

27 NCAC 01B .0132 TRUST ACCOUNTS; AUDIT

(a) Investigative Subpoena for Reasonable Cause - For reasonable cause, the chairperson of the Grievance Committee is empowered to issue an investigative subpoena to a member compelling the production of any records required to be kept relative to the handling of client funds and property by the Rules of Professional Conduct for inspection, copying, or audit by the counsel or any auditor appointed by the counsel. For the purposes of this rule, circumstances that constitute reasonable cause, include, but are not limited to:

- (1) any sworn statement of grievance received by the North Carolina State Bar alleging facts which, if true, would constitute misconduct in the handling of a client's funds or property;
- (2) any facts coming to the attention of the North Carolina State Bar, whether through random review as contemplated by Rule .0132(b) below or otherwise, which if true, would constitute a probable violation of any provision of the Rules of Professional Conduct concerning the handling of client funds or property;
- (3) two or more grievances received by the North Carolina State Bar over a 12 month period alleging facts which, if true, would indicate misconduct for neglect of a client matter or failure to communicate with a client;
- (4) any failure to respond to any notices issued by the North Carolina State Bar with regard to a grievance or a fee dispute;
- (5) any information received by the North Carolina State Bar which, if true, would constitute a failure to file any federal, state, or local tax return or pay a federal, state, or local tax obligation; or
- (6) any finding of probable cause, indictment, or conviction relative to a criminal charge involving moral turpitude. The grounds supporting the issuance of any such subpoena will be set forth upon the face of the subpoena.

(b) Random Audit Subpoenas and Investigations - The chairperson of the Grievance Committee may randomly issue investigative subpoenas to members compelling the production of any records required by the Rules of Professional Conduct to be kept relative to the handling of client funds or property for inspection by the counsel or any auditor appointed by the counsel to determine compliance with the Rules of Professional Conduct. Any such subpoena will disclose upon its face its random character and contain a verification of the secretary that it was randomly issued. No member will be subject to random selection under this section more than once in three years. Any member whose random audit discloses one or more violations of the Rules of Professional Conduct may be referred by the counsel, by the director of the Trust Account Compliance Department (the department), or by the auditor to the department's Trust Account Compliance Program. Determination of a member's qualification for referral to the Trust Account Compliance Program after random audit shall be made by the counsel, by the director, or by the auditor pursuant to guidelines established by the Council. The counsel, the director, or the auditor may also report any violation of the Rules of Professional Conduct discovered during the random audit to the Grievance Committee for investigation. The director of the department and the auditor shall each have authority under the original subpoena for random audit to compel the production of any documents necessary to determine whether the attorney has corrected any violation identified during the audit.

(c) Time Limit - No subpoena issued pursuant to this rule may compel production within five days of service.

(d) Evidence - The rules of evidence applicable in the superior courts of the state will govern the use of any material subpoenaed pursuant to this rule in any hearing before the commission.

(e) Attorney-Client Privilege/Confidentiality - No assertion of attorney-client privilege or confidentiality will prevent an inspection or audit of a trust account as provided in this rule.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: November 16, 2006; September 22, 2016;
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