

**RULE 18:
A SECOND CHANCE**

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In Minnesota, Rule 18, Rules on Lawyers Professional Responsibility (RLPR), provides the mechanism for reinstatement of suspended and disbarred attorneys. The premise of the rule as explained by the Court is that “human beings, generally, are redeemable.”^{ftn1} But “redemption” does not come automatically, simply by waiting for a predetermined amount of time to run. What then, must an attorney who has been suspended or disbarred show to convince the Court that he or she has been “redeemed,” and is therefore again worthy of the public trust? And, importantly, what role is there for the bench and bar in the reinstatement process?

The great majority of lawyers reading this article will never have a personal need to know what standards apply to a lawyer reinstatement proceeding. But the fact that lawyers who violated the public trust are allowed the opportunity to show that they have changed, that they have learned from their errors and are afforded a second chance, is an important aspect of the disciplinary system in this state.

The role for the bar is as follows: Pursuant to Rule 18, RLPR, an attorney petitioning for reinstatement must serve a copy of that petition not only on the director, but also on the president of the state bar association. The obvious rationale for that requirement was to provide an opportunity for the bar to provide input into the reinstatement process. Because a reinstatement petition while public has traditionally received little or no publicity, few members of the bar are aware that a particular attorney is seeking reinstatement. To give the bar the opportunity to provide relevant information relating to the appropriateness of an attorney’s reinstatement, notice of the filing of petitions now will be published. Written comments may be sent to the Director’s Office.

THE REINSTATEMENT PROCESS

What then, is it that a suspended or disbarred lawyer must do to regain the privilege of practicing law? Consider the following examples:

- M.S. was suspended for 30 days for failing for a five-year period to timely file state and federal employer’s withholding tax returns, failing to timely pay the taxes owed, and failing to timely file state and federal individual tax returns or pay the taxes owed.

Because M.S. was suspended for a fixed period of 90 days or less, he was able to seek reinstatement by filing an affidavit pursuant to Rule 18(e), RLPR. The affidavit states that the affiant has complied with Rule 24, RLPR (payment of costs of prosecuting the disciplinary action and disbursements), and Rule 26, RLPR (notification of clients and courts of the suspension), and is current in the Continuing Legal Education requirements.

The affidavit must also include proof that the suspended attorney has complied with all the preconditions for reinstatement set out in the Court’s disciplinary order. Here, the conditions required M.S.

to timely file state and federal tax returns, and cooperate with the Director's Office and the taxing authorities in their efforts to verify compliance with the tax laws. M.S. was reinstated exactly 30 days after the date of the original disciplinary order.[ftn2](#)

■ L.B. was indefinitely suspended from practice after a felony conviction for filing false tax returns, trust account violations, and misappropriation of client funds.

L.B. petitioned for reinstatement 14 months after he was suspended. He was reinstated ten months later. The process may take from two to ten months depending upon: a) the complexity of the issues (especially those involving chemical or psychological rehabilitation), b) the existence of subsequent allegations of misconduct, and c) whether the petitioner promptly provides information and documentation for the investigation.

What happens during that time? Pursuant to Rule 18(b), RLPR, the Director's Office conducts a thorough investigation of the matters raised in petitioner's application to determine whether all of the preconditions for reinstatement have been met. The director submits the investigative report to a panel of the Lawyers Professional Responsibility Board, which holds a public evidentiary hearing and makes a recommendation to the Court regarding reinstatement.[ftn3](#)

L.B. had to show that he had successfully completed the terms of his criminal probation for the federal tax law violations. He was also required to comply with the typical preconditions for reinstatement set out above.

Finally, L.B. had to demonstrate, by clear and convincing evidence, that he had undergone a change in moral attitude since the misconduct.[ftn4](#) This standard requires stronger proof of good character and trustworthiness than is required in an original application for admission to practice:

The practice of law is a privilege, not a right. It is indeed true that the privilege is initially granted upon comparatively little evidence of moral character. This is no paradox: those to whom the privilege is granted have not yet evidenced a lack of moral character by previous misconduct.[ftn5](#)

While evidence of a change in moral character can take many forms, the best barometer of change may be the attorney's own state of mind and values, as evidenced by his or her own works, thoughts and actions.

