

SUBCHAPTER 1B - DISCIPLINE AND DISABILITY RULES

SECTION .0100 - DISCIPLINE AND DISABILITY OF ATTORNEYS

27 NCAC 01B .0101 GENERAL PROVISIONS

Discipline for misconduct is not intended as punishment for wrongdoing but is for the protection of the public, the courts, and the legal profession. The fact that certain misconduct has remained unchallenged when done by others, or when done at other times, or that it has not been made the subject of earlier disciplinary proceedings, will not be a defense to any charge of misconduct by a member.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01B .0102 PROCEDURE FOR DISCIPLINE

(a) The procedure to discipline members of the bar of this state will be in accordance with the provisions hereinafter set forth.
(b) District bars will not conduct separate proceedings to discipline members of the bar but will assist and cooperate with the North Carolina State Bar in reporting and investigating matters of alleged misconduct on the part of its members.

(c) Concurrent Jurisdiction of State Bar and Courts:

- (1) The Council of the North Carolina State Bar is vested, as an agency of the state, with the control of the discipline, disbarment, and restoration of attorneys practicing law in this state.
- (2) The courts of this state have inherent authority to take disciplinary action against attorneys practicing therein, even in relation to matters not pending in the court exercising disciplinary authority.
- (3) The authority of the North Carolina State Bar and the courts to discipline attorneys is separate and distinct, the North Carolina State Bar having derived its jurisdiction by legislative act and the courts from the inherent power of the courts themselves.
- (4) Neither the North Carolina State Bar nor the courts are authorized or empowered to act for or in the name of the other, and the disciplinary action taken by either entity should be clearly delineated as to the source or basis for the action being taken.
- (5) It is the position of the North Carolina State Bar that no trial court has the authority to preempt a North Carolina State Bar disciplinary proceeding with a pending civil or criminal court proceeding involving attorney conduct, or to dismiss a disciplinary proceeding pending before the North Carolina State Bar.
- (6) Whenever the North Carolina State Bar learns that a court has initiated an inquiry or proceeding regarding alleged improper or unethical conduct of an attorney, the North Carolina State Bar may defer to the court and stay its own proceeding pending completion of the court's inquiry or proceeding. Upon request, the North Carolina State Bar will assist in the court's inquiry or proceeding.
- (7) If the North Carolina State Bar finds probable cause and institutes disciplinary proceedings against an attorney for conduct which subsequently becomes an issue in a criminal or civil proceeding, the court may, in its discretion, defer its inquiry pending the completion of the North Carolina State Bar's proceedings.
- (8) Upon the filing of a complaint by the North Carolina State Bar, the North Carolina State Bar will send a copy of the complaint to the chief resident superior court judge and to all superior court judges regularly assigned to the district in which the attorney maintains his or her law office. The North Carolina State Bar will send a copy of the complaint to the district attorney in the district in which the attorney maintains a law office if the complaint alleges criminal activity by the attorney.
- (9) The North Carolina State Bar will encourage judges to contact the North Carolina State Bar to determine the status of any relevant complaints filed against an attorney before the court takes disciplinary action against the attorney.

*History Note: Authority G.S. 84-23; 84-36;
 Readopted Eff. December 8, 1994.*

27 NCAC 01B .0103 DEFINITIONS

Subject to additional definitions contained in other provisions of this subchapter, the following words and phrases, when used in this subchapter, will have, unless the context clearly indicates otherwise, the meanings given to them in this rule.

- (1) Admonition - a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

- (2) Appellate division - the appellate division of the general court of justice.
- (3) Board - the Board of Continuing Legal Education.
- (4) Board of Continuing Legal Education - a standing committee of the council responsible for the administration of a program of mandatory continuing legal education and law practice assistance.
- (5) Censure - a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the attorney's license.
- (6) Certificate of conviction - a certified copy of any judgment wherein a member of the North Carolina State Bar is convicted of a criminal offense.
- (7) Chairperson of the Grievance Committee - councilor appointed to serve as chairperson of the Grievance Committee of the North Carolina State Bar.
- (8) Commission - the Disciplinary Hearing Commission of the North Carolina State Bar.
- (9) Commission chairperson - the chairperson of the Disciplinary Hearing Commission of the North Carolina State Bar.
- (10) Complainant or complaining witness - any person who has complained of the conduct of any member of the North Carolina State Bar to the North Carolina State Bar.
- (11) Complaint - a formal pleading filed in the name of the North Carolina State Bar with the commission against a member of the North Carolina State Bar after a finding of probable cause.
- (12) Consolidation of cases - a hearing by a hearing panel of multiple charges, whether related or unrelated in substance, brought against one defendant.
- (13) Council - the Council of the North Carolina State Bar.
- (14) Councilor - a member of the Council of the North Carolina State Bar.
- (15) Counsel - the counsel of the North Carolina State Bar appointed by the council.
- (16) Court or courts of this state - a court authorized and established by the constitution or laws of the state of North Carolina.
- (17) Criminal offense showing professional unfitness - the commission of, attempt to commit, conspiracy to commit, solicitation or subornation of any felony or any crime that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, interference with the judicial or political process, larceny, misappropriation of funds or property, overthrow of the government, perjury, willful failure to file a tax return, or any other offense involving moral turpitude or showing professional unfitness.
- (18) Defendant - a member of the North Carolina State Bar against whom a finding of probable cause has been made.
- (19) Disabled or disability - a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney.
- (20) Grievance - alleged misconduct.
- (21) Grievance Committee - the Grievance Committee of the North Carolina State Bar or any of its panels acting as the Grievance Committee respecting the grievances and other matters referred to it by the chairperson of the Grievance Committee.
- (22) Hearing panel - a hearing panel designated under Rule .0108(a)(2), .0114(d), .0114(x), .0118(b)(2), .0125(a)(6), .0125(b)(7) or .0125(c)(2) of this subchapter.
- (23) Illicit drug - any controlled substance as defined in the North Carolina Controlled Substances Act, section 5, chapter 90, of the North Carolina General Statutes, or its successor, which is used or possessed without a prescription or in violation of the laws of this state or the United States.
- (24) Incapacity or incapacitated - condition determined in a judicial proceeding under the laws of this or any other jurisdiction that an attorney is mentally defective, an inebriate, mentally disordered, or incompetent from want of understanding to manage his or her own affairs by reason of the excessive use of intoxicants, drugs, or other cause.
- (25) Investigation - the gathering of information with respect to alleged misconduct, alleged disability, or a petition for reinstatement.
- (26) Investigator - any person designated to assist in the investigation of alleged misconduct or facts pertinent to a petition for reinstatement.
- (27) Lawyer Assistance Program Board – the Lawyer Assistance Program Board of the North Carolina State Bar.

- (28) Letter of caution - communication from the Grievance Committee to an attorney stating that the past conduct of the attorney, while not the basis for discipline, is unprofessional or not in accord with accepted professional practice.
- (29) Letter of notice - a communication to a respondent setting forth the substance of a grievance.
- (30) Letter of warning - written communication from the Grievance Committee or the commission to an attorney stating that past conduct of the attorney, while not the basis for discipline, is an unintentional, minor, or technical violation of the Rules of Professional Conduct and may be the basis for discipline if continued or repeated.
- (31) Member - a member of the North Carolina State Bar.
- (32) Office of the Counsel - the office and staff maintained by the counsel of the North Carolina State Bar.
- (33) Office of the secretary - the office and staff maintained by the secretary-treasurer of the North Carolina State Bar.
- (34) Party - after a complaint has been filed, the North Carolina State Bar as plaintiff or the member as defendant.
- (35) Plaintiff - after a complaint has been filed, the North Carolina State Bar.
- (36) Preliminary hearing - hearing by the Grievance Committee to determine whether probable cause exists.
- (37) Probable cause - a finding by the Grievance Committee that there is reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action.
- (38) Reprimand - a written form of discipline more serious than an admonition issued in cases in which a defendant has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.
- (39) Respondent - a member of the North Carolina State Bar who has been accused of misconduct or whose conduct is under investigation, but as to which conduct there has not yet been a determination of whether probable cause exists.
- (40) Revised Rules of Professional Conduct - the Rules of Professional Conduct adopted by the Council of the North Carolina State Bar and approved by the North Carolina Supreme Court effective July 24, 1997.
- (41) Rules of Professional Conduct - the Rules of Professional Conduct adopted by the Council of the North Carolina State Bar and approved by the North Carolina Supreme Court and which were in effect from October 7, 1985 through July 23, 1997.
- (42) Secretary - the secretary-treasurer of the North Carolina State Bar.
- (43) Supreme Court - the Supreme Court of North Carolina.
- (44) Will - when used in these rules, means a direction or order which is mandatory or obligatory.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amended Eff. October 8, 2009; February 3, 2000; December 30, 1998.*

27 NCAC 01B .0104 STATE BAR COUNCIL: POWERS AND DUTIES IN DISCIPLINE AND DISABILITY MATTERS

The Council of the North Carolina State Bar will have the power and duty:

- (1) to supervise and conduct disciplinary proceedings in accordance with the provisions hereinafter set forth;
- (2) to appoint members of the commission as provided by statute;
- (3) to appoint a counsel. The counsel will serve at the pleasure of the council. The counsel will be a member of the North Carolina State Bar but will not be permitted to engage in the private practice of law;
- (4) to order the transfer of a member to disability inactive status when such member has been judicially declared incompetent or has been involuntarily committed to institutional care because of incompetence or disability;
- (5) to accept or reject the surrender of the license to practice law of any member of the North Carolina State Bar;
- (6) to order the disbarment of any member whose resignation is accepted;
- (7) to review the report of any hearing panel upon a petition for reinstatement of a disbarred attorney and to make final determination as to whether the license will be restored.

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

Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; September 7, 1995.

27 NCAC 01B .0105 CHAIR OF THE GRIEVANCE COMMITTEE: POWERS AND DUTIES

- (a) The chair of the Grievance Committee will have the power and duty
- (1) to supervise the activities of the counsel;
 - (2) to recommend to the Grievance Committee that an investigation be initiated;
 - (3) to recommend to the Grievance Committee that a grievance be dismissed;
 - (4) to direct a letter of notice to a respondent or direct the counsel to issue letters of notice in such cases or under such circumstances as the chair deems appropriate;
 - (5) to issue, at the direction and in the name of the Grievance Committee, a letter of caution, letter of warning, an admonition, a reprimand, or a censure to a member;
 - (6) to notify a respondent that a grievance has been dismissed, and to notify the complainant in accordance with Rule .0125 of this subchapter;
 - (7) to call meetings of the Grievance Committee;
 - (8) to issue subpoenas in the name of the North Carolina State Bar or direct the secretary to issue such subpoenas;
 - (9) to administer or direct the administration of oaths or affirmations to witnesses;
 - (10) to sign complaints and petitions in the name of the North Carolina State Bar;
 - (11) to determine whether proceedings should be instituted to activate a suspension which has been stayed;
 - (12) to enter orders of reciprocal discipline in the name of the Grievance Committee;
 - (13) to direct the counsel to institute proceedings in the appropriate forum to determine if an attorney is in violation of an order of the Grievance Committee, the commission, or the council;
 - (14) to rule on requests for reconsideration of decisions of the Grievance Committee regarding grievances;
 - (15) to tax costs of the disciplinary procedures against any defendant against whom the Grievance Committee imposes discipline, including a minimum administrative cost of fifty dollars (\$50.00);
 - (16) to dismiss a grievance upon request of the complainant, where it appears that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct and where counsel consents to the dismissal;
 - (17) to dismiss a grievance where it appears that the grievance has not been filed within the time period set out in Rule .0111(f)(4);
 - (18) to dismiss a grievance where it appears that the complaint, even if true, fails to state a violation of the Rules of Professional Conduct and where counsel consents to the dismissal;
 - (19) to dismiss a grievance where it appears that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct and where counsel and a member of the Grievance Committee designated by the committee consent to the dismissal;
 - (20) to appoint a subcommittee to make recommendations to the council for such amendments to the Discipline and Disability Rules as the subcommittee deems necessary or appropriate;
 - (21) to appoint the members of a grievance review panel; and
 - (22) to perform such other duties as the council may direct.
- (b) Absence of Chair and Delegation of Duties. The president, vice-chair, or a member of the Grievance Committee designated by the president or the chair or vice-chair of the committee may perform the functions, exercise the power, and discharge the duties of the chair or any vice-chair when the chair or a vice-chair is absent or disqualified.
- (c) Delegation of Authority. The chair may delegate his or her authority to the president, the vice- chair of the committee, or a member of the Grievance Committee.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 20, 1995; March 6, 1997; October 2, 1997;
December 30, 1998; March 3, 1999; February 3, 2000; March 10, 2011; August 23, 2012;
Amendments Approved by the Supreme Court December 20, 2023 and re-entered into the Supreme Court's
minutes March 20, 2024.

