

2001 PERMANENT RECORD

Rule Change #2001(20)

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

C.R.C.P. 251.8.6. Suspension for Failure to Cooperate

**New Rule Adopted by the Court, En Banc, October 29, 2001,
effective immediately.**

Rule 251.8.6 Suspension for Failure to Cooperate

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

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

Upon consideration of a petition for suspension and the attorney's response, if any, the supreme court may suspend the attorney's license to practice law for an indefinite period pending further order of the court; it may deny the petition; or it may issue any other appropriate orders. If a response to the petition is filed and the attorney requests a hearing on the petition, the supreme court may conduct such a hearing or it may refer the matter to the presiding disciplinary judge for resolution of contested

factual matters. The presiding disciplinary judge shall submit a report setting forth findings of fact and a recommendation to the supreme court within five days of the conclusion of the hearing.

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

Comment

This rule addresses problems caused by relatively few attorneys who fail to cooperate with the regulation counsel after a request for investigation has been filed against the attorney. In general, it would not apply after formal proceedings have been commenced against the attorney by the filing of a complaint. The rule would still apply, however, even after formal proceedings have begun, with respect to matters outside of the complaint.

Suspension under the rule is not discipline. In this sense, it is similar to a summary administrative suspension for failing to pay the attorney registration fee or to file a registration statement, see C.R.C.P. 227(A)(4), or for noncompliance with mandatory continuing legal education requirements, see C.R.C.P. 260.6. It is also similar to a suspension for nonpayment of child support, see C.R.C.P. 251.8.5, except resort in the first instance is made to the supreme court rather than the presiding disciplinary judge. Like those other rules, the intent of this rule is to ensure that an attorney complies with the requirements of the rules governing the legal profession, in this case the attorney's duty to cooperate with regulation counsel in the investigation of a request for investigation. See C.R.C.P. 251.1(a); C.R.C.P. 251.5(d); Colo. RPC 8.4(d). By this rule, the supreme court intends to facilitate communication between the attorney and regulation counsel. The rule is not designed to threaten or punish lawyers who have a good reason for not complying with regulation counsel's request, such as an inability to comply or possession of a good-faith objection to production. For example, an attorney will not

be suspended under this rule merely because the attorney is out of the office on vacation.

Adopted by the Court, En Banc, October 29, 2001, effective immediately.

BY THE COURT:

**Rebecca Love Kourlis
Justice, Colorado Supreme Court**

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