ten days of the request, or as soon thereafter as is practicable.~~before the Presiding Disciplinary Judge. A hearing shall be held solely for the purpose of determining whether there exists, as of the date of the hearing, proof that full payment of all arrears of support established by the order of a court owed by the attorney has been paid; that there is a mistake in the identity of the attorney; that the attorney has entered into a court approved payment plan; or that the attorney has filed a motion to modify the court ordered child support obligation.~~ At the hearing, the burden is initially on the regulation counsel to prove the allegations in the petition by a preponderance of the evidence. If the presiding disciplinary judge has determined that the regulation counsel has proved the allegations in the petition by a preponderance of the evidence, he or she shall issue an order immediately suspending the attorney, unless the attorney proves by a preponderance of the evidence that:- (1) there is a mistake in the identity of the attorney; (2) there is a bona fide disagreement currently before a court or an agency concerning the amount of the child support debt, arrearage balance, retroactive support due, or the amount of the past-due child support when combined with maintenance; (3) all child support payments were made when due; (4) the attorney has complied with the subpoena or warrant; (5) the attorney was not served with the subpoena or warrant; or

(6) there was a technical defect with the subpoena or warrant. No evidence with respect to the appropriateness of the underlying child support~~court~~ order or ability of the attorney in arrears to comply with such order shall be received or considered by the pPresiding dDisciplinary jJudge. Upon conclusion of the hearing, the pPresiding dDisciplinary jJudge shall promptly prepare an opinion setting forth ~~its~~ his or her findings of facts and ~~its~~ decision. ~~The Presiding Disciplinary Judge shall enter an order suspending the attorney from the practice of law immediately if the attorney has failed to pay the past due obligation, negotiate a payment plan approved by a court, or file [sic] a motion to modify the court-ordered support obligation as of the date of the hearing.~~

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

(d) Reinstatement.

(1) If, after an attorney's license has been suspended, ~~suspension,~~ the an attorney has paid the past-due obligations, entered into a payment plan approved by the court or the agency having jurisdiction over the child support order, or complied with the warrant or subpoena, ~~a payment plan approved by a court or filed a motion to modify the court-ordered support obligation as of the date of the hearing~~ the attorney may seek reinstatement by filing a verified petition, with evidence of compliance, with the pPresiding dDisciplinary jJudge. ~~The attorney must prove compliance by clear and convincing evidence.~~

(2) Immediately upon receipt of a petition for reinstatement, the rRegulation cCounsel shall have thirty days or, upon a showing of good cause, such greater time as authorized by the presiding disciplinary judge within which to conduct any investigation ~~the Regulation Counsel deems~~ necessary. The attorney~~petitioner~~ shall cooperate in any such investigation. At the end of the period of time allowed for the ~~After the~~ investigation, the rRegulation cCounsel shall file an answer. Based on the petition and answer, the pPresiding dDisciplinary jJudge may order reinstatement or a~~hold a~~ hearing to determine whether the attorney shall be reinstated. The attorney shall bear the burden of establishing the right to be reinstated by a preponderance of the evidence.~~conducted with procedures~~

~~identical to those outlines [sic] by these rules governing
hearings of complaints.~~

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

**Amended and Adopted by the Court, En Banc, February 17,
2000, effective immediately.**

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**