27 NCAC 01B .0106 GRIEVANCE COMMITTEE: POWERS AND DUTIES

The Grievance Committee will have the power and duty

- (1) to direct the counsel to investigate any alleged misconduct or disability of a member of the North Carolina State Bar coming to its attention;
- (2) to hold preliminary hearings, find probable cause and direct that complaints be filed;
- (3) to dismiss grievances upon a finding of no probable cause;
- (4) to issue a letter of caution to a respondent in cases wherein misconduct is not established but the activities of the respondent are unprofessional or not in accord with accepted professional practice. The letter of caution will recommend that the respondent be more professional in his or her practice in one or more ways which are to be specifically identified;
- (5) to issue a letter of warning to a respondent in cases wherein no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct. The letter of warning will advise the respondent that he or she may be subject to discipline if such conduct is continued or repeated. The warning will specify in one or more ways the conduct or practice for which the respondent is being warned. A copy of the letter of warning will be maintained in the office of the counsel for three years subject to the confidentiality provisions of Rule .0133 of this subchapter;
- (6) to issue an admonition in cases wherein the respondent has committed a minor violation of the Rules of Professional Conduct;
- (7) to issue a reprimand in cases wherein the respondent has violated one or more provisions of the Rules of Professional Conduct, and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure;
- (8) to issue a censure in cases wherein the respondent has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the respondent's license;
- (9) to direct that a petition be filed seeking a determination whether a member of the North Carolina State Bar is disabled;
- (10) to include in any order of admonition, reprimand, or censure a provision requiring the respondent to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court;
- (11) in its discretion, to refer grievances primarily attributable to unsound law office management to a program of law office management training approved by the State Bar in accordance with Rule .0112(i) of this subchapter;
- (12) in its discretion, to refer grievances primarily attributable to the respondent's substance abuse or mental health problem to the Lawyer Assistance Program in accordance with Rule .0112(j) of this subchapter;
- (13) in its discretion, to refer grievances primarily attributable to the respondent's failure to employ sound trust accounting techniques to the trust account supervisory program in accordance with Rule .0112(k) of this subchapter;
- (14) to operate the Attorney Client Assistance Program (ACAP). Functions of ACAP can include without limitation:
 - (a) assisting clients and lawyers in resolving issues arising in the client/lawyer relationship that might be resolved without the need to open grievance files; and
 - (b) operating the Fee Dispute Resolution Program;
- (15) to consider and decide whether to follow the recommendation of a grievance review panel; and
- (16) to perform such other duties as the council may direct.

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amendments Approved by the Supreme Court: March 3, 1999; December 20, 2000; August 23, 2012;
 September 25, 2019;
 Amendments Approved by the Supreme Court December 20, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.

27 NCAC 01B .0107 COUNSEL: POWERS AND DUTIES

The counsel will have the power and duty:

- (1) to initiate an investigation concerning alleged misconduct of a member;

- (2) to direct a letter of notice to a respondent when authorized by the chairperson of the Grievance Committee;
- (3) to investigate all matters involving alleged misconduct whether initiated by the filing of a grievance or otherwise;
- (4) to recommend to the chairperson of the Grievance Committee that a matter be dismissed, that a letter of caution, or a letter of warning be issued, or that the Grievance Committee hold a preliminary hearing;
- (5) to prosecute all disciplinary proceedings before the Grievance Committee, hearing panels, and the courts;
- (6) to represent the North Carolina State Bar in any trial, hearing, or other proceeding concerning the alleged disability of a member;
- (7) to appear on behalf of the North Carolina State Bar at hearings conducted by the Grievance Committee, hearing panels, or any other agency or court concerning any motion or other matter arising out of a disciplinary or disability proceeding;
- (8) to appear at hearings conducted with respect to petitions for reinstatement of license by suspended or disbarred attorneys or by attorneys transferred to disability inactive status, to cross-examine witnesses testifying in support of such petitions, and to present evidence, if any, in opposition to such petitions;
- (9) to employ such deputy counsel, investigators, and other administrative personnel in such numbers as the council may authorize;
- (10) to maintain permanent records of all matters processed and of the disposition of such matters;
- (11) to perform such other duties as the council may direct;
- (12) after a finding of probable cause by the Grievance Committee, to designate the particular violations of the Rules of Professional Conduct to be alleged in a formal complaint filed with the commission;
- (13) to file amendments to complaints and petitions arising out of the same transactions or occurrences as the allegations in the original complaints or petitions, in the name of the North Carolina State Bar, with the prior approval of the chairperson of the Grievance Committee;
- (14) after a complaint is filed with the commission, to dismiss any or all claims in the complaint or to negotiate and recommend consent orders of discipline to the hearing panel.

History Note: Authority G.S. 84-23; 84-31;
 Readopted Eff. December 8, 1994;
 Amended Eff. October 8, 2009; March 3, 1999.

27 NCAC 01B .0108 CHAIRPERSON OF THE HEARING COMMISSION: POWERS AND DUTIES

- (a) The chairperson of the Disciplinary Hearing Commission of the North Carolina State Bar will have the power and duty:
- (1) to receive complaints alleging misconduct and petitions alleging the disability of a member filed by the counsel; petitions requesting reinstatement of license by members who have been involuntarily transferred to disability inactive status, suspended, or disbarred; motions seeking the activation of suspensions which have been stayed; and proposed consent orders of disbarment;
 - (2) to assign three members of the commission, consisting of two members of the North Carolina State Bar and one nonlawyer to hear complaints, petitions, motions, and post-hearing motions pursuant to Rule .0114(z)(2) of this subchapter. The chairperson will designate one of the attorney members as chairperson of the hearing panel. No panel member who hears a disciplinary matter may serve on the panel which hears the attorney's reinstatement petition. The chairperson of the commission may designate himself or herself to serve as one of the attorney members of any hearing panel and will be chairperson of any hearing panel on which he or she serves. Post-hearing motions filed pursuant to Rule .0114(z)(2) of this subchapter will be considered by the same hearing panel assigned to the original trial proceeding. Hearing panel members who are ineligible or unable to serve for any reason will be replaced with members selected by the commission chairperson;
 - (3) to set the time and place for the hearing on each complaint or petition;
 - (4) to subpoena witnesses and compel their attendance and to compel the production of books, papers, and other documents deemed necessary or material to any hearing. The chairperson may designate the secretary to issue such subpoenas;
 - (5) to consolidate, in his or her discretion for hearing, two or more cases in which a subsequent complaint or complaints have been served upon a defendant within ninety days of the date of service of the first or a preceding complaint;
 - (6) to enter orders disbarring members by consent;

- (7) to enter an order suspending a member pending disposition of a disciplinary proceeding when the member has been convicted of a serious crime or has pled no contest to a serious crime and the court has accepted the plea.
- (b) The vice-chairperson of the Disciplinary Hearing Commission may perform the function of the chairperson in any matter when the chairperson is absent or disqualified.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; September 7, 1995.

27 NCAC 01B .0109 HEARING PANEL: POWERS AND DUTIES

Hearing panels of the Disciplinary Hearing Commission of the North Carolina State Bar will have the following powers and duties:

- (1) to hold hearings on complaints alleging misconduct, or petitions seeking a determination of disability or reinstatement, or motions seeking the activation of suspensions which have been stayed, and to conduct proceedings to determine if persons or corporations should be held in contempt pursuant to G.S. 84-28.1(b1);
- (2) to enter orders regarding discovery and other procedures in connection with such hearings, including, in disability matters, the examination of a member by such qualified medical experts as the panel will designate;
- (3) to subpoena witnesses and compel their attendance, and to compel the production of books, papers, and other documents deemed necessary or material to any hearing. Subpoenas will be issued by the chairperson of the hearing panel in the name of the commission. The chairperson may direct the secretary to issue such subpoenas;
- (4) to administer or direct the administration of oaths or affirmations to witnesses at hearings;
- (5) to make findings of fact and conclusions of law;
- (6) to enter orders dismissing complaints in matters before the panel;
- (7) to enter orders of discipline against or letters of warning to defendants in matters before the panel;
- (8) to tax costs of the disciplinary proceedings against any defendant against whom discipline is imposed, provided, however, that such costs will not include the compensation of any member of the council, panels, or agencies of the North Carolina State Bar;
- (9) to enter orders transferring a member to disability inactive status;
- (10) to report to the council its findings of fact and recommendations after hearings on petitions for reinstatement of disbarred attorneys;
- (11) to grant or deny petitions of attorneys seeking transfer from disability inactive status to active status;
- (12) to enter orders reinstating suspended attorneys or denying reinstatement. An order denying reinstatement may include additional sanctions in the event violations of the petitioner's order of suspension are found;
- (13) to enter orders activating suspensions which have been stayed or continuing the stays of such suspensions.
- (14) to enter orders holding persons and corporations in contempt pursuant to G.S. 84-28.1(b1) and imposing such sanctions allowed by law.

History Note: Authority G.S. 84-23; 84-28; 84-28.1;
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; March 3, 1999.

27 NCAC 01B .0110 SECRETARY: POWERS AND DUTIES IN DISCIPLINE AND DISABILITY MATTERS

The secretary will have the following powers and duties in regard to discipline and disability procedures:

- (1) to receive grievances for transmittal to the counsel, to receive complaints and petitions for transmittal to the commission chairperson, and to receive affidavits of surrender of license for transmittal to the council;
- (2) to issue summonses and subpoenas when so directed by the president, the chairperson of the Grievance Committee, the chairperson of the commission, or the chairperson of any hearing panel;
- (3) to maintain a record and file of all grievances not dismissed by the Grievance Committee;
- (4) to perform all necessary ministerial acts normally performed by the clerk of the superior court in complaints filed before the commission;

- (5) to enter orders of reinstatement where petitions for reinstatement of suspended attorneys are unopposed by the counsel;
- (6) to dismiss reinstatement petitions based on the petitioner's failure to comply with the rules governing the provision and transmittal of the record of reinstatement proceedings;
- (7) to determine the amount of costs assessed in disciplinary proceedings by the commission.

*History Note: Authority G.S. 84-22; 84-23; 84-32(c);
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009.*

27 NCAC 01B .0111 GRIEVANCES: FORM AND FILING

- (a) A grievance may be filed by any person against a member of the North Carolina State Bar. Such grievance may be written or oral, verified or unverified, and may be made initially to the counsel. The counsel may require that a grievance be reduced to writing in affidavit form and may prepare and distribute standard forms for this purpose.
- (b) Upon the direction of the council or the Grievance Committee, the counsel will investigate such conduct of any member as may be specified by the council or Grievance Committee.
- (c) The counsel may investigate any matter coming to the attention of the counsel involving alleged misconduct of a member upon receiving authorization from the chairperson of the Grievance Committee. If the counsel receives information that a member has used or is using illicit drugs, the counsel will follow the provisions of Rule .0130 of this Subchapter.
- (d) The North Carolina State Bar may keep confidential the identity of an attorney or judge who reports alleged misconduct of another attorney pursuant to Rule 8.3 of the Revised Rules of Professional Conduct and who requests to remain anonymous. Notwithstanding the foregoing, the North Carolina State Bar will reveal the identity of a reporting attorney or judge to the respondent attorney where such disclosure is required by law, or by considerations of due process or where identification of the reporting attorney or judge is essential to preparation of the attorney's defense to the grievance and/or a formal disciplinary complaint.
- (e) The counsel may decline to investigate the following allegations:
 - (1) that a member provided ineffective assistance of counsel in a criminal case, unless a court has granted a motion for appropriate relief based upon the member's conduct;
 - (2) that a plea entered in a criminal case was not made voluntarily and knowingly, unless a court granted a motion for appropriate relief based upon the member's conduct;
 - (3) that a member's advice or strategy in a civil or criminal matter was inadequate or ineffective.
- (f) Limitation of Grievances.
 - (1) There is no time limitation for initiation of any grievance based upon a plea of guilty to a felony or upon conviction of a felony.
 - (2) There is no time limitation for initiation of any grievance based upon allegations of conduct that constitutes a felony, without regard to whether the lawyer is charged, prosecuted, or convicted of a crime for the conduct.
 - (3) There is no time limitation for initiation of any grievance based upon conduct that violates the Rules of Professional Conduct and has been found by a court to be intentional conduct by the lawyer. As used in this Rule, "court" means a state court of general jurisdiction of any state or of the District of Columbia or a federal court.
 - (4) All other grievances must be initiated within six years after the last act giving rise to the grievance.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; October 1, 2003; December 30, 1998; February 20, 1995.*

SECTION .0100 - DISCIPLINE AND DISABILITY OF ATTORNEYS

27 NCAC 01B .0112 INVESTIGATIONS: INITIAL DETERMINATION; NOTICE AND RESPONSE; COMMITTEE REFERRALS

- (a) Investigation Authority - Subject to the policy supervision of the council and the control of the chair of the Grievance Committee, the counsel, or other personnel under the authority of the counsel, will investigate the grievance and submit to the chair a report detailing the findings of the investigation.

(b) Grievance Committee Action on Initial or Interim Reports - As soon as practicable after the receipt of the initial or any interim report of the counsel concerning any grievance, the chair of the Grievance Committee may

- (1) treat the report as a final report;
- (2) direct the counsel to conduct further investigation, including contacting the respondent in writing or otherwise; or
- (3) direct the counsel to send a letter of notice to the respondent.

(c) Letter of Notice, Respondent's Response, and Request for Copy of Grievance - If the counsel serves a letter of notice upon the respondent, it will be served by certified mail and will direct that a response be provided within 15 days of service of the letter of notice upon the respondent. The response to the letter of notice shall include a full and fair disclosure of all facts and circumstances pertaining to the alleged misconduct. The response must be in writing and signed by the respondent. If the respondent requests it, the counsel will provide the respondent with a copy of the written grievance unless the complainant requests anonymity pursuant to Rule .0111(d) of this subchapter.

(d) Request for Copy of Respondent's Response - The counsel may provide to the complainant a copy of the respondent's response to the letter of notice unless the respondent objects thereto in writing.

(e) Termination of Further Investigation - After the Grievance Committee receives the response to a letter of notice, the counsel may conduct further investigation or terminate the investigation, subject to the control of the chair of the Grievance Committee.

(f) Subpoenas - For reasonable cause, the chair of the Grievance Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, for examination concerning the grievance and may compel the production of books, papers, and other documents or writings which the chair deems necessary or material to the inquiry. Each subpoena will be issued by the chair or by the secretary at the direction of the chair. The counsel, deputy counsel, investigator, or any members of the Grievance Committee designated by the chair may examine any such witness under oath or otherwise.

(g) Grievance Committee Action on Final Reports - The Grievance Committee will consider the grievance as soon as practicable after it receives the final report of the counsel, except as otherwise provided in these rules.

