

## Rule 64 and 65 Reinstatement

### Rule 64. Reinstatement Eligibility

**(a) General Standard.** Except as provided in paragraph (e)(2) of this rule, in order to be reinstated to the active practice of law, a suspended or disbarred lawyer or a lawyer on disability inactive status must show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. However, the requirements for reinstatement after summary suspension are as stated in paragraph (f) of this rule.

**(b) Presumptive Disqualification.** There shall be a presumption, rebuttable by clear and convincing evidence presented at the hearing, that a lawyer who has been convicted of a misdemeanor involving a serious crime or of any felony shall be disqualified for reinstatement. "Serious crime" includes any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or moral turpitude, including a conspiracy, a solicitation of another, or any attempt to commit a serious crime.

**(c) Additional Requirements.** If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required, unless the applicant meets the criteria to apply for reinstatement pursuant to paragraph (f)(1)(B) of this rule. An applicant subject to the additional requirements under this paragraph shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement.

**(d) Reinstatement After Disbarment.** A lawyer who has been disbarred may apply for reinstatement, as set forth in [Rule 65](#), not sooner than ninety (90) days prior to the fifth anniversary of the effective date of the disbarment, but may not be reinstated until after the fifth anniversary of the effective date of the disbarment.

**(e) Reinstatement After Suspension by the Presiding Disciplinary Judge, the Hearing Panel, or the Court.**

1. *Six Months or More.* A lawyer who has been suspended for more than six (6) months may apply for reinstatement, as set forth in [Rule 65](#), no sooner than ninety (90) days prior to the expiration of the period of suspension set forth in the judgment, but may not be reinstated until the full period of suspension has been served.

2. *Six Months or Less.*

A. *Affidavit.* A lawyer who has been suspended for six (6) months or less may apply for reinstatement no sooner than ten (10) days before the expiration of the period of suspension by filing with the disciplinary clerk and by serving upon the state bar an affidavit for reinstatement. The affidavit shall include an avowal that the lawyer has fully complied with the requirements of the suspension judgment or order, and has paid all required fees, costs and expenses. The lawyer need not show proof of rehabilitation. If an affidavit is not filed within one hundred eighty (180) days after expiration of the period of suspension the reinstatement procedure set forth in [Rule 65](#) shall apply.

B. Opposition. Within ten (10) days of service of the affidavit, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the affidavit. If an opposition is filed, the matter shall be submitted to the presiding disciplinary judge for review and the member may not resume the practice of law until reinstated by order of the presiding disciplinary judge. If no timely opposition is filed, the state bar shall be deemed to consent to reinstatement, and the member may resume the practice of law upon order of the presiding disciplinary judge.

3. Suspended members shall remain suspended until an order is entered by the presiding disciplinary judge or the court reinstating the member to the active practice of law. This provision shall not apply to members who are summarily suspended by the board pursuant to [Rule 62](#) of these rules and have filed their application for reinstatement within two years from the effective date of the suspension or otherwise qualify for reinstatement pursuant to paragraph (f)(1)(B) of this rule.

**(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement.**

*1. Reinstatement After Summary Suspension.*

A. Within Two (2) Years. The application of a member summarily suspended shall be filed with the board within two years from the effective date of the suspension on a form approved and provided by the court and be accompanied by:

- (i) proof of cure of the grounds upon which the suspension order was entered;
- (ii) payment equal to the amount of fees, assessments, and administrative costs, if any, the applicant would have been required to pay had the applicant remained an active member to the date of the application, plus the reinstatement fee and any applicable delinquency or late fees; and
- (iii) proof of completion of any hours of continuing legal education activity required had the applicant remained an active member to the date of the application.

Upon verification of compliance, the board shall enter an order of reinstatement.

B. After Two (2) Years. If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in [Rule 65](#) of these rules shall apply.

(i) If the suspension is based solely on failure to pay annual dues and/or failure to maintain required MCLE, the applicant need not demonstrate rehabilitation; the applicant need only prove compliance with all rules, fitness to practice, and competence under [Rule 65\(b\)\(2\)](#).

(ii) An applicant without earlier discipline of suspension or disbarment must file a [Rule 65\(a\)](#) compliant application and pay all required fees and payments required under [Rule 65\(a\)\(3\)](#).

a. If such an applicant seeks reinstatement due to resignation in good standing or failure to pay annual dues and/or failure to maintain required MCLE, that applicant may enter an agreement for reinstatement with the State Bar without having to comply with [Rule 65\(b\)\(1\) and \(3\)](#).

