

After Suspension: A Look at the Process of Reinstatement

by

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The purpose of attorney discipline is to protect the public, the profession and the administration of justice. When attorneys commit serious misconduct individual members of the public who relied on that attorney may be harmed and/or public confidence in the profession and the administration of justice may be shaken.

In order to protect the public and restore public confidence, the court suspends the attorney's license to practice for a time and requires the attorney to undergo a reinstatement process. When an attorney is suspended, the attorney must notify all current clients, opposing counsel and courts of the suspension by sending them a copy of the court's order. Suspended attorneys must also file a proof of compliance affidavit with the Director's Office indicating any other jurisdictions in which they are licensed and an address at which they can be reached during the suspension. Rule 26, Rules on Lawyers Professional Responsibility (RLPR).

By affidavit

Suspended attorneys are not automatically reinstated to practice at the end of the designated length of their suspension. All reinstatements are by court order pursuant to Rule 18, RLPR. If the suspension is for a short time (a fixed period of 90 days or less), the attorney may be reinstated by filing an affidavit. The affidavit must indicate that he or she has complied with all of the preconditions set out in the court's suspension order, including compliance with Rule 26, RLPR, and payment of costs and disbursements imposed by Rule 24, RLPR.

Attorneys reinstated following a short suspension must pass the professional responsibility portion of the bar examination within one year of the court's suspension order. Short suspensions often involve tax-filing noncompliance, failure to pay law-related debts, and trust account record keeping problems. Reinstatement may be conditioned upon proof of correction of these issues.

Two weeks before the end of the period of suspension, the attorney may file the affidavit of compliance requesting an order for reinstatement. The Director's Office then files a responsive affidavit and proposed order regarding the attorney's compliance or lack of compliance. The court then promptly issues either a reinstatement order or an order denying reinstatement. If reinstatement is denied the court may order the matter to hearing under Rule 18(a)-(e).

By petition

For suspensions that are indefinite or for a period of more than 90 days (unless the court orders otherwise), the reinstatement process requires a petition, investigation and hearing before a Lawyers Board Panel which makes findings and a recommendation to the court. Reinstatement petitions are filed with the Clerk of Appellate Court and served on the Director's Office and the president of the state bar association. A \$300 filing fee must be paid to the Director's Office. The Director's Office publishes a notice in the Appellate

Courts Edition of *Minnesota Lawyer*, inviting members of the bar to comment on the appropriateness or inappropriateness of the reinstatement.

As a result of this notice, the Director's Office has received letters of support as well as letters opposing the reinstatement of various attorneys. An attorney in the Director's Office conducts a specific investigation into the conduct and character of the petitioning attorney. The inquiry focuses both on the attorney's present character (ability and willingness to conform conduct to the Rules of Professional Conduct) and fitness (mental health or chemical dependency issues, legal skills and competence, and plans for practice if reinstated).

At the hearing before a Lawyers Board Panel, the attorney has the burden to show by clear and convincing evidence that he/she has the present character and fitness to be returned to practice. The hearing is public. The panels are chaired by an attorney member of the Board and include at least one non-lawyer member of the Board.

If the petitioner or the Director disagrees with the panel's findings or recommendation, either may order a transcript and appeal the findings and/or recommendation to the Minnesota Supreme Court.[Ftn 1](#) The Supreme Court has original jurisdiction in all discipline and reinstatement proceedings. An appeal to the Supreme Court involves both briefing and oral argument.

During the last 10 years, more than 60 attorneys have petitioned for reinstatement. About 60 percent have been reinstated. Some attorneys withdrew their petitions during the investigation process. At least two attorneys initially denied reinstatement were reinstated following a second petition.

[1 Rule 18\(d\), RLPR, provides that the court may appoint a referee to conduct a hearing on the panel's findings and recommendation. Neither the Director nor any petitioner has ever requested a referee hearing in a reinstatement matter in more than 16 years.](#)