

Rule Change 2006 (20)

COLORADO RULES OF CIVIL PROCEDURE

CHAPTER 19

UNAUTHORIZED PRACTICE OF LAW RULES

RULE 232.5. Investigation; Procedure; Subpoenas

(a) through (c) [No Change]

(d) (1) and (2) [No Change]

(3) enter into an informal disposition with the respondent consisting of a written agreement by the respondent to refrain from the conduct in question, to refund any fees collected, to make restitution, and/or to pay a fine that may range from \$100 to \$250 per incident; such informal dispositions are to be encouraged;

Deleted: and

Deleted: ;

(4) and (5) [No Change]

(f) through (i) [No Change]

RULE 234. Civil Injunction Proceedings; General

(a) [No Change]

(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, a fine, and assessment of costs of the proceeding.

(c) through (f) [No Change]

**RULE 236. Civil Injunction Proceedings;
Report of Hearing Master; Objections**

(a) After the hearing, the hearing master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact, conclusions of law, and recommendations for final disposition of the case. If the hearing master makes a finding of unauthorized practice of law in the report, then the hearing master shall also recommend that a fine be imposed for each incident of unauthorized practice of law; the minimum fine for each incident shall be not less than \$250 and not more than \$1000. A report from the Presiding Disciplinary Judge approving the parties' stipulation to

injunction, may be exempt from a fine. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof to all parties.

(b) through (f) [No Change]

RULE 238. Contempt Proceedings; General

(a) and (b) (No Change]

(c) Upon the filing of a petition, the Supreme Court may issue a citation directing the respondent to show cause why he should not be held in contempt of the Supreme Court for the unauthorized practice of law, or the Supreme Court may, in the alternative, issue a show cause order in civil injunctive proceedings which shall be governed by Rules 234 to 237. If a citation is issued, the citation shall state that a fine of not less than \$2000 per incident or imprisonment may be imposed to vindicate the dignity of the Supreme Court.

(d) through (i) (No Change]

RULE 239. Contempt Determination by Court Proceedings; Report of Hearing Master; Objections

(a) After the conclusion of the hearing, the hearing master shall report in writing to the Supreme Court, setting forth the hearing master's findings of fact, conclusions of law, and, upon a finding of contempt, recommendations for punishment. If the matter proceeds to trial and the hearing master makes a finding of contempt but does not recommend imprisonment, then the hearing master shall recommend that a fine be imposed for each incident of contempt; the minimum fine for each incident shall be not less than \$2000 and not more than \$5000. Promptly after the report is filed with the Supreme Court, the Clerk of the Supreme Court shall mail copies thereof to the parties.

(b) through (h) [No Change]

RULE 240.2. Expunction of Records

(a) Expunction – Self-Executing. Except for records relating to proceedings that have 1) become public pursuant to C.R.C.P. 234, et seq., 2) resulted in a finding of unauthorized practice of law, or 3) resulted in agreements, all records relating to proceedings that were dismissed without a finding of unauthorized practice of law shall be expunged from the files of the committee, the Presiding Disciplinary Judge, and Regulation

Counsel three years after the end of the year in which the dismissal occurred.

(b) Definition. The terms "expunge" and "expunction" shall mean the destruction of all records or other evidence of any type, including but not limited to, the request for investigation, the response, the investigator's notes, and the report of investigation.

(c) Notice to Respondent. If proceedings conducted pursuant to these Rules (or their predecessor) were commenced, the attorney in question shall be given prompt notice of the expunction.

(d) Effect of Expunction. After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which have been expunged, the committee or the Regulation Counsel shall respond by stating that no record of the proceedings exists. The respondent in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The respondent in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed with no finding of unauthorized practice of law and that the record of the proceeding was expunged pursuant to this Rule. After a response is provided and is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged needs be made.

(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the respondent in question and opportunity to such respondent to be heard, the Regulation Counsel may request that records which would otherwise be expunged under this Rule be retained for such additional period of time, not to exceed three years, as the committee deems appropriate. The Regulation Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

Amended and Adopted by the Court, En Banc, December 14, 2006,
effective January 1, 2007.

BY THE COURT:

Justice Michael L. Bender
Colorado Supreme Court

Justice Nathan B. Coats
Colorado Supreme Court