1. The State Bar must complete its investigation and support reinstatement before the parties enter the signed written reinstatement agreement.

2. The agreement must contain stipulated conclusions of law that applicant is fit to practice law, competent, has complied with all discipline rules, met all requirements for reinstatement to the practice of law, and is qualified to be reinstated as an active member of the State Bar of Arizona. Such conclusions must be supported by a stipulation of facts and exhibits.

- b. Within thirty (30) days, the presiding disciplinary judge must file a decision with the disciplinary clerk and serve a copy on the parties. The presiding disciplinary judge must accept, reject, or recommend modification of the proposed agreement. The decision must incorporate all or portions of the agreement.

1. If the agreement is accepted, the presiding disciplinary judge must enter an order of reinstatement.

2. If a modification is recommended, the presiding disciplinary judge must state the nature and substance of the proposed modifications and give the parties thirty (30) days to accept any proposed modification or file a modified agreement for consideration.

3. If the parties fail to accept any proposed modification or file a modified agreement, the application must be set for hearing before a hearing panel.

4. If the agreement is rejected, the presiding disciplinary judge must state the reasons for rejection, and the application will be set for hearing before a hearing panel.

(iii) Notwithstanding these provisions a suspended member may apply for reinstatement under the provisions of paragraph (f)(1)(A) as set forth above by submitting proof that the suspended member:

- a. is admitted to practice in another jurisdiction;

- b. has actively practiced in that jurisdiction during the entirety of the summary suspension period;

- c. has not had a disciplinary sanction imposed and has been a member in good standing in that jurisdiction during the entirety of the summary suspension period; and

- d. has complied with all other application requirements set forth in paragraph (f)(1)(A) above.

Upon verification of compliance, the board shall enter an order of reinstatement.

2. *Resignation in Lieu of Reinstatement.* Notwithstanding the provisions of [Rule 32\(c\)\(11\)](#) of these rules, a member who has been summarily suspended by the board may resign from membership, in lieu of seeking reinstatement. Such a resignation shall become effective when filed in the office of the Records Manager of the state bar, accepted by the board, and approved by the presiding disciplinary judge. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member. After the resignation is approved by the presiding disciplinary judge, such person shall not represent to any other jurisdiction that such person resigned while in good standing. Such a resignation shall not be a bar to the institution of subsequent discipline proceedings for any conduct of the resigned person occurring prior to the resignation. In the event such resigned person thereafter is disbarred, suspended or reprimanded, the resigned person's status shall be changed from "resigned person" to that of a person so disciplined. A summarily suspended member who resigned in lieu of seeking reinstatement shall not be eligible for reinstatement, but may be readmitted to membership through the application procedures set forth in [Rule 34](#) of these rules.

## **Rule 65. Reinstatement; Application and Proceedings**

**(a) Application for Reinstatement.** Except as may otherwise be provided in [Rules 63\(g\)](#) and [64](#), a lawyer may be reinstated to active membership only as provided in this rule.

1. *Application.* The lawyer shall file with the disciplinary clerk an application for reinstatement, which shall be verified by the lawyer and accompanied by the appropriate fees and proofs of payment required by paragraph (a)(3) of this rule. The lawyer shall serve the state bar with a copy of the application. The lawyer shall file with the application for reinstatement a written release or authorization for the state bar to obtain documents or information in the possession of any third party, including a physician, psychologist or psychiatrist. The application shall require the lawyer to provide information concerning the period of time between the date of disbarment, suspension, or transfer to disability inactive status, and the date of filing the application. The required information shall include, but is not limited to, the following:

A. name, age, residence and address of the lawyer;

B. the offense or misconduct upon which the disbarment or suspension was based, together with the date of disbarment or suspension;

C. the names and addresses of all complaining witnesses in discipline proceedings that resulted in disbarment or suspension, and the name of the hearing officer or presiding disciplinary judge before whom the discipline proceedings were heard, or of the trial judge, complaining witness and prosecuting attorney, if discipline was based upon conviction of a felony or serious misdemeanor;

D. a detailed description of lawyer's occupation during the period of rehabilitation, with names and addresses of all partners, associates in business and employers, if any, and dates and duration of all such relations and employment;

E. a statement showing the approximate monthly earnings and other income of the lawyer, and the sources from which all such earnings and income were derived for the period of rehabilitation;

