

You're Suspended: Do No Pass “Go”, Do Not Collect \$200

By Shannon L. Briesacher

When the Office of Chief Disciplinary Counsel receives a complaint of misconduct and further determines that there is probable cause to believe that misconduct occurred, Rule 5 of the Missouri Court Rules sets forth a procedure that, in the appropriate case, may result in the appointment of a hearing panel, an evidentiary hearing, a recommendation for disposition made by a hearing panel to the Missouri Supreme Court and, ultimately, a decision from the Court regarding an appropriate resolution or sanction. But did you know that there are instances in which the evidentiary portion of the disciplinary process is bypassed and an attorney's license can be subject to automatic suspension? Did you know that an automatic suspension immediately prohibits an attorney from appearing in court or filing documents on behalf of a client? The latter of these questions likely seems ridiculous to most, as an automatic suspension by definition prohibits the practice of law. However, if you were ordered automatically suspended by the Missouri Supreme Court today and were scheduled for trial in the coming weeks, you may not instinctively conclude that you are prohibited from appearing. Nevertheless, the rules provide that you may not practice law. So how can you prevent the automatic suspension of your license?

Automatic Suspension for Failure to Pay Taxes

The Missouri Supreme Court has previously stated that, in the context of attorney discipline, the willful failure to pay taxes reflects adversely on an attorney's fitness to practice law.¹ In 2003, §484.053, RSMo, became effective and established the authority of the Director of Revenue to work with the Missouri Supreme Court to develop a procedure whereby, at least once a year, the Court provides to the Director of Revenue a list of all attorneys licensed to practice in the State of Missouri. If any such person is delinquent on state taxes or has failed to file state income tax returns in the last three years, the director shall notify the clerk of the Missouri Supreme Court that such person has a delinquency for failure to pay.² Once such a list has been furnished to the Missouri Supreme Court, Rule 5.245 provides that the clerk of the Court must notify the attorney in question that his or her license to practice law is subject to automatic suspension unless the matter is “satisfactorily resolved” within 30 days of the last notice of the clerk.

At this point in the process, an attorney may “satisfactorily resolve” the issue and subsequently avoid automatic suspension by filing with the clerk of the Missouri Supreme Court an affidavit of tax compliance.³ This implicitly means that the attorney must first contact the Department of Revenue and take steps to come into compliance, oftentimes by entering into an agreement for repayment. If the matter is not satisfactorily resolved within 30 days from the date that the clerk notified the attorney of the deficiency, the Missouri Supreme Court may issue an order suspending the attorney from the practice of law and at the same time notify the Office of Chief Disciplinary Counsel of every lawyer automatically suspended under Rule 5.245.⁴

So what are the practical effects of such a suspension? First, the suspension is a real suspension and any member of the public inquiring of the Office of Chief Disciplinary Counsel as to the attorney's current status and/or disciplinary history may be notified of the suspension. Second, the attorney is prohibited from the practice of law and circuit courts throughout the state may be notified of the attorney's suspended status. It also means that if the attorney appears in court after being automatically suspended by the Missouri Supreme Court, the attorney is engaging in the unauthorized practice of law and may be

subject to additional discipline.⁵ Further, the attorney in question must make appropriate provisions for the protection of the client so as to avoid any collateral consequences. Finally, the attorney is subject to the rule regarding reinstatement in order to return the attorney's license to good standing.

Rule 5.28 sets forth the procedures for reinstatement following a suspension or disbarment. If an attorney is suspended pursuant to Rule 5.245 for failure to pay taxes, the attorney in question may file a petition for reinstatement with the Missouri Supreme Court. The petition is then referred to the Office of Chief Disciplinary Counsel for report and recommendation to the Court. If within 30 days the Office of Chief Disciplinary Counsel does not make a request for additional time to submit a full report and recommendation, or if the Office of Chief Disciplinary Counsel files a pleading with the Court evidencing no objection to the reinstatement of the applicant and the applicant has been suspended for three years or less, the license is retroactively reinstated. If, however, the Office of Chief Disciplinary Counsel requests additional time to file a full report and recommendation, the license is not reinstated and the reinstatement will proceed as otherwise provided for in Rule 5.28. Keep in mind that, in either case, the attorney in question remains suspended until the Missouri Supreme Court issues an order of reinstatement.

