

Failure To Pay Support and Maintenance

by

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Attorneys should be aware that exposure to discipline is not restricted to the nonpayment of professionally incurred indebtedness or traditional creditors. Rather, lawyers can be subject to discipline for failing to honor other forms of financial obligations, including child support and spousal maintenance.

On June 13, 1996, the Minnesota Supreme Court adopted Rule 30 of the Rules on Lawyers Professional Responsibility (RLPR), which provides an administrative scheme for suspending the licenses of attorneys who fail to pay court-ordered child support and spousal maintenance. The rule is based on Minn. Stat. sec. 518.551, subd.12, which uses occupational-license suspension as a means of enforcing and collecting arrearages in court-ordered child support and spousal-maintenance cases. Minnesota Stat. sec. 518.551, subd.12(a), specifically directs public agencies and district courts to report failure to pay child support and maintenance to the Director's Office.

Rule 30 is similar to license-suspension schemes enacted by the Legislature for other licensed professionals in Minnesota. Minnesota Stat. sec. 518.551, subd.12(a), empowers health-related licensing boards, such as the Minnesota Board of Chiropractic Examiners, and other non-health-related licensing boards, such as the Board of Accountancy, also to suspend the licenses of professionals for failure to pay court-ordered child support and maintenance. Rule 30 essentially mirrors the administrative suspension procedures contained in Minn. Stat. sec. 214.101, subd.1.

If an attorney is in arrears for nonpayment of child support, Rule 30 permits the Director to move for the administrative suspension of the attorney's license after receiving appropriate notice from a public authority, such as the county attorney's office. If a lawyer is in arrears for nonpayment of spousal maintenance, Rule 30 permits the Director to move for the administrative suspension of the attorney's license after receiving an order from the District Court directing suspension of the attorney's license.

The legislative intent behind Minn. Stat. sec. 518.551, subd.12, was to create an administrative suspension scheme that would avoid costly and time-consuming license revocation procedures yet still provide an efficient and effective means of enforcing child support and spousal maintenance.

The administrative license-suspension procedures in Rule 30 mimic the legislative intent of Minn. Stat. sec. 518.551, subd.12. In comparison, seeking suspension of an attorney for professional misconduct through the normal substantive and procedural rules requires several layers of review and can be a lengthy process.

A balanced approach

Administrative suspension represents a balanced approach to child-support and spousal-maintenance enforcement by providing a prompt licensure response to nonpayment but also permitting an administratively suspended attorney to be expediently reinstated once he or she demonstrates support compliance.

Attorneys who are administratively suspended under Rule 30 can be reinstated by filing an affidavit with supporting documentation attesting to their compliance with an approved payment agreement. Within 15 days the Director will verify the accuracy of the affidavit and file a proposed order for reinstatement if the lawyer is in compliance. Rule 30(c), RLPR.

In comparison, reinstatements from nonadministrative suspensions can require wholesale compliance with Rule 18 of the RLPR, which can include a reinstatement investigation process as well as hearings before the Lawyers Board and the Supreme Court.

The administrative procedure under Rule 30 does not preclude formal disciplinary action where an attorney's failure to comply with court-ordered child support or spousal maintenance is willful or intentional. See, *In re Giberson*, 581 N.W.2d 351 (Minn. 1998) (attorney's willful refusal to comply with court-ordered child support and spousal maintenance payments warranted indefinite suspension from practice of law).

Not every unpaid personal debt by an attorney is a cause for disciplinary review. Attorneys should be aware, however, of the types of personal obligations that can transform into de facto professional obligations. Like other professionals, compliance with court-ordered child support and maintenance obligations is a personal obligation that can have professional consequences for lawyers.