

Rule 234

TRANSFER TO DISABLED STATUS

- (a) **Definition.** In this rule, “disabled” means unable to continue the practice of law due to a mental or physical limitation.
- (b) **Examination.** The disciplinary administrator may file with the Supreme Court a motion for an order requiring an attorney to submit to examination by a physician, psychologist, or other treatment professional. The attorney may file a response within 14 days.
 - (1) **Consent.** By registering as an active attorney under Rule 206, an attorney consents to submit to examination by a physician, psychologist, or other treatment professional when ordered to do so by the Supreme Court and to waive all objections to the admissibility of the examination report.
 - (2) **Submission.** If the Supreme Court grants the motion, the attorney must submit to examination by a physician, psychologist, or other treatment professional designated by the court to determine whether the attorney is disabled.
 - (3) **Costs of Examination.** The costs of examination may be paid from the disciplinary fee fund. If a disciplinary proceeding is pending, the costs may be charged as costs of the action.
 - (4) **Refusal to Submit to Examination.** If the attorney refuses to submit to examination when required under subsection (b)(2) or fails to appear for a scheduled appointment for an examination, the Supreme Court will issue an order temporarily suspending the attorney’s license to practice law.
 - (5) **Reinstatement.** If the Supreme Court temporarily suspends the attorney’s license to practice law under subsection (b)(4), the attorney may petition for reinstatement under Rule 232. The petition for reinstatement must show the following:
 - (A) the attorney has completed examination by the physician, psychologist, or other treatment professional; and
 - (B) the attorney is no longer disabled and is eligible for reinstatement to the practice of law.
- (c) **Automatic Transfer.**
 - (1) **District Court Clerk’s Duty.** When a court has entered an order declaring an attorney to be incapacitated or subject to involuntary civil commitment, the clerk of the district court must send a certified copy of the order to the disciplinary administrator.
 - (2) **Disciplinary Administrator’s Duty.** When the disciplinary administrator receives a certified copy of an order declaring an attorney to be incapacitated or subject to involuntary civil

commitment, the disciplinary administrator must notify the Supreme Court that the attorney should be transferred to disabled status.

- (3) **Supreme Court Action.** The Supreme Court will automatically transfer the attorney to disabled status without a hearing when the court receives notification from the disciplinary administrator under subsection (c)(2).
- (d) **When Docketed Complaint Not Pending.** When no docketed complaint is pending against an attorney and the attorney serves the disciplinary administrator with a copy of evidence that establishes the attorney is disabled, the attorney may register as a disabled attorney under Rule 206(b)(1).
- (e) **When Docketed Complaint Pending.**
 - (1) **Voluntary Transfer.** When an investigation of a docketed complaint is pending, the respondent may request transfer to disabled status. The following provisions apply.
 - (A) **Respondent's Duties.** The respondent must cease practicing law and serve the disciplinary administrator with a copy of evidence that establishes the respondent is disabled.
 - (B) **Motion and Response.**
 - (i) The respondent may file with the Supreme Court a motion requesting transfer to disabled status. The disciplinary administrator must file with the Supreme Court a response no later than 14 days after service of the motion.
 - (ii) Upon the respondent's request, the disciplinary administrator may file a motion with the Supreme Court to transfer the respondent to disabled status. The respondent may file with the Supreme Court a response no later than 14 days after service of the motion.
 - (2) **Involuntary Transfer.** When an investigation of a docketed complaint is pending, the Supreme Court may involuntarily transfer the respondent to disabled status. The following provisions apply.
 - (A) **Motion and Response.** The disciplinary administrator may file with the Supreme Court a motion to transfer the respondent to disabled status. The respondent may file with the Supreme Court a response no later than 14 days after service of the motion.
 - (B) **Burden of Proof.** The disciplinary administrator must establish by clear and convincing evidence that the respondent is disabled.

- (C) **Appointment of Counsel.** The Supreme Court may appoint counsel to represent the respondent. The costs of appointed counsel may be paid from the disciplinary fee fund and charged as costs of the action.
- (D) **Report of Examination and Other Evidence.**
 - (i) The disciplinary administrator must file with the Supreme Court and serve the attorney with the report of any examination under subsection (b) and any other evidence regarding whether the attorney is disabled.
 - (ii) No later than 30 days after the disciplinary administrator files the report and any other evidence, the attorney may file with the Supreme Court and serve the disciplinary administrator with additional evidence regarding whether the attorney is disabled.
- (E) **Transfer.** If the Supreme Court determines based on the record that the attorney is disabled, the court will issue an order transferring the attorney to disabled status.
- (f) **Service.** When the Supreme Court transfers an attorney to disabled status, the clerk of the appellate courts will serve a copy of the order on the following individuals:
 - (1) the attorney;
 - (2) the director of any institution where the attorney is committed as described in subsection (c)(1);
 - (3) the disciplinary administrator; and
 - (4) the administrative judge in the judicial district where the attorney's office is located, according to the attorney's most recent registration address with the Office of Judicial Administration.
- (g) **Practice of Law.** An attorney transferred to disabled status may not engage in the practice of law until the Supreme Court reinstates the attorney to active status.
- (h) **Reinstatement.** An attorney on disabled status may file a petition for reinstatement with the Supreme Court when the attorney is no longer disabled. The following provisions apply regardless of whether the attorney registered as disabled under Rule 206(b)(1) or whether the attorney's status changed through an automatic, a voluntary, or an involuntary transfer under this rule.
 - (1) **Waiver of Privilege.** By filing a petition for reinstatement, the attorney waives any privilege applicable to treatment received while the attorney was on disabled status.
 - (2) **No Fee Required.** The attorney is not required to pay the reinstatement fee required by Rule 232(b)(2)(A).
 - (3) **Evidence.** The attorney must attach to the petition evidence that the attorney is no longer disabled.