F. a statement showing all residences maintained during such period, with the names and addresses of landlords, if any;

G. a statement showing all financial obligations of applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors;

H. a statement covering the period of rehabilitation showing the dates, general nature and final disposition of every civil action in which the lawyer was either a plaintiff or defendant or in which the lawyer had or claimed an interest, together with the dates of filing pleadings, titles of courts and actions, and the names and addresses of parties, attorneys for such parties, the trial judge or judges, and of all witnesses who testified in the action or actions;

I. a statement covering the period of rehabilitation showing dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of lawyer for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges;

J. a statement showing whether or not any applications were made during the period of rehabilitation for a license requiring proof of good character for its procurement, and as to each such application, the dates, the name and address of the authority to whom it was addressed and the disposition thereof;

K. a statement covering the period of rehabilitation setting forth any procedure or inquiry concerning lawyer's standing as a member of any profession or organization, or holder of any license or office, which involved the reprimand, removal, suspension, revocation of license or discipline of the lawyer and, as to each, the dates, facts and disposition thereof, and the name and address of the authority in possession of the record thereof;

L. a statement of any charges of fraud made or claimed against the lawyer during the period of rehabilitation, whether formal or informal, together with the dates, names and addresses of persons making such charges;

M. a concise statement of facts claimed to support readmission to the state bar, including facts showing the lawyer's rehabilitation; and

N. if the lawyer has been on disability status, a statement setting forth the status of pending discipline matters, if any.

2. *Documentation Supporting Application.* In addition to the application, the lawyer shall submit:

A. copies of the judgment of conviction, findings and judgment of the trial court and opinions of the appellate courts, or findings and recommendations of the hearing officer, the Disciplinary Commission, the presiding disciplinary judge, or the hearing panel, and decision, judgment or order of this court, as appropriate, upon which the lawyer was suspended or disbarred;

B. copies of all prior applications for reinstatement filed on the lawyer's behalf, including all findings, decisions or orders entered;

C. copies of state and federal income tax returns from the period of disbarment, suspension, or disability; and

D. further information as requested by the presiding disciplinary judge or hearing panel.

3. *Required Fees and Payments.*

A. *Application Fee.* As a prerequisite to filing and before investigation of the application, every applicant for reinstatement shall pay to the records manager of the state bar an application fee, as set by the court, along with the state bar's estimate of the costs of its investigation and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, or the court. If the lawyer's payment is less than the actual cost of investigation and subsequent proceedings, the lawyer shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly refunded to the lawyer at the conclusion of the proceedings. Any subsequent costs or expenses incurred shall be paid before the lawyer is reinstated by the court.

B. *Costs and Expenses of Disciplinary Proceedings.* Prior to filing the application, the applicant shall pay all outstanding costs and expenses of any disciplinary proceeding. Verification of such payment in the form of an affidavit from the records manager of the state bar must accompany the application.

C. *Amounts Owed to Client Security Fund.* Prior to filing the application, the applicant shall also pay any sums owing by the lawyer to the client security fund due to prior discipline, disability or reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.

D. Membership Fees and Other Charges. No reinstatement shall become effective until membership fees and other charges accruing after the application for reinstatement has been granted have been paid.

4. *Successive Applications*. No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement.

5. *Withdrawal of Application*. An applicant may withdraw an application any time before the filing of the hearing panel's report.

**(b) Reinstatement Proceedings.**

1. *Hearing*.

A. Notice of Hearing; Continuance. The hearing panel shall hold a hearing within one hundred fifty (150) days of the filing of the application and the disciplinary clerk shall notify the parties of the time and date thereof. Upon request of a party or the hearing panel, for good cause shown, the presiding disciplinary judge may continue the hearing.

B. Rules Governing Hearing. The hearing shall proceed in accordance with the rules governing discipline proceedings.

C. Duty of Bar Counsel. At the conclusion of the hearing, bar counsel shall provide the hearing panel with a recommendation as to whether or not the lawyer should be reinstated.

2. *Burden of Proof*. The lawyer requesting reinstatement shall have the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence.

3. *Hearing Panel's Report*. Within thirty (30) days after completion of the hearing or receipt of the certified transcript, whichever is later, the hearing panel shall file a report with the court containing findings of fact and a recommendation concerning reinstatement, together with the record of the proceedings. The disciplinary clerk shall serve a copy of the report on the parties.

4. *Court Review*. The court shall promptly review the report of the hearing panel. The court may request additional briefing by the parties and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be dismissed. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, subject to any conditions deemed necessary.