

Notice to the Bar

Attorney License Suspensions for Failure to Repay Student Loans

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SUPREME COURT OF NEW JERSEY

ADMINISTRATIVE DETERMINATION

RE: RULE 1:20-11B (ATTORNEY LICENSE SUSPENSIONS FOR FAILING TO REPAY STUDENT LOANS)

Effective June 8, 1999, Chapter 54 of the Laws of 1999 (“the Act”) established procedures for the suspension of licenses of any person who fails to repay a State or federal direct or guaranteed educational loan. Section 1 of the Act, codified at N.J.S.A. 45:1-21.2, instructs the director of a licensing board or the Director of the Division of Consumer Affairs, to “suspend, as appropriate, after a hearing, the license, registration or certification of any person” who is currently in “nonpayment or default of a State or federal direct or guaranteed educational loan.” Section 2 of the Act, codified at N.J.S.A. 2A:13-12, provides that the Supreme Court may adopt a Rule establishing procedures for attorneys who default on student loans.

The Court referred the matter to its Professional Responsibility Rules Committee (PRRC). The PRRC analyzed the Act and the federal and State regulations that govern student loans, and provided necessary background information to the Court for its consideration. The PRRC recommended a procedure similar to the one employed to discipline attorneys who have been convicted of crimes. R. 1:20-13. Under that Rule, the Disciplinary Review Board has the right to decide whether circumstances warrant a lesser sanction than suspension.

After considering the PRRC’s recommendation, the Court determined that a more streamlined process was appropriate for student loan defaults. In developing that process, the Court obtained information from the New Jersey Higher Education Student Assistance Authority (HESAA), a State guarantor of student loans. Based on the information provided by HESAA and on the PRRC’s report, the Court crafted a Rule that follows in large part the federal regulations that govern collection activities on state and federal guaranteed student loans, specifically the regulations governing wage garnishment.

New Jersey Court Rule 1:20-11B and the Regulations Governing Application Pursuant to Rule 1:20-11B, codified as RG. 101:1 to 202:1, require the entity seeking the suspension to file a certification with the Supreme Court attesting that the loan is in default and that it has complied with the Court’s regulations. The Court’s regulations begin by binding the entity to the federal regulations governing the collection of defaulted student loans. Those regulations provide all defaulting borrowers with the right to challenge the legal enforceability of the debt; that is, that the entity has the correct information in respect of the identity of the borrower and the amount of the debt. The federal regulations mandate this first administrative review for the loans that come within their scope. The review must occur before guarantors can report defaults to credit bureaus, assess collection costs, or use other collection tools.

For the next step, the Court’s regulations contemplate a two-stage process. First, the entity will notify the borrower that he or she has sixty days within which to enter into a repayment agreement or the entity will seek license

suspension. If the borrower does not enter into a repayment agreement and begin repayment of the loan, the entity will send a new notice informing the borrower that he or she has a short time frame in which to seek a hearing on the suspension. This hearing will be conducted by an Administrative Law Judge (ALJ). The offering of a new repayment agreement and the hearing by an ALJ are adopted from the federal regulations governing wage garnishment and HESAA's wage garnishment procedures. If the borrower does not make a timely request for a hearing on the license suspension, the regulations permit the entity to file a certification with the Court so noting, and the license will be suspended. If the borrower requests a hearing, the ALJ's consideration will be limited to whether the repayment agreement recently offered by the entity seeking the suspension constituted an "extraordinary financial hardship" and to challenges to the legal enforceability of the debt. The "extraordinary financial hardship" standard is consistent with HESAA's procedures and the federal regulations on wage garnishment, which consider the borrower's arguments on the terms of the repayment schedule and permit challenges on grounds that garnishment in amounts equal to, or greater than, 10% of the borrower's disposable pay would constitute an extreme financial hardship.

By requiring the entity to offer a new repayment plan on terms that do not present an extraordinary financial hardship, the regulations eliminate the problem of very old student debt. The borrower who failed to meet his or her obligations many years ago will not have a license revoked without having a new opportunity to negotiate a fair repayment plan.

Finally, under the Court's regulations, the written decision of the ALJ will be binding. If the entity prevails, it must provide the ALJ's decision to the Court with its certification, and the Court will enter an Order temporarily suspending the attorney's license.

New Jersey Court Rule 1:20-11B and its implementing regulations provide the borrower with adequate due process while imposing on the entities seeking the suspension essentially the same requirements that are dictated by federal law for other collection tools. The Rule and regulations will be effective May 1, 2002.