(h) Failure of Complainant to Sign and Dismissal Upon Request of Complainant - The investigation into alleged misconduct of the respondent will not be abated by failure of the complainant to sign a grievance, by settlement or compromise of a dispute between the complainant and the respondent, or by the respondent's payment of restitution. The chair of the Grievance Committee may dismiss a grievance upon request of the complainant and with consent of the counsel where it appears that there is no probable cause to believe that the respondent violated the Rules of Professional Conduct.

(i) Referral to Law Office Management Training

- (1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound law office management techniques and procedures, the committee may offer the respondent an opportunity to voluntarily participate in a law office management training program approved by the State Bar before the committee considers discipline.

If the respondent accepts the committee's offer to participate in the program, the respondent will then be required to complete a course of training in law office management prescribed by the chair which may include a comprehensive site audit of the respondent's records and procedures as well as attendance at continuing legal education seminars. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

- (2) Completion of Law Office Management Training Program - If the respondent successfully completes the law office management training program, the committee may consider the respondent's successful completion of the law office management training program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to successfully complete the law office management training program as agreed, the grievance will be returned to the committee's agenda for consideration of imposition of discipline. The requirement that a respondent complete law office management training pursuant to this rule shall be in addition to the respondent's obligation to satisfy the minimum continuing legal education requirements contained in 27 NCAC 01D .1517.

(j) Referral to Lawyer Assistance Program

- (1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's substance abuse or mental health problem, the committee may offer the respondent an opportunity to voluntarily participate in a rehabilitation program under the supervision of the Lawyer Assistance Program Board before the committee considers discipline. If the respondent accepts the committee's offer to participate in a rehabilitation program, the respondent must provide the committee with a written acknowledgement of the referral on a form approved by the

chair. The acknowledgement of the referral must include the respondent's waiver of any right of confidentiality that might otherwise exist to permit the Lawyer Assistance Program to provide the committee with the information necessary for the committee to determine whether the respondent is in compliance with the rehabilitation program. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

- (2) Completion of Rehabilitation Program – If the respondent successfully completes the rehabilitation program, the committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to complete the rehabilitation program or fails to cooperate with the Lawyer Assistance Program Board, the Lawyer Assistance Program will report that failure to the counsel and the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(k) Referral to Trust Accounting Compliance Program

- (1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound trust accounting techniques, the committee may offer the respondent an opportunity to voluntarily participate in the State Bar's Trust Account Compliance Program for up to two years before the committee considers discipline. If the respondent accepts the committee's offer to participate in the compliance program, the respondent must fully cooperate with the Trust Account Compliance Counsel and must provide to the Office of Counsel quarterly proof of compliance with all provisions of Rule 1.15 of the Rules of Professional Conduct. Such proof shall be in a form satisfactory to the Office of Counsel. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.
- (2) Completion of Trust Account Compliance Program - If the respondent successfully completes the program, the committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent does not fully cooperate with the Trust Account Compliance Counsel and/or does not successfully complete the program, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.
- (3) The committee will not refer to the program any case involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or any other case the committee deems inappropriate for referral. The committee will not refer to the program any respondent who has not cooperated fully and timely with the committee's investigation. If the Office of Counsel or the committee discovers evidence that a respondent who is participating in the program may have misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, the chair will terminate the respondent's participation in the program and the disciplinary process will proceed. Referral to the Trust Accounting Compliance Program is not a defense to allegations that a lawyer misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, and it does not immunize a lawyer from the disciplinary consequences of such conduct.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 5, 2015; August 23, 2012; August 25, 2011; March 10, 2011; March 6, 2002;
December 20, 2000; December 30, 1998; March 6, 1997; February 20, 1995.*

27 NCAC 01B .0113 PROCEEDINGS BEFORE THE GRIEVANCE COMMITTEE

(a) Probable Cause - The Grievance Committee or any of its panels acting as the Grievance Committee with respect to grievances referred to it by the chair of the Grievance Committee will determine whether there is probable cause to believe that a respondent is guilty of misconduct justifying disciplinary action. In its discretion, the Grievance Committee or a panel thereof may find probable cause regardless of whether the respondent has been served with a written letter of notice. The respondent may waive the necessity of a finding of probable cause with the consent of the counsel and the chair of the Grievance Committee. A decision of a panel of the committee may not be appealed to the Grievance Committee as a whole or to another panel (except as provided in 27 N.C.A.C. 1A, .0701(a)(3)).

(b) Oaths and Affirmations - The chair of the Grievance Committee will have the power to administer oaths and affirmations.

(c) Record of Grievance Committee's Determination - The chair will keep a record of the Grievance Committee's determination concerning each grievance and file the record with the secretary.

(d) Subpoenas - The chair will have the power to subpoena witnesses, to compel their attendance, and compel the production of books, papers, and other documents deemed necessary or material to any preliminary hearing. The chair may designate the secretary to issue such subpoenas.

(e) Closed Meetings - The counsel and deputy counsel, the witness under examination, interpreters when needed, and, if deemed necessary, a stenographer or operator of a recording device may be present while the committee is in session and deliberating, but no persons other than members may be present while the committee is voting.

(f) Disclosure of Matters Before the Grievance Committee - The results of any deliberation by the Grievance Committee will be disclosed to the counsel and the secretary for use in the performance of their duties. Otherwise, a member of the committee, the staff of the North Carolina State Bar, any interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the committee only when so directed by the committee or a court of record.

(g) Quorum Requirement - At any preliminary hearing held by the Grievance Committee, a quorum of one-half of the members will be required to conduct any business. Affirmative vote of a majority of members present will be necessary to find that probable cause exists. The chair will not be counted for quorum purposes and will be eligible to vote regarding the disposition of any grievance only in case of a tie among the regular voting members.

(h) Results of Grievance Committee Deliberations - If probable cause is found and the committee determines that a hearing is necessary, the chair will direct the counsel to prepare and file a complaint against the respondent. If the committee finds probable cause but determines that no hearing is necessary, it will direct the counsel to prepare for the chair's signature an admonition, reprimand, or censure. If no probable cause is found, the grievance will be dismissed or dismissed with a letter of warning or a letter of caution.

(i) Letters of Caution - If no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is unprofessional or not in accord with accepted professional practice, the committee may issue a letter of caution to the respondent recommending that the respondent be more professional in his or her practice in one or more ways which are to be specifically identified.

(j) Letters of Warning

(1) If no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct, the committee may issue a letter of warning to the respondent. The letter of warning will advise the respondent that he or she may be subject to discipline if such conduct is continued or repeated. The letter will specify in one or more ways the conduct or practice for which the respondent is being warned. The letter of warning will not constitute discipline of the respondent.

(2) A copy of the letter of warning will be maintained in the office of the counsel for three years. If relevant, a copy of the letter of warning may be offered into evidence in any proceeding filed against the respondent before the commission within three years after the letter of warning is issued to the respondent. In every case filed against the respondent before the commission within three years after the letter of warning is issued to the respondent, the letter of warning may be introduced into evidence as an aggravating factor concerning the issue of what disciplinary sanction should be imposed. A copy of the letter of warning may be disclosed to the Grievance Committee if another grievance is filed against the respondent within three years after the letter of warning is issued to the respondent.

(3) Service of Process:

(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning may be served upon the respondent by mailing a copy of the letter of warning to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the letter of warning 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.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning shall be served upon the respondent by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the letter of warning shall be served by mailing a copy of the letter of warning to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the letter of warning 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.

- (4) Within 15 days after service, the respondent may refuse the letter of warning and request a hearing before the commission to determine whether the respondent violated the Rules of Professional Conduct. Such refusal and request will be in writing, addressed to the Grievance Committee, and served on the secretary by certified mail, return receipt requested. The refusal will state that the letter of warning is refused. If the respondent does not serve a refusal and request within 15 days after service upon the respondent of the letter of warning, the letter of warning will be deemed accepted by the respondent. An extension of time may be granted by the chairperson of the Grievance Committee for good cause shown.
- (5) In cases in which the respondent refuses the letter of warning, the counsel will prepare and file a complaint against the respondent at the commission.

(k) Admonitions, Reprimands, and Censures

- (1) If probable cause is found but it is determined by the Grievance Committee that a complaint and hearing are not warranted, the committee shall issue an admonition in cases in which the respondent has committed a minor violation of the Rules of Professional Conduct, a reprimand in cases in which the respondent's conduct has violated one or more provisions of the Rules of Professional Conduct and caused harm or potential harm to a client, the administration of justice, the profession, or members of the public, or a censure in cases in which the respondent has violated one or more provisions of the Rules of Professional Conduct and the harm or potential harm caused by the respondent is significant and protection of the public requires more serious discipline. To determine whether more serious discipline is necessary to protect the public or whether the violation is minor and less serious discipline is sufficient to protect the public, the committee shall consider the factors delineated in subparagraphs (2) and (3) below.
- (2) Factors that shall be considered in determining whether protection of the public requires a censure include, but are not limited to, the following:
 - (A) prior discipline for the same or similar conduct;
 - (B) prior notification by the North Carolina State Bar of the wrongfulness of the conduct;
 - (C) refusal to acknowledge wrongful nature of conduct;
 - (D) lack of indication of reformation;
 - (E) likelihood of repetition of misconduct;
 - (F) uncooperative attitude toward disciplinary process;
 - (G) pattern of similar conduct;
 - (H) violation of the Rules of Professional Conduct in more than one unrelated matter;
 - (I) lack of efforts to rectify consequences of conduct;
 - (J) imposition of lesser discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar;
 - (K) notification contemporaneous with the conduct at issue of the wrongful nature of the conduct and failure to take remedial action.
- (3) Factors that shall be considered in determining whether the violation of the Rules is minor and warrants issuance of an admonition include, but are not limited to, the following:
 - (A) lack of prior discipline for same or similar conduct;
 - (B) recognition of wrongful nature of conduct;
 - (C) indication of reformation;
 - (D) indication that repetition of misconduct not likely;
 - (E) isolated incident;
 - (F) violation of the Rules of Professional Conduct in only one matter;
 - (G) lack of harm or potential harm to client, administration of justice, profession, or members of the public;
 - (H) efforts to rectify consequences of conduct;
 - (I) inexperience in the practice of law;
 - (J) imposition of admonition appropriately acknowledges the minor nature of the violation(s) of the Rules of Professional Conduct;
 - (K) notification contemporaneous with the conduct at issue of the wrongful nature of the conduct resulting in efforts to take remedial action;
 - (L) personal or emotional problems contributing to the conduct at issue;

(M) successful participation in and completion of contract with Lawyer's Assistance Program where mental health or substance abuse issues contributed to the conduct at issue.

(l) Procedures for Admonitions, Reprimands, and Censures

(1) A record of any admonition, reprimand, or censure issued by the Grievance Committee will be maintained in the office of the secretary.

(2)

(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the admonition, reprimand, or censure may be served upon the respondent by mailing a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the admonition, reprimand, or censure 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.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the admonition, reprimand, or censure shall be served upon the respondent by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the respondent shall be served by mailing a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the admonition, reprimand, or censure 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.

(3) Within 15 days after service the respondent may refuse the admonition, reprimand, or censure and request a hearing before the commission. Such refusal and request will be in writing, addressed to the Grievance Committee, and served upon the secretary by certified mail, return receipt requested. The refusal will state that the admonition, reprimand, or censure is refused.

(4) If a refusal and request are not served upon the secretary within 15 days after service upon the respondent of the admonition, reprimand, or censure, the admonition, reprimand, or censure will be deemed accepted by the respondent. An extension of time may be granted by the chair of the Grievance Committee for good cause shown. A censure that is deemed accepted by the respondent must be filed as provided by Rule .0127(a)(3) of this subchapter.

(5) In cases in which the respondent refuses an admonition, reprimand, or censure, the counsel will prepare and file a complaint against the respondent at the commission.

(m) There shall be a grievance review panel of the Grievance Committee. For each review conducted, the chair shall appoint a panel consisting of the chair, two vice-chairs, and two other members of the Grievance Committee, including one public member. The panel shall not include any member who serves on the subcommittee that was assigned to address the underlying grievance file. The chair shall serve as the chair of the panel. If the chair or either of the two vice-chairs from the other subcommittees served on the subcommittee that issued the discipline or are otherwise unable to serve on the review panel, the chair may appoint a substitute member or members of the committee to serve on the review panel in the place of the chair or in the place of such vice-chair or vice-chairs.

(1) The panel shall have the following powers and duties:

(A) Upon a timely-filed written request by a grievance respondent, to review an order of public discipline issued to the respondent by the Grievance Committee.

(i) A written request for review must be filed with the secretary of the State Bar within 15 days of service of the public discipline upon the respondent.

(ii) The written request shall contain the grounds upon which the respondent believes review is warranted and may include supporting documentary evidence that has not previously been submitted to the Grievance Committee.