- (4) **Investigation.** If the Supreme Court determines from the petition and the evidence that there is probable cause to believe the attorney is no longer disabled, the Supreme Court will direct the disciplinary administrator to investigate the attorney's petition.
- (A) **Examination.** During the investigation of the petition, the disciplinary administrator may direct the attorney to submit to examination by a physician, psychologist, or other treatment professional. The costs of examination may be paid from the disciplinary fee fund and charged as costs of the action.
- (B) **Attorney's Duties.** The attorney must cooperate in the following ways with the disciplinary administrator's investigation:
- (i) timely respond to requests for information;
 - (ii) submit to examination by a physician, psychologist, or other treatment professional on direction of the disciplinary administrator;
 - (iii) disclose the name of every physician, psychologist, treatment professional, institution, hospital, or facility that examined the attorney or provided treatment to the attorney while the attorney was on disabled status;
 - (iv) consent in writing to allow the disciplinary administrator to obtain information and records regarding any examination or treatment of the attorney while the attorney was on disabled status; and
 - (v) comply with other requests made by the disciplinary administrator.
- (5) **Disciplinary Administrator's Recommendation.** When the investigation is complete, the disciplinary administrator must determine whether the attorney has established by clear and convincing evidence that the attorney is no longer disabled.
- (A) If the disciplinary administrator determines the attorney is no longer disabled, the disciplinary administrator will recommend that the Supreme Court grant the petition for reinstatement.
- (B) If the disciplinary administrator determines the attorney has not established that the attorney is no longer disabled, the disciplinary administrator will recommend to the Supreme Court that the petition be set for hearing before a hearing panel.
- (6) **Supreme Court.**
- (A) If the disciplinary administrator recommends that the Supreme Court grant the petition, the court will reinstate the

- attorney without further proceedings, subject to any condition or limitation imposed under subsection (h)(10).
- (B) If the disciplinary administrator recommends that the petition be set for hearing before a hearing panel, the Supreme Court may do one of the following:
 - (i) reinstate the attorney without further proceedings, subject to any condition or limitation imposed under subsection (h)(10); or
 - (ii) direct the Board chair to appoint a hearing panel to conduct a hearing on the petition.
- (7) **Hearing Procedure.**
- (A) **Hearing.** The hearing panel will schedule the reinstatement hearing.
 - (B) **Burden of Proof.** To be reinstated to the active practice of law, an attorney must establish by clear and convincing evidence that the attorney is no longer disabled.
- (8) **Reinstatement Final Hearing Report.**
- (A) **Contents.** Following a hearing on the petition, the hearing panel will issue a reinstatement final hearing report setting forth findings of fact, conclusions of law, and a recommendation regarding whether the attorney should be reinstated to the active practice of law.
 - (i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.
 - (ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.
 - (iii) **Recommendation Regarding Reinstatement.** The hearing panel's recommendation regarding reinstatement is advisory only.
 - (B) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, or the recommendation regarding reinstatement, the panel member's concurring or dissenting opinion will be included in the reinstatement final hearing report.
 - (C) **Distribution.** After the hearing panel issues the reinstatement final hearing report, the panel will serve the disciplinary administrator and the attorney with a copy of the report.
- (9) **Procedure Following Distribution.**
- (A) **Case Docketed with Supreme Court.** On service of the reinstatement final hearing report, the disciplinary administrator must complete the following:

- (i) file the petition for reinstatement, response, and reinstatement final hearing report with the Supreme Court; and
 - (ii) submit the record and table of contents as directed by the clerk of the appellate courts.
- (B) **Record.** The record in a reinstatement case must be filed under seal and include the following:
- (i) the petition for reinstatement, each filing by the attorney and the disciplinary administrator in the reinstatement action, any order issued by the hearing panel, and the reinstatement final hearing report issued by the panel;
 - (ii) the transcript of the reinstatement hearing and any deposition;
 - (iii) the attorney's exhibits offered for admission into evidence; and
 - (iv) the disciplinary administrator's exhibits offered for admission into evidence.
- (C) **Reinstatement Recommended.** If the hearing panel recommends granting the petition for reinstatement, the matter is submitted for the Supreme Court's consideration.
- (D) **Reinstatement Not Recommended.**
- (i) If the hearing panel recommends denying the petition for reinstatement, the attorney may file with the Supreme Court an exception to a finding of fact or conclusion of law no later than 21 days after service of a copy of the reinstatement final hearing report.
 - (ii) If the attorney files an exception, the attorney must serve the disciplinary administrator with a copy of the exception.
 - (iii) On filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration.
 - (iv) Briefs and oral arguments are not permitted unless requested by the Supreme Court.
- (10) **Condition for Reinstatement; Limitation on Practice.** If the Supreme Court grants the petition for reinstatement, the court may order the attorney to comply with any condition or limitation on the attorney's practice. The court may also order that the attorney's practice be supervised for a period of time.
- (11) **Reinstatement Denied.** If the Supreme Court denies the petition for reinstatement, the attorney may not file another petition

for reinstatement until one year after the date of the order denying the petition or as otherwise directed by the court.

(i) **Board Proceedings.**

- (1) When the Supreme Court transfers an attorney to disabled status or temporarily suspends an attorney's license to practice law under subsection (b)(4), a pending disciplinary board proceeding against the attorney will be stayed. But the disciplinary administrator may direct the investigator to complete a pending investigation to preserve evidence.
- (2) When the Supreme Court reinstates an attorney from disabled status, a disciplinary board proceeding that was pending at the time of the transfer will resume.

[History: New rule adopted effective January 1, 2021; [Am. effective November 29, 2021.](#)]