The Court's Rule and regulations are being published contemporaneously with this Administrative Determination.

For the Court:
Stephen W. Townsend, Esq.
Clerk of the Supreme Court
March 7, 2002

Supreme Court of New Jersey

Regulations Governing Applications Pursuant to Rule 1:20-11B

REGULATION 101. Applicability and Citation of Regulations

101:1 Adoption and Scope. These regulations have been adopted by the Supreme Court pursuant to Rule 1:20-11B. They supplement that Rule by setting forth in detail the requirements imposed on an entity seeking the suspension of an attorney's license to practice law in New Jersey for failing to repay a student loan.

101:2 Citation. These regulations shall be referred to as "Regulations Governing Applications Pursuant to Rule 1:20-11B" and shall be cited as, for example, "RG. 201:1(b)."

REGULATION 201. Obligations of an Entity Seeking the Suspension of an Attorney's License.

201:1 The entity seeking the license suspension shall file a certification with the Supreme Court that contains the information set forth in Rule 1:20-11B(a), and further certifies that the entity complied with the following:

(a) Compliance with Federal Regulation Requirements. The entity shall have met the requirements of the Department of Education in respect of the administration of the Federal Family Education Loan Programs as set forth in the Code of Federal Regulations. 34 C.F.R. § 682.410(b)(5) (ii), (iv), (v), and (vi)(2001).

(b) Service of Proposed Repayment Agreement. After the requirements of paragraph (a) have been met, the entity seeking the suspension of the borrower's license to practice law in New Jersey shall send to the borrower's last known home address and law office address, by regular and certified mail, return receipt requested, a written notice advising the borrower of the nature and amount of the debt and informing the borrower of the entity's intention to initiate proceedings to suspend the borrower's license unless the borrower enters into a written repayment agreement with the entity and begins payments on the agreement within sixty days of receipt of the notice. The terms of the proposed repayment agreement, which shall be subject to negotiation between the borrower and the entity, shall be provided with the written notice. The notice shall also provide an explanation of the borrower's rights, including an opportunity to inspect and copy agency records related to the debt, and an explanation of the notice and opportunity for a hearing on the license suspension that will follow if a repayment agreement is not reached. The notice shall also describe the limited issues that can be considered at the hearing on license suspension pursuant to paragraphs (c)(1) and (e)(2).

(c) Borrower's Failure to Enter into Repayment Agreement; Opportunity for a Hearing. If the borrower fails to enter into a repayment agreement pursuant to paragraph (b), or fails to meet the obligations of repayment of the loan by other means, the entity may, at the conclusion of the sixty-day period described in paragraph (b), continue with the following procedures for obtaining suspension of the borrower's license to practice law.

(1) The entity shall send to the borrower's last known home address and law office address, by regular and certified mail, return receipt requested, a written notice stating the nature and amount of the debt and stating further that the entity is initiating proceedings to obtain suspension of the borrower's license to practice law in New Jersey. The notice shall offer the borrower an opportunity for a hearing, which will be limited to the existence and the amount of the debt and whether the written repayment agreement that was offered by the entity in accordance with paragraph (b) would have imposed on the borrower an extraordinary financial hardship. The notice shall inform the borrower that the request for hearing must be received by the entity within fifteen days of the borrower's receipt of this notice. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in this paragraph five days after it was mailed by the entity.

(2) If the borrower makes a timely request for a hearing, the entity may not file a certification with the Court seeking license suspension pending completion of the proceedings.

(3) If the borrower's written request is received by the entity after the fifteenth day following the borrower's receipt of the notice described in paragraph (c)(1), the entity may provide the borrower with a hearing if it determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies the provision of a hearing.

(4) If the borrower does not request a hearing in accordance with these regulations, the entity may so certify to the Court and seek the borrower's immediate temporary suspension from practice. The certification shall state also that the requirements of Rule 1:20-11B(a) and paragraphs (a), (b), and (c)(1)-(3) of these regulations have been met. The entity shall provide the Court with proof of service of the certification on the attorney pursuant to Rule 1:20-11B(a).

(5) A borrower who requests a hearing in accordance with these regulations shall provide to the entity, within ten days of submitting the request for hearing, a statement of the borrower's income, expenses and assets, copies of state and federal tax forms for the prior two years, and such other evidence as is necessary to evaluate the borrower's financial situation. The entity shall document the nature and amount of the debt, and the terms of the repayment agreement offered by the entity pursuant to paragraph (b), and shall submit the completed information package to the appropriate administrative hearing body for a hearing pursuant to paragraph (d).

