

Rule 1-591. Reinstatement following a suspension of more than six months; relicensure.

(a) **Generally.** A Respondent suspended for more than six months or a delicensed Respondent may be reinstated or relicensed only upon the district court's order. No Respondent may petition for reinstatement until three months before the period for suspension has expired. No Respondent may petition for reinstatement until five years after the effective date of delicensure. A Respondent who has been placed on interim suspension and is then delicensed for the same misconduct that was the ground for the interim suspension may petition for reinstatement or relicensure at the expiration of five years from the effective date of the interim suspension.

(b) **Petition.** A petition for reinstatement or relicensure must be verified, filed with the district court, and must specify with particularity the manner in which the Respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or relicensure. With specific reference to paragraph (e)(4), before filing a petition for relicensure, the Respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the Respondent must satisfy all other requirements as set forth in Chapter 14, Article 7. Before or as part of the Respondent's petition, the Respondent may request to modify or abate conditions of discipline, reinstatement, or relicensure.

(c) **Serving the petition.** The Respondent must serve the OPC with a copy of the petition.

(d) **Publishing notice of petition.** When a Respondent files and serves a petition for reinstatement or relicensure, the OPC must:

(1) publish a notice of the petition in the Utah Bar Journal, which:

(A) informs Bar members of the application for reinstatement or relicensure, and

(B) requests that any individuals file notice of their opposition or concurrence with the district court within 28 days of the date of publication; and

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29 (2) send a notice to the Complainant's last known address according to OPC records,
30 to each Complainant in the disciplinary proceeding that led to the Respondent's
31 suspension or delicensure informing such Complainant that:

32 (A) the Respondent is applying for reinstatement or relicensure, and

33 (B) the Complainant has 28 days from the ~~mailing~~service date to object to or
34 support the Respondent's petition.

35 (e) **Criteria for reinstatement and relicensure.** A Respondent may be reinstated or
36 relicensed only if the Respondent meets each of the following criteria, or, if not, presents
37 good and sufficient reason why the Respondent should nevertheless be reinstated or
38 relicensed.

39 (1) The Respondent has fully complied with the terms and conditions of all prior
40 disciplinary orders except to the extent such orders are abated by the district court.

41 (2) The Respondent has not engaged nor attempted to engage in the unauthorized
42 practice of law during the period of suspension or delicensure.

43 (3) If the Respondent was suffering from a physical or mental disability or impairment
44 which was a causative factor of the Respondent's misconduct, including substance
45 abuse, the disability or impairment has been removed. Where substance abuse was a
46 causative factor in the Respondent's misconduct, the Respondent may not be
47 reinstated or relicensed unless the Respondent:

48 (A) has recovered from the substance abuse as demonstrated by a meaningful and
49 sustained period of successful rehabilitation;

50 (B) has abstained from the use of the abused substance and the unlawful use of
51 controlled substances for the preceding six months; and

(C) is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(4) Notwithstanding the conduct for which the Respondent was disciplined, the Respondent has the requisite honesty, integrity, and fitness to practice law. In relicensure cases, the Respondent must appear before the Bar's Character and Fitness Committee and cooperate in its investigation of the Respondent. A copy of the Character and Fitness Committee's report and recommendation will be provided to the OPC and forwarded to the district court assigned to the petition after the Respondent files a petition.

(A) Factors considered in determining honesty, integrity, and fitness for reinstatement or relicensure. The [district](#) court must determine whether the Lawyer seeking reinstatement or relicensure has demonstrated the requisite honesty, integrity, and fitness to practice law. The court may consider the Respondent's actions taken during the suspension or delicensure including:

(i) lack of candor;

(ii) unlawful conduct;

(iii) false or misleading statements or omissions;

(iv) acts involving dishonesty, fraud, deceit, or misrepresentation;

(v) abuse of the legal process;

(vi) neglecting financial responsibilities;

(vii) violating court order;

(viii) evidence of mental or emotional instability; and

(ix) evidence of drug or alcohol dependency;

(B) Assigning weight and significance to conduct. In determining honesty, integrity, and fitness to practice law, the court may use the following factors to assign weight and significance to prior conduct:

- (i) how recently^{ly} the conduct occurred;
- (ii) seriousness of the conduct;
- (iii) cumulative effect of the conduct;
- (iv) evidence of rehabilitation; and
- (v) positive social contributions while suspended.

(5) The Respondent has kept informed about recent developments in the law by engaging in legal education and is competent to practice.

(6) In cases of suspensions for one year or more, a Respondent lawyer will be required to retake and pass the Multistate Professional Responsibility Examination, and a Respondent licensed paralegal practitioners^s must pass the Licensed Paralegal Practitioner Professional Responsibility Exam.

(7) In all cases of delicensure, a Respondent lawyer will be required to pass the student applicant Bar Examination and the Multistate Professional Responsibility Examination, and a Respondent licensed paralegal practitioners^s must pass the student applicant Licensed Paralegal Practitioner Licensing Exam.

(8) The Respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection or Licensed Paralegal Practitioners' Fund for Client Protection for any amounts paid on account of the Respondent's conduct.

(f) **Review of petition.** Within 60 days of ~~receiving~~^{service of} a Respondent's petition for reinstatement or relicensure, the OPC must either:

- (1) advise the Respondent and district court that the OPC will not object to the Respondent's reinstatement or relicensure; or

(2) object in writing to the petition.

(g) **Hearing; report.** If the OPC objects, the district court, as soon as reasonably practicable and within a target date of 90 days of the ~~filing~~ service of the petition, will conduct a hearing at which the Respondent will have the burden of demonstrating by a preponderance of the evidence that the Respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the Respondent should nevertheless be reinstated or relicensed. The district court will enter its findings and order. If the OPC does not object, the district court will review the petition without a hearing and enter its findings and order.

(h) **Successive petitions.** Unless the district court orders otherwise, no Respondent may apply for reinstatement or relicensure within one year following an adverse judgment upon a petition for reinstatement or relicensure.

(i) **Conditions of reinstatement or relicensure.** The district court may impose conditions on a Respondent's reinstatement or relicensure if the Respondent has met the burden of proof justifying reinstatement or relicensure, but the district court reasonably believes that further precautions should be taken to ensure that the public will be protected when the Respondent returns to practice.

(j) **Reciprocal reinstatement or relicensure.** If a Respondent has been suspended or delicensed solely because of discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the Respondent is later reinstated or relicensed by that court, jurisdiction or regulatory body, the Respondent may petition for reciprocal reinstatement or relicensure in Utah. The Respondent must file with the district court and serve the OPC with a petition for reciprocal reinstatement or relicensure. The petition must include a certified or otherwise authenticated copy of the order of reinstatement or relicensure from the other court, jurisdiction, or regulatory body. Within 21 days of receiving the petition, the OPC may object based solely on substantial procedural irregularities. If the OPC objects, the district court will hold a

127 hearing and enter its findings and order. If no objection is filed, the district court will
128 enter its order based on the petition.