



## ATTACHMENT\*

### RULES OF THE SUPREME COURT

#### Rule 61. Interim Suspension by the Court

**(a) Grounds for Interim Suspension.** An interim suspension may be entered upon a showing of probable cause that a lawyer ~~appears to be misappropriating funds, engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice,~~ has been convicted of a misdemeanor involving a serious crime ~~or a felony~~, as defined in Rule 54(g), or is ~~subject to another ground stated in these rules~~ engaging in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice. An interim suspension shall be entered pursuant to paragraph (c)(1)(A) of this rule upon receipt by the presiding disciplinary judge of proof of a lawyer's conviction of a felony. For purposes of this rule, an undesignated class six felony is considered a misdemeanor conviction.

**(b) Period of Interim Suspension.** A lawyer may be suspended from the practice of law for an indeterminate interim period, ~~not in excess of five (5) years~~ pending further order of this court.

#### **(c) Procedure.**

1. ~~Upon Conviction of a Crime.~~ Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to the disciplinary clerk this court and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was entered; and (d) the date the judgment of conviction was entered.

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\* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

*A. Felony Conviction.* A lawyer shall be suspended after the disciplinary clerk's court's receipt of proof of the lawyer's conviction of a felony under either state or federal law, regardless of the pendency of post conviction motions or an appeal, unless within ten (10) days of the clerk's receipt of proof of the conviction the member files with the presiding disciplinary judge court a verified motion showing good cause why the suspension should not be entered. The presiding disciplinary judge court may permit the lawyer to present oral argument in support of the lawyer's motion and shall promptly grant or deny it. If the motion is denied, the lawyer shall be suspended as of the date the motion is denied. If the motion is granted, the lawyer shall not be suspended pending completion of a disciplinary proceeding based on such conviction.

*B. Serious Misdemeanor Conviction.* A lawyer convicted of a serious crime other than a felony may be suspended, upon motion of the state bar, pending final disposition of a disciplinary proceeding predicated upon the conviction. Within ten (10) days of the state bar filing a motion, respondent may file with the presiding disciplinary judge this court a verified response showing good cause why respondent should not be suspended. The presiding disciplinary judge court may permit respondent to present oral argument in support of the respondent's response and shall promptly grant or deny the motion. If the motion is granted, the lawyer shall be suspended as of the date of such order.

*C. Reinstatement.* If a lawyer suspended solely under the provisions of sections (A) or (B) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any proceeding then pending against the lawyer, the disposition of which shall be determined on the basis of the available evidence.

*2. All Other Grounds for Interim Suspension.* The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel report.

*A. Temporary Restraining Order.* ~~Upon verified application in or with the motion, or upon its own motion, the presiding disciplinary judge may issue an~~

~~order in the nature of a temporary restraining order, with such notice as the judge may prescribe, imposing temporary conditions of probation on the lawyer, or temporarily suspending the lawyer, or both. Any order issued under this provision shall become effective as ordered by the presiding disciplinary judge and remain in effect unless modified or dissolved, as necessary, after a hearing as prescribed in subpart D.~~

~~A. B. Service of Motion; Response on Respondent.~~ Upon filing of the motion, the presiding disciplinary judge shall issue an order requiring the state bar to serve the motion and the presiding disciplinary judge's order on respondent. ~~The motion and order shall be served,~~ within five (5) ~~seven (7)~~ days, ~~the motion and the presiding disciplinary judge's order upon respondent,~~ as appropriate under Rule 47(c), including service by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). ~~C. Response.~~ Respondent shall file a response to the motion within ten (10) days of service of the motion.

~~B. Hearing.~~ After receiving the response or after the time for filing a response has passed, the presiding disciplinary judge shall, within ten (10) days, ~~promptly rule on the motion or~~ conduct an evidentiary hearing, unless the parties have stipulated to the entry of an order of interim suspension. ~~D. Hearing.~~ If an evidentiary hearing is ordered, it shall be held within ten (10) days of the order. The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate. The presiding disciplinary judge is not bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice. Respondent shall have the right to present evidence, cross-examine witnesses, and be represented by counsel. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall issue and file a report and an order in this court containing findings of fact, conclusions of law and a recommendation. After receiving the presiding disciplinary judge's report, the court shall consider the matter and issue an order or decision forthwith.

C. Interim Probation. The presiding disciplinary judge may order interim probation terms in lieu of interim suspension. The state bar shall be responsible for monitoring the respondent's compliance with any order of interim probation entered under these rules. The state bar may seek relief

from material violations of the terms of probation by filing with the presiding disciplinary judge a motion supported by affidavit setting forth sufficient grounds. The state bar shall have the burden of proving by a preponderance of the evidence a material violation. The presiding disciplinary judge may hold a hearing promptly to determine whether a violation occurred, and whether the interim probation should be reaffirmed, modified, or revoked, or whether interim suspension should be imposed.

D. Status Review. After the entry of an order of interim suspension or interim probation, the state bar must expeditiously proceed with any related disciplinary investigation and proceeding. The presiding disciplinary judge may order any necessary measures, including but not limited to setting deadlines and holding regular status reviews, to ensure the state bar's compliance with this provision.

**(d) Effect of Order.** An order of interim suspension or interim probation decision on the motion shall be effective when entered unless otherwise specified ~~by the court~~, and shall continue in force until final disposition of all pending proceedings against the lawyer, unless vacated or modified. The disciplinary clerk of the court shall serve a copy of any resulting order entered in this court on the disciplinary clerk, the respondent, and the state bar. ~~An order of interim suspension shall preclude the lawyer from accepting any new cases but shall not preclude him or her from continuing to represent existing clients until the effective date of the order. Any fees tendered to the lawyer after the order issues but prior to its effective date shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the court.~~ Any order that restricts a lawyer maintaining a trust account shall, when served on any bank maintaining an account against which the lawyer may make withdrawals, serve as an injunction to prevent the bank from making further payment from the account or accounts on any obligation except in accordance with restrictions imposed ~~by the court~~. Unless otherwise specified by the presiding disciplinary judge court, the provisions of Rule 72 relating to suspended lawyers shall apply.

**(e) Review by the Court.** Either party may seek review of the presiding disciplinary judge's decision.

1. Appeal. Within five (5) days after service of a report and order of the presiding disciplinary judge, respondent or the state bar may appeal by filing an opening brief with the disciplinary clerk. An answering brief may be filed with the disciplinary clerk no later than five (5) days after service of the opening brief. Briefs shall conform to the requirements of ARCAP 6(c). Briefs shall not exceed

ten (10) pages and shall not be bound. The content of the briefs shall conform to ARCAP 13. After the time for filing the appellate briefs has expired, the disciplinary clerk shall transmit the entire record, including any transcripts and the parties' briefs, to the clerk of the court.

2. *Stay Pending Appeal.* Within five (5) days after service of a report and order of the presiding disciplinary judge, a respondent may seek a stay of the decision by filing an application for stay with the disciplinary clerk, along with the opening brief on appeal. The state bar may file a response with the disciplinary clerk, along with the answering brief on appeal, within five (5) days after service of the application for stay. The disciplinary clerk shall transmit the application for stay with the record as set forth in paragraph (e)(1) to the clerk of the court. The court shall promptly rule on the application for stay, which shall not be granted unless good cause is shown.

3. *Standard of Review.* The court shall review questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

4. *Form of Decision.* The court may resolve any matter before it by opinion, memorandum decision, or order, as the court may determine in its discretion.