Automatic Suspension for Failure to Pay Fees

Just as you can always count on death and taxes, so can attorneys licensed in Missouri expect that, in or around January of each year, enrollment fees must be paid.⁶ Should an attorney fail to pay those enrollment fees, however, his or her license to practice law may be at stake. Rule 6.01(f) provides that “[i]n default of timely paying the annual enrollment fee, the lawyer shall be subject to automatic suspension.” Thereafter, the clerk of the Missouri Supreme Court shall notify all lawyers shown to be delinquent in payment of their enrollment fees that unless application for reinstatement be filed within 30 days following the date of the mailing, the attorney's name will be stricken from the roll of attorneys maintained by the clerk.⁷ If no response to the clerk's letter is received, a formal order striking the lawyer's name from the roll of attorneys shall be entered.⁸

Similar to the consequences of automatic suspension for failure to pay taxes, the striking of an attorney's name from the roll results in the attorney's inability to legally practice law in the state – no new clients, no appearances in court and no new filings.⁹ However, for attorneys who are delinquent for less than three years, reinstatement of the license is attained quite simply by paying the enrollment fee. Rule 6.01(f) states that “any lawyer thus suspended for such nonpayment shall be retroactively reinstated as a matter of course upon paying the enrollment fee prescribed for each calendar year of the suspension plus the accumulated penalty.” Of course, if the attorney remains delinquent for more than three years, reinstatement must be sought by filing a petition with the Missouri Supreme Court under Rule 5.28.

Automatic Suspension for Failure to Comply with MCLE Requirements

Finally, an attorney can be automatically suspended for failure to comply with MCLE requirements. Rule 15.05(a) requires that an attorney complete and report during each reporting year at least 15 credit hours of accredited continuing education programs.¹⁰ On or after the first of October of each year, notice will be mailed to every lawyer failing to meet the requirements of Rule 15 advising the lawyer of the deficiency and providing the lawyer an additional 30 days from the date of the notice to file a report establishing compliance with Rule 15.¹¹ If the delinquency is not resolved as provided for in Rule 15.06, The Missouri Bar will file an annual report with the clerk of the Missouri Supreme Court, the Office of Chief Disciplinary Counsel, and the Commission on Retirement, Removal and Discipline containing the name of each lawyer not meeting the MCLE requirements under Rule 15.¹² Every lawyer so reported is automatically suspended from the practice of law as of the date the report is received by the Clerk of the Missouri Supreme Court.¹³

Much the same as an automatic suspension for failure to pay enrollment fees, an attorney may return his or her license to good standing by coming into compliance with the rule. Rule 15.06(f) provides that “[a]ny lawyer automatically suspended for failing to comply with this Rule 15 shall be retroactively reinstated as a matter of course upon certification to the clerk of this Court by The Missouri Bar that the lawyer is in full compliance with this Rule 15 within three years of the date of the lawyer’s suspension and the payment of an additional \$100 late fee.” Any lawyer not reinstated as matter of course must apply for reinstatement as provided for in Rule 5.28.¹

An attorney engaged in a busy practice must keep track of filing deadlines and hours billed and any number of other dates and appointments. It is not difficult to imagine that the deadline for paying enrollment fees or filing MCLE compliance may come and go and that an attorney may inadvertently fail to file either. However, with the very real consequence of automatic suspension looming for attorneys who fail to bring themselves into compliance, each of us would be well-advised to make compliance with these rules a priority. If you do find yourself in receipt of a notice from the Department of Revenue or the clerk of the Missouri Supreme Court, take steps to remedy the deficiency within the first 30 days as provided for by rule and avoid the potential for an unexpected interruption to your practice.

Endnotes

1 *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003).

2 The statute provides that a person who is delinquent on state taxes or who has failed to file returns in the last three years shall be reported, assuming such person has not paid in protest or commenced a reasonably founded dispute with the liability. §484.053, RSMo.

3 Rule 5.245(c)

4 Rule 5.245(e)

5 Rule 6.05 provides that a lawyer who engages in the practice of law while suspended for failure to comply with Rule 5.245 is guilty of professional misconduct and the unauthorized practice of law. The rule permits the Office of Chief Disciplinary Counsel to institute proceedings under Rule 5, as well as to seek temporary or permanent injunctive relief in any court of competent jurisdiction.

6 Rule 6.01(a)

7 Rule 6.02

8 *Id.*

9 Rule 6.05

10 Note that, pursuant to Rule 15.05(f), each lawyer shall complete at least three hours of ethics credit every three years.

11 Rule 15.06(b)

12 Rule 15.06(f)

13 *Id.*



Shannon L. Briesacher is staff counsel for the Office of Chief Disciplinary Counsel in Jefferson City, Missouri.