(iii) The respondent shall be entitled to be represented by legal counsel at the respondent's expense. The respondent or the respondent's legal counsel and legal counsel for the State Bar shall be entitled to appear and to present oral arguments to the panel. The panel's review shall be conducted upon the written record and oral arguments. Neither the respondent nor the State Bar may present live testimony or compel the production of books, papers, and other writings and documents in connection with a request for

- review. The panel may, in its discretion, question the respondent, legal counsel for the respondent, and legal counsel for the State Bar.
- (iv) The panel shall consider the request for review, any documentation submitted in support of the request for review, and all materials that were before the Grievance Committee when it made its decision. The respondent shall be entitled to receive all material considered by the panel other than attorney-client privileged communications of the Office of Counsel and work product of the Office of Counsel. The panel shall determine whether the public discipline issued by the Grievance Committee is appropriate in light of all material considered by the panel.
 - (a) After considering the request for review, oral arguments, and the documentary record, the panel may, by majority vote, either concur in the public discipline issued by the Grievance Committee or remand the grievance file to the Grievance Committee with its recommendation for a different disposition.
 - (b) The panel shall prepare a memorandum communicating its determination to the respondent and to the Office of Counsel. The memorandum will not constitute an order and will not contain findings of fact, conclusions of law, or the rationale for the panel's determination.
 - (c) The Grievance Committee shall act upon a remand at its next regularly scheduled meeting.
 - (d) Upon remand, the Grievance Committee may affirm the public discipline that it issued or may reach a different disposition of the grievance file.
 - (e) The decision of the Grievance Committee upon remand is final, and its decision is not subject to further consideration by the Grievance Committee.
 - (f) Within 15 days after service upon the respondent of (i) the panel's memorandum concurring in the original public discipline issued by the Grievance Committee, or (ii) the Grievance Committee's final decision upon remand after review, the respondent may refuse the public discipline imposed by the Grievance Committee and request a hearing before the commission. Such refusal and request shall be in writing, addressed to the Grievance Committee, and served upon the secretary of the State Bar by certified mail, return receipt requested.
 - (v) Second or subsequent requests for review of Grievance Committee action in the same file will not be considered.
 - (vi) A request for review is in addition to and not in derogation of all procedural and substantive rights contained in the Discipline and Disability Rules of the State Bar.
- (2) All proceedings and deliberations of the panel shall be conducted in a manner and at a time and location to be determined by the chair of the Grievance Committee. Reviews may be conducted by videoconference in the discretion of the chair.
 - (3) All proceedings of the panel are closed to the public. Neither the respondent nor legal counsel for the respondent and the State Bar shall be privy to deliberations of the panel. All documents, papers, letters, recordings, electronic records, or other documentary materials, regardless of physical form or characteristic, in the possession of the panel are confidential and are not public records within the meaning of Chapter 132 of the General Statutes.
- (n) Disciplinary Hearing Commission Complaints - Formal complaints will be issued in the name of the North Carolina State Bar as plaintiff and signed by the chair of the Grievance Committee. Amendments to complaints may be signed by the counsel alone, with the approval of the chair of the Grievance Committee.

*History Note: Authority G.S. 84-23; 84-28;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 1999; February 3, 2000; October 8, 2009; March 27, 2019; September 25, 2020;
Amendments Approved by the Supreme Court October 18, 2023 and December 20, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.*

27 NCAC 01B .0114 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: GENERAL RULES APPLICABLE TO ALL PROCEEDINGS

(a) Applicable Procedure - Except where specific procedures are provided by these rules, pleadings and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of nonjury civil cases in the superior courts. Any specific procedure set out in these rules controls, and where specific procedures are set out in these rules, the Rules of Civil Procedure will be supplemental only.

(b) Continuances - The chairperson of the hearing panel may continue any hearing for good cause shown. After a hearing has commenced, continuances will only be granted pursuant to Rule .0116(b).

(c) Appearance By or For the Defendant - The defendant may appear pro se or may be represented by counsel. The defendant may not act pro se if he or she is represented by counsel.

(1) Pro Se Defendant's Address - When a defendant appears in his or her own behalf in a proceeding, the defendant will file with the clerk, with proof of delivery of a copy to the counsel, an address at which any notice or other written communication required to be served upon the defendant may be sent, if such address differs from the address on record with the State Bar's membership department.

(2) Notice of Appearance - When a defendant is represented by an attorney in a proceeding, the attorney will file with the clerk a written notice of such appearance which will state his or her name, address and telephone number, the name and address of the defendant on whose behalf he or she appears, and the caption and docket number of the proceeding. Any additional notice or other written communication required to be served on or furnished to a defendant during the pendency of the hearing will be sent to defendant's attorney of record in lieu of transmission to the defendant.

(d) Filing Time Limits - Pleadings or other documents in formal proceedings required or permitted to be filed under these rules must be received for filing by the clerk of the commission within the time limits, if any, for such filing. The date of the receipt by the clerk, and not the date of deposit in the mail, is determinative.

(e) Form of Papers - All papers presented to the commission for filing will be on letter size paper (8 1/2 x 11 inches) with the exception of exhibits. The clerk will require a party to refile any paper that does not conform to this size.

(f) Subpoenas - The hearing panel will have the power to subpoena witnesses and compel their attendance, and to compel the production of books, papers, and other documents deemed necessary or material to any hearing as permitted in civil cases under the North Carolina Rules of Civil Procedure. Such process will be issued in the name of the hearing panel by its chairperson, or the chairperson may designate the secretary of the North Carolina State Bar to issue such process. The plaintiff and the defendant have the right to invoke the powers of the panel with respect to compulsory process for witnesses and for the production of books, papers, and other writings and documents.

(g) Admissibility of Evidence - In any hearing, admissibility of evidence will be governed by the rules of evidence applicable in the superior court of North Carolina at the time of the hearing. The chairperson of the hearing panel will rule on the admissibility of evidence, subject to the right of any member of the panel to question the ruling. If a member of the panel challenges a ruling relating to admissibility of evidence, the question will be decided by a majority vote of the hearing panel.

(h) Defendant as Witness - The defendant will, except as otherwise provided by law, be competent and compellable to give evidence for either party.

History Note: Authority G.S. 84-23; 84-28; 84-28.1; 84-29; 84-30; 84-32(a);

Readopted Eff. December 8, 1994;

Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009; March 2, 2006; December 30, 1998; October 2, 1997.

27 NCAC 01B .0115 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: PLEADINGS AND PREHEARING PROCEDURE

(a) Complaint and Service - The counsel will file the complaint with the clerk of the commission. The counsel will cause a summons and a copy of the complaint to be served upon the defendant and will inform the clerk of the date of service. The clerk will deliver a copy of the complaint to the chairperson of the commission and will inform the chairperson of the date that service on the defendant was effected. Service of complaints and summonses and other documents or papers will be accomplished as set forth in the North Carolina Rules of Civil Procedure.

(b) Notice Pleading - Complaints in disciplinary actions will allege the charges with sufficient precision to clearly apprise the defendant of the conduct which is the subject of the complaint.

(c) Answer - Within 20 days after the service of the complaint, unless further time is allowed by the chairperson of the commission or of the hearing panel upon good cause shown, the defendant will file an answer to the complaint with the clerk of the commission and will serve a copy on the counsel.

(d) Designation of Hearing Panel - Within 20 days after service of the complaint upon the defendant, the chairperson of the commission will designate a hearing panel from among the commission members. The chairperson will notify the counsel and the defendant of the composition of the hearing panel.

(e) Scheduling Conference - The chairperson of the hearing panel will hold a scheduling conference with the parties within 20 days after the filing of the answer by the defendant unless another time is set by the chairperson of the commission. The chairperson of the hearing panel will notify the counsel and the defendant of the date, time, and venue (e.g., in person, telephone, video conference) of the scheduling conference. At the scheduling conference, the parties will discuss anticipated issues, amendments, motions, any settlement conference, and discovery. The chairperson of the hearing panel will set dates for the completion of discovery and depositions, for the filing of motions, for the pre-hearing conference, for the filing of the stipulation on the pre-hearing conference, and for the hearing, and may order a settlement conference. The hearing date shall not be less than 60 days from the final date for discovery and depositions unless otherwise consented to by the parties. The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in the scheduling conference or willfully fails to comply with a scheduling order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the NC Rules of Civil Procedure.

(f) Failure to File an Answer - Failure to file an answer admitting or denying the allegations of the complaint or asserting the grounds for failing to do so within the time specified by this rule will be grounds for entry of the defendant's default. If the defendant fails to file an answer to the complaint, the allegations contained in the complaint will be deemed admitted.

(g) Default

- (1) The clerk will enter the defendant's default when the fact of default is made to appear by motion of the counsel or otherwise.
- (2) The counsel may thereupon apply to the hearing panel for default orders as follows:
 - (A) For an order making findings of fact and conclusions of law. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. The hearing panel shall then set a date for hearing at which the sole issue shall be the discipline to be imposed.
 - (B) For an order of discipline. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. If such facts provide sufficient basis, the hearing panel shall enter an order imposing the discipline deemed to be appropriate. The hearing panel may, in its discretion, set a hearing date and hear such additional evidence as it deems necessary to determine appropriate discipline prior to entering the order of discipline.
- (3) For good cause shown, the hearing panel may set aside the entry of default.
- (4) After an order imposing discipline has been entered by the hearing panel upon the defendant's default, the hearing panel may set aside the order in accordance with Rule 60(b) of the North Carolina Rules of Civil Procedure.

(h) Discovery - Discovery will be available to the parties in accordance with the North Carolina Rules of Civil Procedure. Any discovery undertaken must be completed by the date set in the scheduling order unless the time for discovery is extended by the chairperson of the hearing panel for good cause shown. Upon a showing of good cause, the chairperson of the hearing panel may reschedule the hearing to accommodate completion of reasonable discovery.

(i) Settlement - The parties may meet by mutual consent prior to the hearing to discuss the possibility of settlement of the case or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the case will be subject to the approval of the hearing panel. The hearing panel may reject a proposed settlement agreement but only after conducting a conference with the parties. The chairperson of the hearing panel will notify the counsel and the defendant of the date, time, and venue (e.g., in person, telephone, videoconference) of the conference. If, after the conference, the first hearing panel rejects a proposed settlement, another hearing panel must be empanelled to try the case, unless all parties consent to proceed with the original hearing panel. The parties may submit a proposed settlement to a second hearing panel and may, upon the agreement of both parties, request a conference with the panel, but the parties shall not have the right to request a third hearing panel if the proposed settlement is rejected by the second hearing panel. The second hearing panel shall either accept the settlement proposal or hold a hearing upon the allegations of the complaint.

(j) Settlement Conference - Either party may request, or the chair of the hearing panel may order, appointment of a commission member to conduct a settlement conference.

- (1) Such request shall be filed with the clerk of the commission and must be made no later than 60 days prior to the date set for hearing.
- (2) Upon such request, the chairperson of the commission shall select and assign a commission member not assigned to the hearing panel in the case to conduct a settlement conference and shall notify the parties of

the commission member assigned and the date by which the settlement conference must be held. The settlement conference must be no later than 30 days prior to the date set for hearing.

- (3) The commission member conducting the settlement conference will set the date, time, and manner.
- (4) At the settlement conference, the parties will discuss their positions and desired resolution and the commission member will provide input regarding the case and resolution.
- (5) The commission member's evaluation and input shall be advisory only and not binding.
- (6) All statements and/or admissions made at the settlement conference shall be for settlement purposes only and shall not be admissible at any hearing in the case. Evidence that is otherwise discoverable, however, shall not be excluded from admission at hearing merely because it is presented in the course of the settlement conference.

(k) Prehearing Conference and Order

- (1) Unless default has been entered by the clerk, the parties shall hold a prehearing conference. The prehearing conference shall be arranged and held by the dates established in the scheduling order.
- (2) Prior to or during the prehearing conference, the parties shall: exchange witness and exhibit lists; discuss stipulations of undisputed facts; discuss the issues for determination by the hearing panel; and exchange contested issues if the parties identify differing contested issues.
- (3) Within five days after the date of the prehearing conference, each party shall provide the other with any documents or items identified as exhibits but not previously provided to the other party.
- (4) The parties shall memorialize the prehearing conference in a document titled "Stipulation on Prehearing Conference" that shall address the items and utilize the format in the sample provided to the parties by the clerk. By the date set in the scheduling order, the parties shall submit the Stipulation on Prehearing Conference to the clerk to provide to the hearing panel.
- (5) Upon five days' notice to the parties, at the discretion of the chairperson of the hearing panel, the chairperson may order the parties to meet with the chairperson or any designated member of the hearing panel for the purpose of promoting the efficiency of the hearing. The participating member of the panel shall have the power to issue such orders as may be appropriate. The venue (e.g., telephone, videoconference, in person) shall be set by the hearing panel member.
- (6) The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in a prehearing conference or hearing or who willfully fails to comply with a prehearing order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the NC Rules of Procedure.
- (7) Evidence or witnesses not included in the Stipulation on Prehearing Conference may be excluded from admission or consideration at the hearing.

(l) Prehearing Motions - The chairperson of the hearing panel, without consulting the other panel members, may hear and dispose of all prehearing motions except motions the granting of which would result in dismissal of the charges or final judgment for either party. All motions which could result in dismissal of the charges or final judgment for either party will be decided by a majority of the members of the hearing panel. The following procedures shall apply to all prehearing motions, including motions which could result in dismissal of all or any of the allegations or could result in final judgment for either party on all or any claims:

- (1) Parties shall file motions with the clerk of the commission. Parties may submit motions by regular mail, overnight mail, or in person. Motions transmitted by facsimile or by email will not be accepted for filing except with the advance written permission of the chairperson of the hearing panel. Parties shall not deliver motions or other communications directly to members of the hearing panel unless expressly directed in writing to do so by the chairperson of the hearing panel.
- (2) Motions shall be served as provided in the NC Rules of Civil Procedure.
- (3) The non-moving party shall have ten days from the filing of the motion to respond. If the motion is served upon the non-moving party by regular mail only, then the non-moving party shall have 13 days from the filing of the motion to respond. Upon good cause shown, the chairperson of the hearing panel may shorten or extend the time period for response.
- (4) Any prehearing motion may be decided on the basis of the parties' written submissions. Oral argument may be allowed in the discretion of the chairperson of the hearing panel. The chairperson shall set the time, date, and manner of oral argument. The chairperson may order that argument on any prehearing motion may be heard in person or by telephone or electronic means of communication.
- (5) Any motion included in or with a defendant's answer will not be acted upon, and no response from the non-moving party will be due, unless and until a party files a notice requesting action by the deadline for filing

motions set in the scheduling order. The due date for response by the non-moving party will run from the date of the filing of the notice.

*History Note: Authority G.S. 84-23;
Adopted: September 22, 2016;
Amendments Approved by the Supreme Court: September 28, 2017.*

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.*

**27 NCAC 01B .0117 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION:
POSTTRIAL MOTIONS**

- (a) New Trials and Amendments of Judgments (N.C. R. Civ. 59)
- (1) Either party may request a new trial or amendment of the hearing panel's final order, based on any of the grounds set out in Rule 59 of the North Carolina Rules of Civil Procedure.
 - (2) A motion for a new trial or amendment of judgment will be filed with the clerk no later than 20 days after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, will be filed with the motion.