■ D.P. was indefinitely suspended from practice, for a minimum of six months, for falsification of will documents, false swearing under oath, misappropriation of client funds, and mismanagement of trust accounts. D.P.'s claim that a psychological disability should be considered in mitigation of his misconduct was rejected by the Court.

D.P. petitioned for reinstatement as soon as the disciplinary order allowed. While the Court had rejected his psychological disability as mitigation, it ordered, as a condition for reinstatement, that D.P. show that he had overcome any psychological disability which would prevent him from competently and ethically practicing law. After hearing, the LPRB panel recommended against reinstatement. D.P. then mailed a letter to approximately 30 of his former clients, questioning the impartiality of the panel chair, and mischaracterizing his previously admitted misconduct. He also made a number of personal contacts with

the panel members, including a visit to one of their homes.

D.P.'s request for a second hearing before the panel was granted, but the panel again recommended that he not be readmitted. The panel found that his actions, in mailing the letter to his former clients and contact with the panel, demonstrated that he was not yet fit to practice law.

■ D.T. was disbarred, based on a conviction of two felony counts of conspiracy to distribute cocaine.

Five years after being disbarred, D.T. petitioned to be reinstated in South Dakota and Minnesota. South Dakota denied his petition, concerned that D.T. did not appreciate the gravity of his misconduct. D.T. then withdrew his petition in Minnesota. Two years later, he again petitioned in Minnesota. The Court reinstated him, noting that four and one-half years had passed since he was released from his criminal parole, seven and one-half years since the disbarment, and finding specifically that D.T. had made the necessary showing to be allowed the opportunity to again practice law. The director of the chemical dependency center he attended testified not only to D.T.'s drug and alcohol rehabilitation, but also to his efforts as an advocate for prevention and early treatment of chemical dependency problems. Even the attorney general who had prosecuted him in the criminal proceeding testified as to his cooperation and honesty.

REINSTATEMENT TRENDS

In recent years, reinstatement decisions have averaged only about five per year. This year that number is expected to go up substantially. Between January and September 1993, six reinstatement matters have been decided. An additional four to eight petitions will likely be decided by the end of the year.^{ftn6} Not everyone petitions to be reinstated as soon as the Court's disciplinary orders would allow. Forty-four attorneys suspended within the last five years are eligible to apply for reinstatement, but have not done so. Who can say why? But Rule 18 provides a second chance, if they decide to try again.

NOTES

1. In re: Porter 472 N.W.2d 137, 140 (Minn. 1991).

2. Since 1988, 36 attorneys have been eligible for reinstatement by affidavit. Twenty-nine were reinstated at or very shortly after the specified suspension period elapsed. Four were subsequently reinstated several months after they became eligible. Two committed additional misconduct which resulted in one case in a lengthy suspension and in the other disbarment.

3. While Rule 18 provides for the possibility of a referee hearing following a panel recommendation, no petitioner to date has requested the appointment of a referee.

4. In re: Porter 427 N.W.2d 654, 655-656 (Minn. 1991).

5. In re: Swanson 405 N.W.2d 892, 893 (Minn. 1987).

6. Since 1988, 30 suspended attorneys have sought reinstatement by the petition process. Eight were reinstated and placed on probation for a period of two to four years. Two were reinstated and placed on indefinite probation, requiring a further Court order to terminate the probation. Three were denied reinstatement by the Court. Seven withdrew their petitions following an adverse director's report or panel recommendation. The Court summarily dismissed as premature two petitions prior to investigation by the Director's Office. Eight petitions are pending. Three disbarred attorneys sought reinstatement during this time frame. Two were successful. The Court denied reinstatement to the third.