

27 NCAC 01B .0120 RECIPROCAL DISCIPLINE AND DISABILITY PROCEEDINGS

(a) Notice to Secretary - All members who have been disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court or who have been transferred to disability inactive status or its equivalent by any state or federal court will inform the secretary of such action in writing no later than 30 days after entry of the order of discipline or transfer to disability inactive status. Failure to make the report required in this paragraph may subject the member to professional discipline as set out in Rule 8.3 of the Revised Rules of Professional Conduct.

(b) Administration of Reciprocal Discipline - Except as provided in Paragraph (c) of this Rule which applies to disciplinary proceedings in certain federal courts, reciprocal discipline and disability proceedings will be administered as follows:

- (1) Notice and Challenge - Upon receipt of a certified copy of an order demonstrating that a member has been disciplined or transferred to disability inactive status or its equivalent in another jurisdiction, state or federal, the Grievance Committee will forthwith issue a notice directed to the member containing a copy of the order from the other jurisdiction and an order directing that the member inform the committee within 30 days from service of the notice of any claim by the member that the imposition of the identical discipline or an order transferring the member to disability inactive status in this state would be unwarranted and the reasons therefor. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure.
- (2) Effect of Stay - If the discipline or transfer order imposed in the other jurisdiction has been stayed, any reciprocal discipline or transfer to disability inactive status imposed in this state will be deferred until such stay expires.
- (3) Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(b)(1) above, the chairperson of the Grievance Committee will impose the identical discipline or enter an order transferring the member to disability inactive status unless the Grievance Committee concludes:
 - (A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (B) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Grievance Committee could not, consistent with its duty, accept as final the conclusion on that subject; or
 - (C) that the imposition of the same discipline would result in grave injustice; or
 - (D) that the misconduct established warrants substantially different discipline in this state; or
 - (E) that the reason for the original transfer to disability inactive status no longer exists.
- (4) Dismissal - Where the Grievance Committee determines that any of the elements listed in Rule .0120(b)(3) above exist, the committee will dismiss the case or direct that a complaint be filed.
- (5) Effect of Final Adjudication in Another Jurisdiction - If the elements listed in Rule .0120(b)(3) above are found not to exist, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct or should be transferred to disability inactive status will establish the misconduct or disability for purposes of reciprocal discipline or disability proceedings in this state.

(c) Reciprocal Discipline in the District of North Carolina, Fourth Circuit, or US Supreme Court - Reciprocal discipline with certain federal courts will be administered as follows:

- (1) Notice and Challenge - Upon receipt of a certified copy of an order demonstrating that a member has been disciplined in a United States District Court in North Carolina, in the United States Fourth Circuit Court of Appeals, or in the United States Supreme Court, the chairperson of the Grievance Committee will forthwith issue a notice directed to the member. The notice will contain a copy of the order from the court and an order directing the member to inform the committee within 10 days from service of the notice whether the member will accept reciprocal discipline which is substantially similar to that imposed by the federal court. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure. The member will have 30 days from service of the notice to file a written challenge with the committee on the grounds that the imposition of discipline by the North Carolina State Bar would be unwarranted because the facts found in the federal disciplinary proceeding do not involve conduct which violates the North Carolina Rules of Professional Conduct. If the member notifies the North Carolina State Bar within 10 days after service of the notice that he or she accepts reciprocal discipline which is substantially similar to that imposed by the federal court, substantially similar discipline will be ordered as provided in Rule .0120(c)(2) below and will run concurrently with the discipline ordered by the federal court.

- (2) Acceptance of Reciprocal Discipline - If the member notifies the North Carolina State Bar of his or her acceptance of reciprocal discipline as provided in Rule .0120(c)(1) above the chairperson of the Grievance Committee will execute an order of discipline which is of a type permitted by these rules and which is substantially similar to that ordered by the federal court and will cause said order to be served upon the member.
 - (3) Effect of Stay - If the discipline imposed by the federal court has been stayed, any reciprocal discipline imposed by the North Carolina State Bar will be deferred until such stay expires.
 - (4) Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(c)(1) above, the chairperson of the Grievance Committee will enter an order of reciprocal discipline imposing substantially similar discipline of a type permitted by these Rules to be effective throughout North Carolina unless the member requests a hearing before the Grievance Committee and at such hearing:
 - (A) the member demonstrates that the facts found in the federal disciplinary proceeding did not involve conduct which violates the North Carolina Rules of Professional Conduct, in which event the case will be dismissed; or
 - (B) the Grievance Committee determines that the discipline imposed by the federal court is not of a type described in Rule .0127(a) of this subchapter and, therefore, cannot be imposed by the North Carolina State Bar, in which event the Grievance Committee may dismiss the case or direct that a complaint be filed in the commission.
 - (5) Federal Findings of Fact - All findings of fact in the federal disciplinary proceeding will be binding upon the North Carolina State Bar and the member.
 - (6) Discipline Imposed by Other Federal Courts - Discipline imposed by any other federal court will be administered as provided in Rule .0120(b) above.
- (d) Imposition of Discipline - If the member fails to accept reciprocal discipline as provided in Rule .0120(c) above or if a hearing is held before the Grievance Committee under either Rule .0120(b) above or Rule .0120(c) above and the committee orders the imposition of reciprocal discipline, such discipline will run from the date of service of the final order of the chairperson of the Grievance Committee unless the committee expressly provides otherwise.

*History Note: Authority G.S. 84-23; 84-28;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; December 30, 1998; March 7, 1996.*