- (3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.
 - (4) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, order oral argument.
- (b) Relief from Judgment or Order (N.C. R. Civ. 60)
- (1) Either party may file a motion for relief from the final judgment or order, based on any of the grounds set out in Rule 60 of the North Carolina Rules of Civil Procedure.
 - (2) A motion for relief from the final judgment or order will be filed with the clerk no later than one year after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, will be filed with the motion.
 - (3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.
 - (4) The clerk will promptly transmit the motion and any response to the chairperson of the commission, who will appoint a hearing panel. The chairperson will appoint the members of the hearing panel that originally heard the matter wherever practicable.
 - (5) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, order oral argument.
- (c) Effect of Filing Motion - The filing of a motion requesting a new trial, amendment of the judgment, or relief from the final judgment or order under this section will not automatically stay or otherwise affect the effective date of an order of the commission.

History Note: Authority G.S. 84-23;
Eff. September 22, 2016.

27 NCAC 01B .0118 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: STAYED SUSPENSION

- (a) Procedures: Non-compliance with Conditions - In any case in which a period of suspension is stayed upon compliance by the defendant with conditions, the commission will retain jurisdiction of the matter until all conditions are satisfied. The following procedures apply during a stayed suspension:
- (1) If, during the period the stay is in effect, the counsel receives information tending to show that a condition has been violated, the counsel may, with the consent of the chairperson of the Grievance Committee, file a motion in the cause with the clerk of the commission specifying the violation and seeking an order lifting the stay and activating the suspension. The counsel will serve a copy of the motion upon the defendant.
 - (2) The clerk will promptly transmit the motion to the chairperson of the commission. The chairperson will appoint a hearing panel to hold a hearing, appointing the members of the hearing panel that originally heard the matter wherever practicable. The chairperson of the commission will notify the counsel and the defendant of the composition of the hearing panel and the time and place for the hearing.
 - (3) At the hearing, the State Bar will have the burden of proving by the greater weight of the evidence that the defendant violated a condition of the stay.
 - (4) If the hearing panel finds by the greater weight of the evidence that the defendant violated a condition of the stay, the panel may enter an order lifting the stay and activating the suspension, or any portion thereof. Alternatively, the panel may allow the stay to remain in effect for the original term of the stay, may extend the term of the stay, and/or may include modified or additional conditions for the suspension to remain stayed. If the panel finds that the defendant violated a condition of the stay, the panel may tax the defendant with administrative fees and costs.
 - (A) In any order lifting a stay and activating a suspension in whole or in part, the panel may include a provision allowing the defendant to apply for a stay of the activated suspension on such terms and conditions as the panel concludes are appropriate.
 - (B) The panel may impose modified or additional conditions: (a) which the defendant must satisfy to obtain a stay of an activated suspension; (b) with which the defendant must comply during the stay of an activated suspension; and/or (c) which the defendant must satisfy to be reinstated to active status at the end of the activated suspension period.
 - (C) If the panel activated the entire period of suspension, in order to be reinstated at the end of the activated suspension, the defendant must comply with the requirements of Rule .0129(b) of this Subchapter and with any requirements imposed in previous orders entered by the commission.

- (D) If the panel activated only a portion of the suspension, in order to be returned to active status at the end of the period of activated suspension the defendant must file a motion with the commission seeking a stay of the remainder of the original term of suspension. If the defendant is granted a stay of the remainder of the original term of suspension, the panel may impose modified and/or additional conditions with which the defendant must comply during the stayed suspension.
 - (5) If the panel finds that the greater weight of the evidence does not establish that the defendant violated a condition of the stay, it will enter an order continuing the stay.
 - (6) In any event, the panel will include in its order findings of fact and conclusions of law in support of its decision.
- (b) Completion of Stayed Suspension; Continuation of Stay if Motion Alleging Lack of Compliance is Pending
- (1) Unless there is pending a motion or proceeding in which it is alleged that the defendant failed to comply with the conditions of the stay, the defendant's obligations under an order of discipline end upon expiration of the period of the stay.
 - (2) When the period of the stay of the suspension would otherwise have terminated, if a motion or proceeding is pending in which it is alleged that the defendant failed to comply with the conditions of the stay, the commission retains jurisdiction to lift the stay and activate all or any part of the suspension. The defendant's obligation to comply with the conditions of the existing stay remains in effect until any such pending motion or proceeding is resolved.
- (c) Applying for Stay of Suspension - The following procedures apply to a motion to stay a suspension:
- (1) The defendant shall file a motion for stay with the clerk and serve a copy of the motion and all attachments upon the counsel. Such motion shall be filed no earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion filed earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion unless it is delivered to the clerk and served upon the counsel contemporaneously.
 - (2) The motion must identify each condition for stay and state how the defendant has met each condition. The defendant shall attach supporting documentation establishing compliance with each condition. The defendant has the burden of proving compliance with each condition by clear, cogent, and convincing evidence.
 - (3) The counsel shall have 30 days after the motion is filed to file a response.
 - (4) The clerk shall transmit the motion and the counsel's response to the chairperson of the commission. Within 14 days of transmittal of the motion and the response, the chairperson shall issue an order appointing a hearing panel and setting the date, time, and location for the hearing. Wherever practicable, the chairperson shall appoint the members of the hearing panel that entered the order of discipline.
- (d) Hearing on Motion for Stay
- (1) The defendant bears the burden of proving compliance with all conditions for a stay by clear, cogent, and convincing evidence.
 - (2) Any hearing on a motion for stay will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trials of nonjury civil causes in the superior courts.
 - (3) The decision to grant or deny a defendant's motion to stay a suspension is discretionary. The panel should consider whether the defendant has complied with Rule .0128 and Rule .0129 of this Subchapter, and any conditions in the order of discipline, as well as whether reinstatement of the defendant will cause harm or potential harm to clients, the profession, the public, or the administration of justice.
- (e) Order on the Motion for Stay - The hearing panel will determine whether the defendant has established compliance with all conditions for a stay by clear, cogent, and convincing evidence. The panel must enter an order including findings of fact and conclusions of law. The panel may impose modified and/or additional conditions: (a) for the suspension to remain stayed; (b) for eligibility for a stay during the suspension; and/or (c) for reinstatement to active status at the end of the suspension period. The panel may tax costs and administrative fees in connection with the motion.

History Note: Authority G.S. 84-23;
Eff. September 22, 2016.

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;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: November 7, 1996; March 6, 1997; December 30, 1998;
February 3, 2000; September 22, 2016;
Amendments Approved by the Supreme Court March 1, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.*

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.*

27 NCAC 01B .0121 SURRENDER OF LICENSE WHILE UNDER INVESTIGATION

- (a) Surrender of License to the Council - A member who is the subject of an investigation into allegations of misconduct, but against whom no formal complaint has been filed before the commission may tender his or her license to practice by delivering to the secretary for transmittal to the council an affidavit stating that the member desires to resign and that
- (1) the resignation is freely and voluntarily rendered, is not the result of coercion or duress, and the member is fully aware of the implications of submitting the resignation;
 - (2) the member is aware that there is presently pending an investigation or other proceedings regarding allegations that the member has been guilty of misconduct, the nature of which will specifically be set forth;
 - (3) the member acknowledges that the material facts upon which the grievance is predicated are true;
 - (4) the resignation is being submitted because the member knows that if charges were predicated upon the misconduct under investigation, the member could not successfully defend against them.
- (b) Acceptance of Resignation - The council may accept a member's resignation only if the affidavit required under Rule .0121(a) above satisfies the requirements stated therein and the member has provided to the North Carolina State Bar all

documents and financial records required to be kept pursuant to the Rules of Professional Conduct and requested by the counsel. If the council accepts a member's resignation, it will enter an order disbaring the member. The order of disbarment is effective on the date the council accepts the member's resignation.

(c) Public Record - The order disbaring the member and the affidavit required under Rule .0121(a) above are matters of public record.

(d) Consent to Disbarment Before the Commission - If a defendant against whom a formal complaint has been filed before the commission wishes to consent to disbarment, the defendant may do so by filing an affidavit with the chairperson of the commission. If the chairperson determines that the affidavit meets the requirements set out in .0121(a)(1), (2), (3), and (4) above, the chairperson will accept the surrender and issue an order of disbarment. The order of disbarment becomes effective upon entry of the order with the secretary. If the affidavit does not meet the requirements set out above, the consent to disbarment will not be accepted and the disciplinary complaint will be heard pursuant to Rule .0114 to Rule .0118 of this subchapter.

(e) Wind-Down Period - After a member tenders his or her license or consents to disbarment under this section the member may not undertake any new legal matters. The member may complete any legal matters which were pending on the date of the tender of the affidavit or consent to disbarment which can be completed within 30 days of the tender or consent. The member has 30 days from the date on which the member tenders the affidavit of surrender or consent to disbarment in which to comply with all of the duties set out in Rule .0128 of this subchapter.

*History Note: Authority G.S. 84-23; 84-28; 84-32(b);
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 2, 2006.*

27 NCAC 01B .0122 DISABILITY

(a) Transfer by Secretary where Member Judicially Declared Incompetent. Where a member of the North Carolina State Bar has been judicially declared incapacitated, incompetent, or mentally ill by a North Carolina court or by a court of any other jurisdiction, the secretary, upon proper proof of such declaration, will enter an order transferring the member to disability inactive status effective immediately and for an indefinite period until further order of the Disciplinary Hearing Commission. A copy of the order transferring the member to disability inactive status will be served upon the member, the member's guardian, or the director of any institution to which the member is committed.

(b) Transfer to Disability Inactive Status by Consent. The chairperson of the Grievance Committee may transfer a member to disability inactive status upon consent of the member and the counsel.

(c) Initiation of Disability Proceeding

(1) Disability Proceeding Initiated by the North Carolina State Bar

(A) Evidence a Member has Become Disabled. When the North Carolina State Bar obtains evidence that a member has become disabled, the Grievance Committee will conduct an inquiry which substantially complies with the procedures set forth in Rule .0113 (a)-(h) of this subchapter. The Grievance Committee will determine whether there is probable cause to believe that the member is disabled within the meaning of Rule .0103(19) of this subchapter. If the Grievance Committee finds probable cause, the counsel will file with the commission a complaint in the name of the North Carolina State Bar, signed by the chairperson of the Grievance Committee, alleging disability. The chairperson of the commission shall appoint a hearing panel to determine whether the member is disabled.

(B) Disability Proceeding Initiated While Disciplinary Proceeding is Pending. If, during the pendency of a disciplinary proceeding, the counsel receives evidence constituting probable cause to believe the defendant is disabled within the meaning of Rule .0103(19) of this subchapter, the chairperson of the Grievance Committee may authorize the counsel to file a motion seeking a determination that the defendant is disabled and seeking the defendant's transfer to disability inactive status. The hearing panel appointed to hear the disciplinary proceeding will hear the disability proceeding.

(C) Pleading in the Alternative. When the Grievance Committee has found probable cause to believe a member has committed professional misconduct and the Grievance Committee or the chairperson of the Grievance Committee has found probable cause to believe the member is disabled, the State Bar may file a complaint seeking, in the alternative, the imposition of professional discipline for professional misconduct or a determination that the defendant is disabled.

- (2) Initiated by Hearing Panel During Disciplinary Proceeding. If, during the pendency of a disciplinary proceeding, a majority of the members of the hearing panel find probable cause to believe that the defendant is disabled, the panel will, on its own motion, enter an order staying the disciplinary proceeding until the question of disability can be determined. The hearing panel will instruct the Office of Counsel of the State Bar to file a complaint alleging disability. The chairperson of the commission will appoint a new hearing panel to hear the disability proceeding. If the new panel does not find the defendant disabled, the disciplinary proceeding will resume before the original hearing panel.
- (3) Disability Proceeding where Defendant Alleges Disability in Disciplinary Proceeding. If, during the course of a disciplinary proceeding, the defendant contends that he or she is disabled within the meaning of Rule .0103(19) of this subchapter, the defendant will be immediately transferred to disability inactive status pending conclusion of a disability hearing. The disciplinary proceeding will be stayed pending conclusion of the disability hearing. The hearing panel appointed to hear the disciplinary proceeding will hear the disability proceeding.

(d) Disability Hearings

- (1) Burden of Proof
 - (A) In any disability proceeding initiated by the State Bar or by the commission, the State Bar bears the burden of proving the defendant's disability by clear, cogent, and convincing evidence.
 - (B) In any disability proceeding initiated by the defendant, the defendant bears the burden of proving the defendant's disability by clear, cogent, and convincing evidence.
- (2) Procedure. The disability hearing will be conducted in the same manner as a disciplinary proceeding under Rule .0114 to .0118 of this subchapter. The North Carolina Rules of Civil Procedure and the North Carolina Rules of Evidence apply, unless a different or more specific procedure is specified in these rules. The hearing will be open to the public.
- (3) Medical Examination. The hearing panel may require the member to undergo psychiatric, physical, or other medical examination or testing by qualified medical experts selected or approved by the hearing panel.
- (4) Appointment of Counsel. The hearing panel may appoint a lawyer to represent the defendant in a disability proceeding if the hearing panel concludes that justice so requires.
- (5) Order
 - (A) When Disability is Proven. If the hearing panel finds that the defendant is disabled, the panel will enter an order continuing the defendant's disability inactive status or transferring the defendant to disability inactive status. An order transferring the defendant to disability inactive status is effective when it is entered. A copy of the order shall be served upon the defendant or the defendant's guardian or lawyer of record.
 - (B) When Disability is Not Proven. When the hearing panel finds that it has not been proven by clear, cogent, and convincing evidence that the defendant is disabled, the hearing panel shall enter an order so finding. If the defendant had been transferred to disability inactive status pursuant to paragraph (c)(3) of this rule, the order shall also terminate the defendant's disability inactive status.

