

27 NCAC 01B .0119 EFFECT OF A FINDING OF GUILT IN ANY CRIMINAL CASE

(a) **Conclusive Evidence of Guilt** - A certified copy of the conviction of a member for any crime or a certified copy of a judgment entered against a member in which a plea of guilty, nolo contendere, or no contest has been accepted by a court will be conclusive evidence of guilt of that crime in any disciplinary proceeding instituted against a member. For purposes of any disciplinary proceeding against a member, such conviction or judgment conclusively establishes all elements of the criminal offense and conclusively establishes all facts set out in the document charging the member with the criminal offense.

(b) **Interim Suspension** - Any member who has been convicted of, pleads guilty to, pleads no contest to, or is found guilty by a jury of a criminal offense showing professional unfitness in any state or federal court may be suspended from the practice of law as set out below.

- (1) The counsel shall file with the clerk of the commission and serve upon the member a motion for interim suspension accompanied by proof of the conviction, plea, or verdict.
- (2) The member shall have ten days in which to file a response.
- (3) The chairperson of the commission may hold a hearing to determine whether the criminal offense is one showing professional unfitness and whether, in the chairperson's discretion, interim suspension is warranted. In determining whether interim suspension is warranted, the chairperson may consider harm or potential harm to a client, the administration of justice, the profession, or members of the public, and impact on the public's perception of the profession. The parties may present additional evidence pertaining to harm or to the circumstances surrounding the offense, but the member may not collaterally attack the conviction, plea or verdict.
- (4) The chairperson shall issue an order containing findings of fact and conclusions of law addressing whether there is a qualifying conviction, plea, or verdict, and whether interim suspension is warranted, and either granting or denying the motion.
- (5) If the member consents to entry of an order of interim suspension, the parties may submit a consent order of interim suspension to the chairperson of the commission.
- (6) The provisions of Rule .0128(c) of this subchapter will apply to the interim suspension.

(c) **When Conviction is Expunged, Overturned or Otherwise Eliminated** -

- (1) Any request for relief as a result of an expunction of any kind shall be made under the provisions of this rule, including but not limited to expunctions of convictions, expunctions from dismissals of charges or findings of not guilty, and expunctions related to prayer for judgment continued and conditional discharges.

(2) **Definitions.**

- (A) "Expunged action" refers to the thing expunged, which may include but is not limited to a conviction, a judgment entered against a member in which the member is adjudged guilty of a criminal offense, a judgment entered against a member in which a plea of guilty, nolo contendere, or no contest was accepted by the court, a charge dismissed or otherwise resolved pursuant to a prayer for judgment disposition, or a charge dismissed pursuant to a conditional discharge disposition.
 - (B) An order of discipline or other disciplinary action issued by the Grievance Committee or the commission ("the discipline") is based solely upon a conviction or other expunged action when there is no evidence in the record before the body that issued the discipline other than documentation of the conviction or expunged action.
 - (C) Any admissions of the member contained in a consent order of discipline entered by the commission and signed by the member or an affidavit surrendering the member's law license constitute evidence in the record other than documentation of the conviction or expunged action.
- (3) **Discipline Based Solely Upon Conviction or Expunged Action.**
- (A) If discipline was imposed upon a member based solely upon a conviction or expunged action and the conviction or expunged action is reversed, vacated, expunged, or otherwise eliminated, the discipline shall be vacated.
 - (B) The State Bar may initiate another disciplinary proceeding against the member alleging rule violations and seeking imposition of discipline based upon the facts or events underlying the conviction or expunged action.
- (4) **Discipline Based in Part Upon Conviction or Expunged Action.** If discipline was imposed upon a member based in part upon a conviction or expunged action and the conviction or expunged action

is reversed, vacated, expunged, or otherwise eliminated, the member may petition the body that issued the discipline for one of the following forms of relief:

- (A) Redaction. All references to the conviction, charges, and/or expunged action redacted from the original discipline.
 - (B) Substituted Discipline. All references to the conviction, charges, and/or expunged action omitted in a substituted discipline identical in all other respects to the original discipline. Substituted discipline will be entered nunc pro tunc to the date of entry of the original discipline and will have the same effective date as the original discipline. Substituted discipline will reflect the filing date on which the substituted discipline is entered.
 - (C) Modified Discipline. When the original discipline was not a consent order of discipline entered by the commission and signed by the member, the member may seek an order replacing the original discipline with modified discipline imposing a different disposition and omitting all references to the conviction, charges, and/or expunged action. Modified discipline will be entered nunc pro tunc to the date of entry of the original discipline and will have the same effective date as the original discipline. Modified discipline will reflect the filing date on which the modified discipline is entered.
- (5) Procedures.
- (A) A member may petition the body that issued the original discipline for relief under this section. The petition must be served simultaneously upon the counsel. If the action that eliminated the conviction is sealed or otherwise not public record, the member may file the petition under seal without seeking leave to do so. The petition shall be accompanied by documentation of the action that eliminated the conviction or expunged action, and shall specify which form of relief the member seeks. If the member seeks relief under section (c)(4)(A) or (c)(4)(B) above, the petition shall include proposed redacted or substituted discipline.
 - (B) The State Bar shall have 30 days from receipt of the petition to file a written response, which must be served simultaneously upon the member. If the petition was filed under seal, the response shall be filed under seal. If the member seeks relief under section (c)(4)(A) or (c)(4)(B) above, the response (i) shall indicate whether the State Bar consents to the redacted or substituted discipline proposed by the member or (ii) shall include redacted or substituted discipline proposed by the State Bar.
 - (C) When the original discipline was issued by the Grievance Committee, the counsel shall forward to the Grievance Committee within 40 days of the date of service of the petition upon the counsel (i) the member's petition for relief and accompanying supporting documentation, (ii) the State Bar's response, and (iii) the evidence considered by the Grievance Committee when it issued the original discipline.
 - (D) When the original discipline was issued by the commission after a hearing, the member shall obtain a transcript of the hearing at the member's sole expense. The member shall provide official copies of the transcript to the commission and to the counsel within 90 days of the date of the petition. For good cause shown, the commission may enlarge the time for provision of the transcript. If the member does not timely provide official copies of the transcript to the commission and to the counsel, the member will be ineligible for the relief described in section (c)(4)(C).
 - (E) Consideration and Action.
 - (i) Grievance Committee - The Grievance Committee will not consider new evidence. The committee will take action on the petition at its next available quarterly meeting occurring at least two weeks after the materials required by section (c)(5)(C) above were forwarded to the committee. The Grievance Committee will consider the matter, determine whether the discipline was based in whole or in part upon the conviction or expunged action, and take action as set forth in sections (c)(3) and (c)(4) above.
 - (ii) Commission - The commission will not consider new evidence. Upon receipt of the petition and response, the chairperson of the commission will appoint a hearing panel. If the original discipline was issued after a hearing, within thirty days of appointment of the hearing panel the clerk will ensure the hearing panel has the exhibits that were entered into evidence and a list of witnesses who testified at

the original hearing. In a case to which (c)(5)(D) applies, the hearing panel will not consider the petition until the member has provided the transcript to the hearing panel and to the counsel or until the time has run for the transcript to be provided. The hearing panel will consider the matter, determine whether the discipline was based in whole or in part upon the conviction or expunged action, and will take action as set forth in sections (c)(3) and (c)(4) above. The hearing panel will enter an order containing findings of fact and conclusions of law and ordering the action to be taken. The order will be entered under seal if the petition seeking relief was filed under seal.

- (F) Expunged Action Referenced in Public Commission Records. Upon relief granted by the commission as set forth above, the commission shall also redact from all public commission records any reference to the expunged action.

*History Note: Authority G.S. 84-23; 84-28;
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