

**27 NCAC 01B .0116 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION:
FORMAL HEARING**

(a) Public Hearing

- (1) The defendant will appear in person before the hearing panel at the time and place named by the chairperson. The hearing will be open to the public except that for good cause shown the chairperson of the hearing panel may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing will be closed to the public over the objection of the defendant.
- (2) Media Coverage - Absent a showing of good cause, the chairperson of the hearing panel shall permit television, motion picture and still photography cameras, broadcast microphones and recorders (electronic media) to record and broadcast formal hearings. A media outlet shall file a motion with the clerk of the commission seeking permission to utilize electronic media to record or broadcast a hearing no less than 48 hours before the hearing is scheduled to begin. The chairperson will rule on the motion no less than 24 hours before the hearing is scheduled to begin. Any order denying a motion to permit the use of electronic media to record or broadcast a formal hearing shall contain written findings of fact setting forth the facts constituting good cause to support that decision. Except as otherwise provided in this paragraph, the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts (Electronic Media and Still Photography Coverage of Public Judicial Proceedings) shall apply to electronic media coverage of hearings before the commission.

(b) Continuance After a Hearing Has Commenced - After a hearing has commenced, no continuances other than an adjournment from day to day will be granted, except to await the filing of a controlling decision of an appellate court, by consent of all parties, or where extreme hardship would result in the absence of a continuance.

(c) Burden of Proof

- (1) Unless otherwise provided in these rules, the State Bar shall have the burden of proving by clear, cogent, and convincing evidence that the defendant violated the Rules of Professional Conduct.
- (2) In any complaint or other pleading or in any trial, hearing, or other proceeding, the State Bar is not required to prove the nonexistence of any exemption or exception contained in the Rules of Professional Conduct. The burden of proving any exemption or exception shall be upon the person claiming its benefit.

(d) Orders - At the conclusion of any disciplinary case, the hearing panel will file an order which will include the panel's findings of fact and conclusions of law. When one or more rule violations has been established by summary judgment, the order of discipline will set out the undisputed material facts and conclusions of law established by virtue of summary judgment, any additional facts and conclusions of law pertaining to discipline, and the disposition. All final orders will be signed by the members of the panel, or by the chairperson of the panel on behalf of the panel, and will be filed with the clerk.

(e) Preservation of the Record - The clerk will ensure that a complete record is made of the evidence received during the course of all hearings before the commission as provided by G.S. 7A-95 for trials in the superior court. The clerk will preserve the record and the pleadings, exhibits, and briefs of the parties.

(f) Discipline - If the charges of misconduct are established, the hearing panel will consider any evidence relevant to the discipline to be imposed.

- (1) Suspension or disbarment is appropriate where there is evidence that the defendant's actions resulted in significant harm or potential significant harm to the clients, the public, the administration of justice, or the legal profession, and lesser discipline is insufficient to adequately protect the public. The following factors shall be considered in imposing suspension or disbarment:
 - (A) intent of the defendant to cause the resulting harm or potential harm;
 - (B) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - (C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
 - (D) elevation of the defendant's own interest above that of the client;
 - (E) negative impact of defendant's actions on client's or public's perception of the profession;
 - (F) negative impact of the defendant's actions on the administration of justice;
 - (G) impairment of the client's ability to achieve the goals of the representation;
 - (H) effect of defendant's conduct on third parties;
 - (I) acts of dishonesty, misrepresentation, deceit, or fabrication;
 - (J) multiple instances of failure to participate in the legal profession's self-regulation process.

- (2) Disbarment shall be considered where the defendant is found to engage in:
 - (A) acts of dishonesty, misrepresentation, deceit, or fabrication;
 - (B) impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts;
 - (C) misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; or
 - (D) commission of a felony.
- (3) In all cases, any or all of the following factors shall be considered in imposing the appropriate discipline:
 - (A) prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
 - (B) remoteness of prior offenses;
 - (C) dishonest or selfish motive, or the absence thereof;
 - (D) timely good faith efforts to make restitution or to rectify consequences of misconduct;
 - (E) indifference to making restitution;
 - (F) a pattern of misconduct;
 - (G) multiple offenses;
 - (H) effect of any personal or emotional problems on the conduct in question;
 - (I) effect of any physical or mental disability or impairment on the conduct in question;
 - (J) interim rehabilitation;
 - (K) full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
 - (L) delay in disciplinary proceedings through no fault of the defendant attorney;
 - (M) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
 - (N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
 - (O) refusal to acknowledge wrongful nature of conduct;
 - (P) remorse;
 - (Q) character or reputation;
 - (R) vulnerability of victim;
 - (S) degree of experience in the practice of law;
 - (T) issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint;
 - (U) imposition of other penalties or sanctions;
 - (V) any other factors found to be pertinent to the consideration of the discipline to be imposed.

(g) Service of Final Orders - The clerk will serve the defendant with the final order of the hearing panel by certified mail, return receipt requested, or by personal service. A defendant who cannot, with reasonable diligence, be served by certified mail or personal service shall be deemed served when the clerk deposits a copy of the order enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service addressed to the defendant's last known address on file with the NC State Bar.

*History Note: Authority G.S. 84-23;
Eff. September 22, 2016;
Amendments Approved by the Supreme Court: March 16, 2017.*