(e) Stay/Resumption of Pending Disciplinary Matters

- (1) Stay or Abatement. When a member is transferred to disability inactive status, any proceeding then pending before the Grievance Committee or the commission against the member shall be stayed or abated unless and until the member's disability inactive status is terminated.
- (2) Preservation of Evidence. When a disciplinary proceeding against a member has been stayed because the member has been transferred to disability inactive status, the counsel may continue to investigate allegations of misconduct. The counsel may seek orders from the chairperson of the commission, or the chairperson of a hearing panel if one has been appointed, to preserve evidence of any alleged professional misconduct by the member, including orders which permit the taking of depositions. The chairperson of the commission, or the chairperson of a hearing panel if one has been appointed, may appoint counsel to represent the member when necessary to protect the interests of the member during the preservation of evidence.
- (3) Termination of Disability Inactive Status. Upon termination of disability inactive status, all disciplinary proceedings pending against the member shall resume. The State Bar may immediately pursue any disciplinary proceedings that were pending when the member was transferred to disability inactive status and any allegations of professional misconduct that came to the State Bar's attention while the member was

in disability inactive status. Any disciplinary proceeding pending before the commission that had been stayed shall be set for hearing by the chairperson of the commission.

(f) Fees and Costs. The hearing panel may direct the member to pay the costs of the disability proceeding, including the cost of any medical examination and the fees of any lawyer appointed to represent the member.

History Note: Authority G.S. 84-23; 84-28(g); 84-28.1; 84-29; 84-30;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 8, 2013; October 8, 2009;
March 6, 2002; March 5, 1998.

27 NCAC 01B .0123 ENFORCEMENT OF POWERS

In addition to the other powers contained herein, in proceedings before any subcommittee or panel of the Grievance Committee or the commission, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, refuses to obey any order in aid of discovery, or refuses to obey any lawful order of the panel contained in its decision rendered after hearing, the counsel or secretary may apply to the appropriate court for an order directing that person to comply by taking the requisite action.

History Note: Authority G.S. 84-23; 84-28(i);
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009.

27 NCAC 01B .0124 NOTICE TO MEMBER OF ACTION AND DISMISSAL

In every disciplinary case wherein the respondent has received a letter of notice and the grievance has been dismissed, the respondent will be notified of the dismissal by a letter by the chairperson of the Grievance Committee. The chairperson will have discretion to give similar notice to the respondent in cases wherein a letter of notice has not been issued but the chairperson deems such notice to be appropriate.

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

27 NCAC 01B .0125 NOTICE TO COMPLAINANT

(a) Notice of Discipline - If the Grievance Committee finds probable cause and imposes discipline, the chairperson of the Grievance Committee will notify the complainant of the action of the committee.

(b) Referral for Disciplinary Commission Hearing - If the Grievance Committee finds probable cause and refers the matter to the commission, the chairperson of the Grievance Committee will advise the complainant that the grievance has been received and considered and has been referred to the commission for hearing.

(c) Notice of Dismissal - If the Grievance Committee finds that there is no probable cause to believe that misconduct occurred and votes to dismiss a grievance, the chairperson of the Grievance Committee will advise the complainant that the committee did not find probable cause to justify imposing discipline and dismissed the grievance.

(d) Notice of Letter of Caution or Letter of Warning - If final action on a grievance is taken by the Grievance Committee in the form of a letter of caution or a letter of warning, the chairperson of the Grievance Committee will so advise the complainant. The communication to the complainant will explain that the letter of caution or letter of warning is not a form of discipline.

(e) Referral to Board of Continuing Legal Education - If a grievance is referred to the Board of Continuing Legal Education, the chairperson of the Grievance Committee will advise the complainant of that fact and the reason for the referral. If the respondent successfully completes the prescribed training and the grievance is dismissed, the chairperson of the Grievance Committee will advise the complainant. If the respondent does not successfully complete the prescribed course of training, the chairperson of the Grievance Committee will advise the complainant that investigation of the original grievance has resumed.

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

27 NCAC 01B .0126 APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN ATTORNEY DISAPPEARS, DIES, OR IS TRANSFERRED TO DISABILITY INACTIVE STATUS

(a) Appointment by Senior Resident Judge - Whenever a member of the North Carolina State Bar has been transferred to disability inactive status, disappears, or dies and no partner or other member of the North Carolina State Bar capable of protecting the interests of the attorney's clients is known to exist, the senior resident judge of the superior court in the district of the member's most recent address on file with the North Carolina State Bar, if it is in this state, will be requested by the secretary to appoint an attorney or attorneys to inventory the files of the member and to take action to protect the interests of the member and his or her clients.

(b) Disclosure of Client Information - Any member so appointed will not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such files relate except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

*History Note: Authority G.S. 84-23; 84-28(j);
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016.*

27 NCAC 01B .0127 IMPOSITION OF DISCIPLINE; FINDINGS OF INCAPACITY OR DISABILITY; NOTICE TO COURTS

(a) Imposition of Discipline - Upon the final determination of a disciplinary proceeding wherein discipline is imposed, one of the following actions will be taken:

- (1) Admonition - An admonition will be prepared by the chairperson of the Grievance Committee or the chairperson of the hearing panel depending upon the agency ordering the admonition. The admonition will be served upon the defendant. The admonition will not be recorded in the judgment docket of the North Carolina State Bar. Where the admonition is imposed by the Grievance Committee, the complainant will be notified that the defendant has been admonished, but will not be entitled to a copy of the admonition. An order of admonition imposed by the commission will be a public document.
- (2) Reprimand - The chairperson of the Grievance Committee or chairperson of the hearing panel depending upon the body ordering the discipline, will file an order of reprimand with the secretary, who will record the order on the judgment docket of the North Carolina State Bar and will forward a copy to the complainant.
- (3) Censure, suspension, or disbarment - The chairperson of the hearing panel will file the censure, order of suspension, or disbarment with the secretary, who will record the order on the judgment docket of the North Carolina State Bar and will forward a copy to the complainant. The secretary will also cause a certified copy of the order to be entered upon the judgment docket of the superior court of the county of the defendant's last known address and of any county where the defendant maintains an office. A copy of the censure, order of suspension, or disbarment will also be sent to the North Carolina Court of Appeals, the North Carolina Supreme Court, the United States District Courts in North Carolina, the Fourth Circuit Court of Appeals, and to the United States Supreme Court. Censures imposed by the Grievance Committee will be filed by the panel chairperson with the secretary. Notice of the censure will be given to the complainant and to the courts in the same manner as censures imposed by the commission.

(b) Notification of Incapacity or Disability and Transfer to Disability Inactive Status - Upon the final determination of incapacity or disability, the chairperson of the hearing panel or the secretary, depending upon the agency entering the order, will file with the secretary a copy of the order transferring the member to disability inactive status. The secretary will cause a certified copy of the order to be entered upon the judgment docket of the superior court of the county of the disabled member's last address on file with the North Carolina State Bar and any county where the disabled member maintains an office and will forward a copy of the order to the courts referred to in Rule .0127(a)(3) above.

*History Note: Authority G.S. 84-23; 84-32(a);
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009; November 7, 1996.*

27 NCAC 01B .0128 OBLIGATIONS OF DISBARRED OR SUSPENDED ATTORNEYS

(a) Client Notification - A disbarred or suspended member of the North Carolina State Bar will promptly notify by certified mail, return receipt requested, all clients being represented in pending matters of the disbarment or suspension, the reasons for the disbarment or suspension, and consequent inability of the member to act as an attorney after the effective date of

disbarment or suspension and will advise such clients to seek legal advice elsewhere. The written notice must be received by the client before a disbarred or suspended attorney enters into any agreement with or on behalf of any client to settle, compromise or resolve any claim, dispute or lawsuit of the client. The disbarred or suspended attorney will take reasonable steps to avoid foreseeable prejudice to the rights of his or her clients, including promptly delivering all file materials and property to which the clients are entitled to the clients or the clients' substituted attorney. No disbarred or suspended attorney will transfer active client files containing confidential information or property to another attorney, nor may another attorney receive such files or property, without prior written permission from the client.

(b) **Withdrawal** - The disbarred or suspended member will withdraw from all pending administrative or litigation matters before the effective date of the suspension or disbarment and will follow all applicable laws and disciplinary rules regarding the manner of withdrawal.

(c) **Effective Date** - In cases not governed by Rule .0121 of this subchapter, orders imposing suspension or disbarment will be effective 30 days after being served upon the defendant. In such cases, after entry of the disbarment or suspension order, the disbarred or suspended attorney will not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, between the entry date of the order and its effective date, the member may complete, on behalf of any client, matters which were pending on the entry date and which can be completed before the effective date of the order.

(d) **Affidavit Showing Compliance with Order** - Within 10 days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney will file with the secretary an affidavit showing that he or she has fully complied with the provisions of the order, with the provisions of this Section, and with the provisions of all other state, federal, and administrative jurisdictions to which he or she is admitted to practice. The affidavit will also set forth the residence or other address of the disbarred or suspended member to which communications may thereafter be directed.

(e) **Records of Compliance** - The disbarred or suspended member will keep and maintain records of the various steps taken under this Section so that, upon any subsequent proceeding, proof of compliance with this Section and with the disbarment or suspension order will be available. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement.

(f) **Contempt** - A suspended or disbarred attorney who fails to comply with Rules .0128(a) - (e) above may be subject to an action for contempt instituted by the appropriate authority. Failure to comply with the requirements of Rule .0128(a) above will be grounds for appointment of counsel pursuant to Rule .0126 of this subchapter.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 6, 1997.*

27 NCAC 01B .0129 REINSTATEMENT

(a) After Disbarment

- (1) **Reinstatement Procedure and Costs** - A person who has been disbarred may have his or her license restored upon a verified petition for reinstatement, a hearing before a hearing panel of the commission, and entry of an order of reinstatement by the council as provided herein. The hearing will commence only if security for the costs of such hearing has been deposited by the petitioner with the secretary in an amount not to exceed \$500.00.
- (2) **Time Limits** - A disbarred lawyer may petition for reinstatement upon the expiration of at least five years from the effective date of the disbarment.
- (3) **Burden of Proof and Elements to be Proved** - The petitioner will have the burden of proving by clear, cogent, and convincing evidence that
 - (A) not more than six months or less than 60 days before filing the petition for reinstatement, a notice of intent to seek reinstatement has been published by the petitioner in an official publication of the North Carolina State Bar. The notice will inform members of the Bar about the application for reinstatement and will request that all interested individuals file with the secretary notice of opposition to or concurrence with the petition within 60 days after the date of publication;
 - (B) not more than six months or less than 60 days before filing the petition for reinstatement, the petitioner has notified the complainant(s) in the disciplinary proceeding which led to the lawyer's disbarment of the notice of intent to seek reinstatement. The notice will specify that each complainant has 60 days from the date of publication in which to file with the secretary notice of opposition to or concurrence with the petition;

- (C) the petitioner has reformed and presently possesses the moral qualifications required for admission to practice law in this state taking into account the gravity of the misconduct which resulted in the order of disbarment;
 - (D) permitting the petitioner to resume the practice of law within the state will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment;
 - (E) the petitioner's citizenship has been restored if the petitioner has been convicted of or sentenced for the commission of a felony;
 - (F) the petitioner has complied with Rule .0128 of this subchapter;
 - (G) the petitioner has complied with all applicable orders of the commission and the council;
 - (H) the petitioner has complied with the orders and judgments of any court relating to the matters resulting in the disbarment;
 - (I) the petitioner has not engaged in the unauthorized practice of law during the period of disbarment;
 - (J) the petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b);
 - (K) the petitioner understands the current Rules of Professional Conduct. Participation in continuing legal education programs in ethics and professional responsibility for each of the three years preceding the petition date may be considered on the issue of the petitioner's understanding of the Rules of Professional Conduct. Such evidence creates no presumption that the petitioner has met the burden of proof established by this section;
 - (L) the petitioner has reimbursed the Client Security Fund of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct. The petitioner is not permitted to collaterally attack the decision of the Client Security Fund Board of Trustees regarding whether to reimburse losses occasioned by the misconduct of the petitioner. This provision shall apply to petitions for reinstatement submitted by petitioners who were disbarred after August 29, 1984;
 - (M) the petitioner has reimbursed all sums which the Disciplinary Hearing Commission found in the order of disbarment were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund;
 - (N) the petitioner paid all dues, Client Security Fund assessments, and late fees owed to the North Carolina State Bar as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of disbarment.
 - (O) if a trustee was appointed by the court to protect the interests of the petitioner's clients, the petitioner has reimbursed the State Bar all sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship;
 - (P) the petitioner has properly reconciled all trust or fiduciary accounts, and all entrusted funds of which the petitioner took receipt have been disbursed to the beneficial owner(s) of the funds or the petitioner has taken all necessary steps to escheat the funds.
- (4) Petitions Filed Less than Seven Years After Disbarment
- (A) Proof of Competency and Learning - If less than seven years have elapsed between the effective date of the disbarment and the filing date of the petition for reinstatement, the petitioner will also have the burden of proving by clear, cogent, and convincing evidence that the petitioner has the competency and learning in the law required to practice law in this state.
 - (B) Factors which may be considered in deciding the issue of competency include
 - (i) experience in the practice of law;
 - (ii) areas of expertise;
 - (iii) certification of expertise;
 - (iv) participation in continuing legal education programs in each of the three years immediately preceding the petition date;
 - (v) certification by three lawyers who are familiar with the petitioner's present knowledge of the law that the petitioner is competent to engage in the practice of law.
 - (C) The factors listed in Rule .0129(a)(4)(B) above are provided by way of example only. The petitioner's satisfaction of one or all of these factors creates no presumption that the petitioner has met the burden of proof established by this section.

