

27 NCAC 01B .0135 NONCOMPLIANCE SUSPENSION

(a) Noncompliant and Noncompliance Defined. Failure to respond fully and timely to a letter of notice issued pursuant to N.C.A.C. 1B, .0112, failure to respond fully and timely to any request from the State Bar for additional information in any pending grievance investigation, failure to respond fully and timely to any request from the State Bar to produce documents or other tangible or electronic materials in connection with a grievance investigation, and/or failure to respond fully and timely to a subpoena issued by the chair of the Grievance Committee or issued by the secretary of the State Bar shall be referred to herein as "noncompliant" or "noncompliance."

(b) Petition for Noncompliance Suspension. If a respondent against whom a grievance file has been opened and who has been served with a letter of notice or who has been served with a subpoena issued by the chair of the Grievance Committee or issued by the secretary of the State Bar is noncompliant, the State Bar may petition the chair of the Disciplinary Hearing Commission (DHC) for an order requiring the respondent to show cause why the chair should not enter an order suspending the respondent's law license.

(c) Content of Petition

- (1) The petition shall be a verified petition, or shall be supported by an affidavit, demonstrating by clear, cogent, and convincing evidence that the respondent is noncompliant.
- (2) The petition shall set forth the efforts made by the State Bar to obtain the respondent's compliance.
- (3) Service of Petition
 - (A) The petition shall be served upon the respondent by mailing a copy of the petition addressed to the last address the respondent provided to the Membership Department of the State Bar pursuant to N.C. Gen. Stat. § 84-34 or addressed to any more recent address that might be known to the State Bar representative who is attempting service.
 - (B) Service of the petition shall be complete upon mailing.

(d) Order to Show Cause

- (1) Upon receiving the State Bar's filed petition, the chair of the DHC shall issue to the respondent an order to show cause.
- (2) The order to show cause shall notify the respondent that the respondent's noncompliance or failure to respond to the order to show cause may result in suspension of the respondent's law license.
- (3) The order to show cause shall be served upon the respondent by mailing a copy of the order addressed to the last address the respondent provided to the Membership Department of the State Bar pursuant to N.C. Gen. Stat. § 84-34, addressed to any more recent address that might be known to the DHC, or addressed to the address where the State Bar served the petition.
- (4) Service of the order to show cause shall be complete upon mailing.

(e) Response to Order to Show Cause

- (1) The respondent shall respond to the order to show cause within 14 days of the date of service of the order upon the respondent.
- (2) If the respondent responds to the order to show cause within 14 days of the date of service of the order upon the respondent, the chair of the DHC shall schedule a hearing on the order to show cause within ten days of the filing of the respondent's response and shall provide notice to the respondent and to the State Bar of such hearing.
- (3) If the respondent does not file a response to the order to show cause within 14 days of the date of service of the order to show cause upon the respondent, the chair of the DHC may enter an order suspending the respondent's law license. Such order of suspension will remain in effect until the chair enters an order finding by clear, cogent, and convincing evidence that the respondent fully cured the noncompliance and reinstating the respondent's law license to active status.

(f) Hearing on Order to Show Cause; Burden of Proof

- (1) The State Bar shall have the burden of proving the respondent's noncompliance by clear, cogent, and convincing evidence.
- (2) If the chair of the DHC finds that the State Bar has met its burden of proof, the burden of proof shall shift to the respondent to prove one or more of the following by clear, cogent, and convincing evidence:
 - (A) That the respondent was and is fully in compliance;
 - (B) That the respondent has fully cured all noncompliance; or
 - (C) That there is good cause for the respondent's noncompliance.

(g) Entry of Order

If the chair finds that the State Bar has met its burden of proof; finds by clear, cogent, and convincing evidence that the respondent is noncompliant; finds that the respondent has not met the respondent's burden of proof; and fails to

find by clear, cogent, and convincing evidence any of the circumstances listed in paragraph (f)(2) above, the chair may enter an order suspending the respondent's law license. Such order of suspension shall remain in effect until the chair enters an order finding by clear, cogent, and convincing evidence that the respondent fully cured the noncompliance and reinstating the respondent's law license to active status.

(h) Wind Down

Any attorney suspended for noncompliance shall comply with the wind-down provisions for suspended attorneys as set forth in N.C.A.C. 1B .0128.

(i) Reinstatement from Noncompliance Suspension

- (1) Following entry of a noncompliance suspension order, the respondent may seek reinstatement by filing a verified petition with the chair of the DHC demonstrating by clear, cogent, and convincing evidence that the respondent has become, and is at the time of the petition, fully compliant. The respondent shall simultaneously serve a copy of the verified petition on the State Bar.
- (2) The State Bar shall have five days from the date of receipt to file an objection to the respondent's petition. If the State Bar does not object, the chair may enter an order finding by clear, cogent, and convincing evidence that the respondent has become, and is at the time of the petition, fully compliant and reinstating the respondent to the active practice of law.
- (3) If the State Bar objects to the petition, the chair shall schedule a hearing within ten days of the filing of such objection. It shall be the respondent's burden to prove by clear, cogent, and convincing evidence that the respondent has become, and remains at the time of the hearing, fully compliant.
- (4) At the conclusion of the hearing, if the chair finds that the respondent has met her/his burden of proof and finds by clear, cogent, and convincing evidence that the respondent is fully compliant at the time of the hearing, the chair shall enter an order reinstating the respondent to the active practice of law.

(j) Subsequent Petitions for Noncompliance Suspension The State Bar may file a petition under this rule on the first occasion when a respondent is noncompliant and may file a petition on any subsequent occasions when a respondent is noncompliant.

*History Note: Authority G.S. 84-23;
Adopted by the Supreme Court: March 27, 2019.*