(d) Hearings; Use of Office of Administrative Law or Its Equivalent. The entity shall initiate the hearing process as follows:

(1) Any entity that is authorized to submit contested cases to the Office of Administrative Law pursuant to N.J.A.C. 1:1-3.2(a) shall submit the documentation required by paragraph (c)(5) to the Office of Administrative Law for a hearing by an Administrative Law Judge. Pursuant to N.J.A.C. 1:1-1.1(e), the New Jersey Higher Education Student Assistance Authority, in consultation with the Office of Administrative Law, may develop special hearing rules that will implement the requirements of these regulations and that will be applicable to all entities seeking the suspension of an attorney's license.

(2) Any entity that is not authorized to submit contested cases to the Office of Administrative Law pursuant to N.J.A.C. 1:1-3.2(a) shall submit the documentation referred to in paragraph (c)(5) to an independent administrative adjudicatory body and shall ensure that the borrower is afforded a hearing that conforms to these regulations, including any special hearing rules that may be adopted by the Office of Administrative Law. The entity must state in its certification to the Court that the hearing provided to the borrower was the equivalent of hearings provided pursuant to this paragraph.

(3) To the extent possible, the provision of a hearing to the borrower shall occur in sufficient time to permit a decision to be rendered within ninety days of the borrower's request.

(e) Hearing Process. The hearing process provided to the borrower shall include the following:

(1) The hearing may be oral or written at the borrower's option. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. All telephonic charges must be the responsibility of the entity.

(2) The Administrative Law Judge shall consider only the existence and the amount of the debt and whether the written repayment agreement offered by the entity in accordance with paragraph (b) would have imposed on the borrower an extraordinary financial hardship. The Administrative Law Judge shall issue a final written decision at the earliest practicable date, but not later than forty-five days after the hearing.

(3) The written decision of the Administrative Law Judge shall be conclusive, and not subject to appeal or review.

(f) Entity Prevailing at Hearing; Filing of Certification. If the entity prevails at the hearing, it may then file with the Court the certification and proof of service pursuant to Rule 1:20-11B(a). It shall attach to the certification a copy of the written decision of the Administrative Law Judge.

Adopted by the Supreme Court: March 5, 2002

SUPREME COURT OF NEW JERSEY

IT IS ORDERED that the attached Rule of Court, Rule 1:20-11B, Suspension of License to Practice Law for Failure to Repay Student Loans, is adopted, to be effective May 1, 2002.

For the Court:

Deborah T. Poritz

C.J.

Dated: March 5, 2002

1:20-11B. Suspension of License to Practice Law for Failure to Repay Student Loans

(a) Certification; Contents. An entity seeking the suspension of an attorney's license to practice law pursuant to N.J.S.A. 2A:13-12 shall file with the Clerk of the Supreme Court and serve on the attorney a certification that (1) identifies the attorney, the attorney's last known home and law office addresses, and the date of the attorney's admission to the New Jersey bar; (2) states the amount currently owed by the attorney on the loan and attests that the loan is in default pursuant to state or federal law; and (3) certifies that the entity has complied with all of the regulations, approved by the Supreme Court, that govern the temporary suspension of attorney licenses for failure to repay student loans. Proof of service on the attorney at his or her last known home and office addresses, by regular and certified mail, return receipt requested, shall be filed with the entity's certification.

b) Supreme Court Action. On receipt of the entity's certification pursuant to paragraph (a), the Court shall direct the Clerk to enter an Order temporarily suspending the license of the attorney until the further Order of the Court.

(c) Reinstatement. An attorney temporarily suspended from the practice of law pursuant to this Rule may seek reinstatement by filing a certification with the Supreme Court. The certification must confirm, in detail, that the attorney is meeting all current requirements for the repayment of his or her outstanding loans. The attorney must attach a copy of a repayment agreement to the certification, along with proof either that payments have begun in accordance with the agreement or that there is other evidence sufficient to demonstrate repayment. Proof of service on the entity by regular and certified mail, return receipt requested, shall be filed with the attorney's certification. If the attorney has continued to meet all other requirements for licensing during his or her suspension, the Court shall direct the Clerk to enter an Order reinstating the attorney to the practice of law.

(d) Release of Attorney Information to Lenders or Guarantors. At the request of an entity seeking the suspension of an attorney's license to practice law pursuant this Rule, the Clerk of the Supreme Court shall provide the entity with an attorney's last known home address and law office address. The information that is provided may be used only in connection with an application pursuant to paragraph (a) of this Rule.

Adopted March 5, 2002, to be effective May 1, 2002.