- (D) Passing Bar Exam as Conclusive Evidence - Attainment of a passing score on a regularly scheduled written Uniform Bar Examination prepared by the National Conference of Bar Examiners and successful completion of the State-Specific Component prescribed by the North Carolina Board of Law Examiners, no more than nine months before filing the petition, and taken voluntarily by the petitioner, shall be conclusive evidence on the issue of the petitioner's competence to practice law.
- (5) Bar Exam Required for Petitions Filed Seven Years or More After Disbarment - If the petition is filed seven years or more after the effective date of disbarment, reinstatement will be conditioned upon:
 - (A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;
 - (B) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and
 - (C) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners.
- (6) Petition, Service, and Hearing - The petitioner shall file a verified petition for reinstatement with the secretary and shall contemporaneously serve a copy upon the counsel. The petition must identify each requirement for reinstatement and state how the petitioner has met each requirement. The petitioner shall attach supporting documentation establishing satisfaction of each requirement. Upon receipt of the petition, the secretary will transmit the petition to the chairperson of the commission. The chairperson will within 14 days appoint a hearing panel as provided in Rule .0108(a)(2) of this Subchapter and schedule a time and place for a hearing to take place within 60 to 90 days after the filing of the petition with the secretary. The chairperson will notify the counsel and the petitioner of the composition of the hearing panel and the time and place of the hearing, which will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter. The secretary shall transmit to the counsel and to the petitioner any notices in opposition to or concurrence with the petition filed with the secretary pursuant to .0129(a)(3)(A) or (B).
- (7) Report of Findings - As soon as possible after the conclusion of the hearing, the hearing panel will file a report containing its findings, conclusions, and recommendations with the secretary. The order may tax against the petitioner such costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.
- (8) Review by the Council - If the hearing panel recommends that reinstatement be denied, the petitioner may file notice of appeal to the council. The notice of appeal must be filed with the secretary within 30 days after service of the panel report upon the petitioner. If no appeal is timely filed, the recommendation of the hearing panel to deny reinstatement will become a final order denying the petition. All cases in which the hearing panel recommends reinstatement of a disbarred lawyer's license shall be heard by the council and no notice of appeal need be filed by the North Carolina State Bar.
 - (A) Transcript of Hearing Panel Proceedings - Within 60 days of entry of the hearing panel's report, the petitioner shall produce a transcript of the proceedings before the hearing panel. The chairperson of the hearing panel, may, for good cause shown, extend the time to produce the transcript.
 - (B) Composition of the Record - The petitioner will provide a record of the proceedings before the hearing panel, including a legible copy of the complete transcript, all exhibits introduced into evidence, and all pleadings, motions, and orders, unless the petitioner and the counsel agree in writing to shorten the record. The petitioner will provide the proposed record to the counsel not later than 90 days after the hearing before the hearing panel, unless an extension of time is granted by the chairperson of the hearing panel for good cause shown. Any agreement regarding the record will be in writing and will be included in the record transmitted to the council.
 - (C) Settlement of the Record
 - (i) By Agreement - At any time following service of the proposed record upon the counsel, the parties may by agreement entered in the record settle the record to the council.
 - (ii) By Counsel's Failure to Object to the Proposed Record - Within 20 days after service of the proposed record, the counsel may serve a written objection or a proposed alternative record upon the petitioner. If the counsel fails to serve a notice of approval or an

objection or a proposed alternative record, the petitioner's proposed record will constitute the record to the council.

- (iii) By Judicial Settlement - If the counsel raises a timely objection to the proposed record or serves a proposed alternative record upon the petitioner, either party may request the chairperson of the hearing panel which heard the reinstatement petition to settle the record. Such request shall be filed in writing with the hearing panel chairperson no later than 15 days after the counsel files an objection or proposed alternative record. Each party shall promptly provide to the chairperson a reference copy of the proposed record, amendments and objections filed by that party in the case. The chairperson of the hearing panel shall settle the record on appeal by order not more than 20 days after service of the request for judicial settlement upon the chairperson. The chairperson may allow oral argument by the parties or may settle the record based upon written submissions by the parties.
 - (D) Filing and Service of the Settled Record - No later than 30 days before the council meeting at which the petition is to be considered, the petitioner will file the settled record with the secretary, will make arrangements with the secretary for a copy of the settled record to be transmitted to each member of the council, and will transmit a copy of the settled record to the counsel.
 - (E) Costs - The petitioner will bear the costs of transcribing, copying, and transmitting a copy of the settled record to each member of the council.
 - (F) Determination by the Council - The council will review the report of the hearing panel and the record and determine whether, and upon what conditions, the petitioner will be reinstated. The council may tax against the petitioner such costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.
 - (9) Failure to Comply with Rule .0129(a) - If the petitioner fails to comply with any provisions of this Rule .0129(a), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.
 - (10) Reapplication - No person who has been disbarred and has unsuccessfully petitioned for reinstatement may reapply until the expiration of one year from the date of the last order denying reinstatement.
- (b) After Suspension
- (1) Restoration - No lawyer who has been suspended may have his or her license restored but upon order of the commission or the secretary after the filing of a verified petition as provided herein.
 - (2) Eligibility - No lawyer who has been suspended for a period of 120 days or less is eligible for reinstatement until the expiration of the period of suspension and, in no event, until 10 days have elapsed from the date of filing the petition for reinstatement. No lawyer whose license has been suspended for a period of more than 120 days is eligible for reinstatement until the expiration of the period of suspension and, in no event, until 30 days have elapsed from the date of the filing of the petition for reinstatement.
 - (3) If the petition is filed seven years or more after the effective date of suspension, reinstatement will be conditioned upon:
 - (A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;
 - (B) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and
 - (C) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners.
 - (4) Reinstatement Requirements - Any suspended lawyer seeking reinstatement must file a verified petition with the secretary, a copy of which the secretary will transmit to the counsel. The petitioner will have the burden of proving the following by clear, cogent, and convincing evidence:
 - (A) compliance with Rule .0128 of this subchapter;
 - (B) compliance with all applicable orders of the commission and the council;
 - (C) abstention from the unauthorized practice of law during the period of suspension;
 - (D) abstention from conduct during the period of suspension constituting grounds for discipline under G.S. 84-28(b);

- (E) Reimbursement of the Client Security Fund - reimbursement of the Client Security Fund of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct. The petitioner is not permitted to collaterally attack the decision of the Client Security Fund Board of Trustees regarding whether to reimburse losses occasioned by the misconduct of the petitioner. This provision shall apply to petitions for reinstatement submitted by lawyers who were suspended after August 29, 1984;
 - (F) Reimbursement of Funds in DHC Order - reimbursement of all sums which the Disciplinary Hearing Commission found in the order of suspension were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund;
 - (G) Satisfaction of Pre-Suspension CLE Requirements - satisfaction of the minimum continuing legal education requirements, as set forth in Rule .1518 of Subchapter 1D of these rules, for the two calendar years immediately preceding the year in which the petitioner was suspended, which shall include the satisfaction of any deficit recorded in the petitioner's State Bar CLE transcript for such period; provided that the petitioner may attend CLE programs after the effective date of the suspension to make up any unsatisfied requirement. These requirements shall be in addition to any continuing legal education requirements imposed by the Disciplinary Hearing Commission;
 - (H) Satisfaction of Post-Suspension CLE Requirements - [effective for petitioners suspended on or after January 1, 1997] if two or more years have elapsed between the effective date of the suspension order and the date on which the reinstatement petition is filed with the secretary, the petitioner must, within one year prior to filing the petition, complete 15 hours of CLE approved by the Board of Continuing Legal Education pursuant to Subchapter 1D, Rule .1519 of these rules. Three hours of the 15 hours must be earned by attending courses of instruction devoted exclusively to professional responsibility and/or professionalism. These requirements shall be in addition to any continuing legal education requirements imposed by the Disciplinary Hearing Commission;
 - (I) Payment of Fees and Assessments - payment of all membership fees, Client Security Fund assessments, and late fees due and owing to the North Carolina State Bar, including any reinstatement fee due under Rule .0904 or Rule .1524 of Subchapter 1D of these rules, as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of suspension;
 - (J) if a trustee was appointed by the court to protect the interests of the petitioner's clients, the petitioner has reimbursed the State Bar all sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship; and
 - (K) the petitioner has properly reconciled all trust or fiduciary accounts, and all entrusted funds of which the petitioner took receipt have been disbursed to the beneficial owner(s) of the funds or the petitioner has taken all necessary steps to escheat the funds.
- (5) Investigation and Response - The counsel will conduct any necessary investigation regarding the compliance of the petitioner with the requirements set forth in Rule .0129(b)(3) above, and the counsel may file a response to the petition with the secretary prior to the date the petitioner is first eligible for reinstatement. The counsel will serve a copy of any response filed upon the petitioner.
 - (6) Failure of Counsel to File Response - If the counsel does not file a response to the petition before the date the petitioner is first eligible for reinstatement, then the secretary will issue an order of reinstatement.
 - (7) Specific Objections in Response - If the counsel files a timely response to the petition, such response must set forth specific objections supported by factual allegations sufficient to put the petitioner on notice of the events at issue.
 - (8) Reinstatement Hearing - The secretary will, upon the filing of a response to the petition, refer the matter to the chairperson of the commission. The chairperson will within 14 days appoint a hearing panel as provided in Rule .0108(a)(2) of this Subchapter, schedule a time and place for a hearing, and notify the counsel and the petitioner of the composition of the hearing panel and the time and place of the hearing. The hearing will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter.
 - (9) Reinstatement Order - The hearing panel will determine whether the petitioner's license should be reinstated and enter an appropriate order which may include additional sanctions in the event violations of the petitioner's order of suspension are found. In any event, the hearing panel must include in its order findings of fact and conclusions of law in support of its decision and may tax against the petitioner such

costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.

- (10) Failure to Comply with Rule .0129(b) - If the petitioner fails to comply with any provision of this Rule .0129(b), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.

(c) After Transfer to Disability Inactive Status

- (1) Reinstatement - No member of the North Carolina State Bar transferred to disability inactive status may resume active status until reinstated by order of the commission. Any member transferred to disability inactive status will be entitled to apply to the commission for reinstatement to active status once a year or at such shorter intervals as are stated in the order transferring the member to disability inactive status or any modification thereof.
- (2) Reinstatement Petition - Petitions for reinstatement by members transferred to disability inactive status will be filed with the secretary. Upon receipt of the petition the secretary will refer the petition to the commission chairperson. The chairperson will appoint a hearing panel as provided in Rule .0108(a)(2) of this subchapter. A hearing will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter.
- (3) Burden of Proof - The petitioner will have the burden of proving by clear, cogent, and convincing evidence that he or she is no longer disabled within the meaning of Rule .0103(19) of this subchapter and that he or she is fit to resume the practice of law.
- (4) Medical Records - Within 10 days of filing the petition for reinstatement, the petitioner will deliver to the secretary a list of the names and addresses of every psychiatrist, psychologist, physician, hospital, and other health care provider by whom or in which the petitioner has been examined or treated or sought treatment while disabled and a written consent to release all information and records relating to the disability. The secretary will deliver to the counsel all information and records relating to the disability received from the petitioner.
- (5) Judicial Findings - Where a member has been transferred to disability inactive status based solely upon a judicial finding of incapacity, and thereafter a court of competent jurisdiction enters an order adjudicating that the member's incapacity has ended, the chairperson of the commission will enter an order returning the member to active status upon receipt of a certified copy of the court's order. Entry of the order will not preclude the North Carolina State Bar from bringing an action pursuant to Rule .0122 of this subchapter to determine whether the member is disabled.
- (6) Costs - The hearing panel may direct the petitioner to pay the costs of the reinstatement hearing, including the cost of any medical examination ordered by the panel.
- (7) Failure to Comply with Rule .0129(c) - If the petitioner fails to comply with any provision of this Rule .0129(c), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.
- (8) Reimbursement of Trustee Fees and Expenses - If a trustee was appointed to protect the interests of the petitioner's clients, the hearing panel may require the petitioner, as a condition of reinstatement, to reimburse the State Bar sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship.
- (9) Entrusted Funds - The hearing panel may require the petitioner, as a condition of reinstatement, to demonstrate that the petitioner has properly reconciled all trust or fiduciary accounts and has taken all steps necessary to ensure that all entrusted funds of which the petitioner took receipt are disbursed to the beneficial owner(s) of the funds or are escheated.

(d) Conditions of Reinstatement - The hearing panel, and the council in petitions for reinstatement from disbarment, may impose reasonable conditions on a lawyer's reinstatement from disbarment, suspension, or disability inactive status in any case in which the hearing panel concludes that such conditions are necessary for the protection of the public. Such conditions may include, but are not limited to, a requirement that the petitioner complete specified hours of continuing legal education, a requirement that the petitioner participate in medical, psychological, or substance use treatment, and a requirement that the petitioner attain a passing score on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within nine months following entry of an order conditionally granting the petition.

(e) After Entry of a Reciprocal Order of Suspension or Disbarment - No member whose license to practice law has been suspended or who has been disbarred by any state or federal court and who is the subject of a reciprocal discipline order in

North Carolina may seek reinstatement of his or her North Carolina law license until the member provides to the secretary a certified copy of an order reinstating the member to the active practice of law in the state or federal court which entered the original order of discipline.

History Note: Authority G.S. 84-23; 84-28.1; 84-29; 84-30;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 20, 1995; March 6, 1997; October 2, 1997;
December 30, 1998; July 22, 1999; August 24, 2000; March 6, 2002; February 27, 2003; October 8,
2009; March 10, 2011; September 22, 2016; December 14, 2021.

27 NCAC 01B .0130 ADDRESS OF RECORD

Except where otherwise specified, any provision herein for notice to a respondent, member, petitioner, or a defendant will be deemed satisfied by appropriate correspondence addressed to that attorney by mail to the last address maintained by the North Carolina State Bar.

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

27 NCAC 01B .0131 DISQUALIFICATION DUE TO INTEREST

No member of the council or hearing commission will participate in any disciplinary matter involving the member, any partner, or associate in the practice of law of the member, or in which the member has a personal interest.

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

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;
Amended Eff. September 1, 2024.*

27 NCAC 01B .0133 CONFIDENTIALITY

(a) Allegations of Misconduct or Alleged Disability - Except as otherwise provided in this rule and G.S. 84-28(f), all proceedings involving allegations of misconduct by or alleged disability of a member will remain confidential until

- (1) a complaint against a member has been filed with the secretary after a finding by the Grievance Committee that there is probable cause to believe that the member is guilty of misconduct justifying disciplinary action or is disabled;
- (2) the member requests that the matter be made public prior to the filing of a complaint;
- (3) the investigation is predicated upon conviction of the member of or sentencing for a crime;
- (4) a petition or action is filed in the general courts of justice;
- (5) the member files an affidavit of surrender of license; or
- (6) a member is transferred to disability inactive status pursuant to Rule .0122(g). In such an instance, the order transferring the member shall be public. Any other materials, including the medical evidence supporting the order, shall be kept confidential unless and until the member petitions for reinstatement pursuant to Rule .0122(c), unless provided otherwise in the order.

(b) Disciplinary Complaints Filed Pursuant to Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4)- The State Bar may disclose that it filed the complaint before the Disciplinary Hearing Commission pursuant to Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4):

- (1) after proceedings before the Disciplinary Hearing Commission have concluded; or
- (2) while proceedings are pending before the Disciplinary Hearing Commission, in order to address

(c) Letter of Warning or Admonition - The previous issuance of a letter of warning, formerly known as a letter of admonition, or an admonition to a member may be revealed in any subsequent disciplinary proceeding.

(d) Attorney's Response to a Grievance - This provision will not be construed to prohibit the North Carolina State Bar from providing a copy of an attorney's response to a grievance to the complaining party where such attorney has not objected thereto in writing.

(e) Law Enforcement or Regulatory Agency - This provision will not be construed to prohibit the North Carolina State Bar from providing information or evidence to any law enforcement or regulatory agency.

(f) Chief Justice's Commission on Professionalism - This provision will not be construed to prevent the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from notifying the Chief Justice's Commission on Professionalism of any allegation of unprofessional conduct by any member.

(g) Lawyer Assistance Program - This provision will not be construed to prevent the North Carolina State Bar from notifying the Lawyer Assistance Program of any circumstances that indicate a member may have a substance abuse or mental health issue.

(h) Other Jurisdictions - This provision will not be construed to prohibit the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from providing information concerning the existence of a letter of caution, letter of warning, or admonition to any agency that regulates the legal profession in any other jurisdiction so long as the inquiring jurisdiction maintains the same level of confidentiality respecting the information as does the North Carolina State Bar.

(i) National Discipline Data Bank - The secretary will transmit notice of all public discipline imposed and transfers to disability inactive status to the National Discipline Data Bank maintained by the American Bar Association.

(j) Client Security Fund Board of Trustees - The secretary may also transmit any relevant information to the Client Security Fund Board of Trustees to assist the Client Security Fund Board in determining losses caused by dishonest conduct of members of the North Carolina State Bar.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 9, 2008; March 6, 2002;
November 7, 1996; February 20, 1996.

27 NCAC 01B .0134 DISCIPLINARY AMNESTY IN ILLICIT DRUG USE CASES

- (a) Information Concerning Illicit Drug Use - The North Carolina State Bar will not treat as a grievance information that a member has used or is using illicit drugs except as provided in Rules.0134(c), (d) and (e) below. The information will be provided to director of the lawyer assistance program of the North Carolina State Bar.
- (b) Lawyer Assistance Program - If the director of the lawyer assistance program concludes after investigation that a member has used or is using an illicit drug and the member participates and successfully complies with any course of treatment prescribed by the lawyer assistance program, the member will not be disciplined by the North Carolina State Bar for illicit drug use occurring prior to the prescribed course of treatment.
- (c) Failure to Complete Treatment - If a member under Rule .0134(b) above fails to cooperate with the Lawyer Assistance Program Board or fails to successfully complete any treatment prescribed for the member's illicit drug use, the director of the lawyer assistance program will report such failure to participate in or complete the prescribed treatment to the chairperson of the Grievance Committee. The chairperson of the Grievance Committee will then treat the information originally received as a grievance.
- (d) Crime Relating to Use or Possession of Illicit Drugs - A member charged with a crime relating to the use or possession of illicit drugs will not be entitled to amnesty from discipline by the North Carolina State Bar relating to the illicit drug use or possession.
- (e) Additional Misconduct - If the North Carolina State Bar receives information that a member has used or is using illicit drugs and that the member has violated some other provision of the Revised Rules of Professional Conduct, the information regarding the member's alleged illicit drug use will be referred to the director of lawyer assistance program pursuant to Rule .0134(a) above. The information regarding the member's alleged additional misconduct will be reported to the chairperson of the Grievance Committee.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; February 3, 2000; February 20, 1995.

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.*

SECTION .0200 - RULES GOVERNING JUDICIAL DISTRICT GRIEVANCE COMMITTEES

27 NCAC 01B .0201 ORGANIZATION OF JUDICIAL DISTRICT GRIEVANCE COMMITTEES

(a) Judicial Districts Eligible to Form District Grievance Committees

- (1) **Membership Requirements for Establishing a District Grievance Committee** - Any judicial district which has more than 100 licensed attorneys as determined by the North Carolina State Bar's records may establish a judicial district grievance committee (hereafter, "district grievance committee") pursuant to the rules and regulations set out herein. A judicial district with fewer than 100 licensed attorneys may establish a district grievance committee with consent of the Council of the North Carolina State Bar.
- (2) **Multi-District Grievance Committees** - One or more judicial districts, including those with fewer than 100 licensed attorneys, may also establish a multi-district grievance committee, as set out in Rule .0201(b)(2) below. Such multi-district grievance committees shall be subject to all of the rules and regulations set out herein and all references to district grievance committees in these rules shall also apply to multi-district grievance committees.

(b) Creation of District Grievance Committees

- (1) **Meeting Establishing a District Grievance Committee and Certification** - A judicial district may establish a district grievance committee at a duly called meeting of the judicial district bar, at which a quorum is present, upon the affirmative vote of a majority of the active members present. Within 30 days of the election, the president of the judicial district bar shall certify in writing the establishment of the district grievance committee to the secretary of the North Carolina State Bar.
- (2) **Meeting Establishing a Multi-District Grievance Committee and Certification** - A multi-district grievance committee may be established by affirmative vote of a majority of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. Within 30 days of the election, the chairperson of the multi-district grievance committee shall certify in writing the establishment of the district grievance committee to the secretary of the North Carolina State Bar. The active members of each participating judicial district may adopt a set of bylaws not inconsistent with these rules by majority vote of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. The chairperson of the multi-district grievance committee shall promptly provide a copy of any such bylaws to the secretary of the North Carolina State Bar.

(c) Appointment of District Grievance Committee Members

- (1) **Members of District Committees** - Each district grievance committee shall be composed of not fewer than five nor more than 21 members, all of whom shall be active members in good standing both of the judicial district bar to which they belong and of the North Carolina State Bar. In addition to the attorney members, each district grievance committee may also include one to five public members who have never been licensed to practice law in any jurisdiction. Public members shall not perform investigative functions regarding grievances but in all other respects shall have the same authority as the attorney members of the district grievance committee.
- (2) **Chairperson** - The chairperson of the district grievance committee shall be selected by the president of the judicial district and shall serve at his or her pleasure. Alternatively, the chairperson may be selected and removed as provided in the district bar bylaws.
- (3) **Selection of Attorney and Public Members** - The attorney and public members of the district grievance committee shall be selected by and serve at the pleasure of the president of the judicial district bar and the chairperson of the district grievance committee. Alternatively, the district grievance committee members may be selected and removed as provided in the district bar bylaws.

- (4) Term and Replacement of Members - The members of the district grievance committee, including the chairperson, shall be appointed for staggered three-year terms, except that the president and chairperson shall appoint some of the initial committee members to terms of less than three years, to effectuate the staggered terms. No member shall serve more than one term, without first having rotated off the committee for a period of at least one year between three-year terms. Any member who resigns or otherwise becomes ineligible to continue serving as a member shall be replaced by appointment by the president of the judicial district bar and the chairperson of the committee or as provided in the district bar bylaws as soon as practicable.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 7, 2010.*

27 NCAC 01B .0202 JURISDICTION & AUTHORITY OF DISTRICT GRIEVANCE COMMITTEES

- (a) District Grievance Committees are Subject to the Rules of the North Carolina State Bar - The district grievance committee shall be subject to the rules and regulations adopted by the Council of the North Carolina State Bar.
- (b) Grievances Filed With District Grievance Committee - A district grievance committee may investigate and consider grievances filed against attorneys who live or maintain offices within the judicial district and which are filed in the first instance with the chairperson of the district grievance committee. The chairperson of the district grievance committee will immediately refer to the State Bar any grievance filed locally in the first instance which
 - (1) alleges misconduct against a member of the district grievance committee;
 - (2) alleges that any attorney has embezzled or misapplied client funds; or
 - (3) alleges any other serious violation of the Rules of Professional Conduct which may be beyond the capacity of the district grievance committee to investigate.
- (c) Grievances Referred to District Grievance Committee - The district grievance committee shall also investigate and consider such grievances as are referred to it for investigation by the counsel of the North Carolina State Bar.
- (d) Grievances Involving Fee Disputes
 - (1) Notice to Complainant of Fee Dispute Resolution Program - If a grievance filed initially with the district bar consists solely or in part of a fee dispute, the chairperson of the district grievance committee shall notify the complainant in writing within 10 working days of receipt of the grievance that the complainant may elect to participate in the North Carolina State Bar Fee Dispute Resolution Program. If the grievance consists solely of a fee dispute, the letter to the complainant shall follow the format set out in Rule .0208 of this subchapter. If the grievance consists in part of matters other than a fee dispute, the letter to the complainant shall follow the format set out in Rule .0209 of this subchapter. A respondent attorney shall not have the right to elect to participate in fee arbitration.
 - (2) Handling Claims Not Involving Fee Dispute - Where a grievance alleges multiple claims, the allegations not involving a fee dispute will be handled in the same manner as any other grievance filed with the district grievance committee.
 - (3) Handling Claims Not Submitted to Fee Dispute Resolution by Complainant - If the complainant elects not to participate in the State Bar's Fee Dispute Resolution Program, or fails to notify the chairperson that he or she elects to participate within 20 days following mailing of the notice referred to in Rule .0202(d)(1) above, the grievance will be handled in the same manner as any other grievance filed with the district grievance committee.
 - (4) Referral to Fee Dispute Resolution Program - Where a complainant timely elects to participate in fee dispute resolution, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the State Bar Fee Dispute Resolution Program for resolution. If the grievance consists entirely of a fee dispute, and the complainant timely elects to participate in fee dispute resolution, no grievance file will be established.
- (e) Authority of District Grievance Committees - The district grievance committee shall have authority to
 - (1) assist a complainant who requests assistance to reduce a grievance to writing;
 - (2) investigate complaints described in Rule .0202(b) and(c) above by interviewing the complainant, the attorney against whom the grievance was filed and any other persons who may have relevant information regarding the grievance and by requesting written materials from the complainant, respondent attorney, and other individuals;
 - (3) explain the procedures of the district grievance committee to complainants and respondent attorneys;

- (4) find facts and recommend whether or not the State Bar's Grievance Committee should find that there is probable cause to believe that the respondent has violated one or more provisions of the Revised Rules of Professional Conduct. The district grievance committee may also make a recommendation to the State Bar regarding the appropriate disposition of the case, including referral to the Lawyer Assistance Program pursuant to Rule .0112(j) or to a program of law office management training approved by the State Bar;
- (5) draft a written report stating the grounds for the recommended disposition of a grievance assigned to the district grievance committee;
- (6) notify the complainant and the respondent attorney where the district grievance committee recommends that the State Bar find that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct. Where the district grievance committee recommends that the State Bar find that there is probable cause to believe that the respondent has violated one or more provisions of the Rules of Professional Conduct, the committee shall notify the respondent attorney of its recommendation and shall notify the complainant that the district grievance committee has concluded its investigation and has referred the matter to the State Bar for final resolution. Where the district grievance committee recommends a finding of no probable cause, the letter of notification to the respondent attorney and to the complainant shall follow the format set out in Rule .0210 of this subchapter. Where the district grievance committee recommends a finding of probable cause, the letter of notification to the respondent attorney shall follow the format set out in Rule .0211 of this subchapter. The letter of notification to the complainant shall follow the format set out in Rule .0212 of this subchapter;
- (7) maintain records of grievances investigated by the district grievance committee for at least one year from the date on which the district grievance committee makes its final recommendation regarding a grievance to the State Bar.

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amendments Approved by the Supreme Court: March 3, 1999; December 20, 2000; August 23, 2007;
 September 25, 2019.

27 NCAC 01B .0203 MEETINGS OF THE DISTRICT GRIEVANCE COMMITTEES

- (a) Notice of Meeting - The district grievance committee shall meet at the call of the chairperson upon reasonable notice, as often as is necessary to dispatch its business and not less than once every 60 days, provided the committee has grievances pending.
- (b) Confidentiality - The district grievance committee shall meet in private. Discussions of the committee, its records and its actions shall be confidential. The names of the members of the committee shall not be confidential.
- (c) Quorum - A simple majority of the district grievance committee must be present at any meeting in order to constitute a quorum. The committee may take no action unless a quorum is present. A majority vote in favor of a motion or any proposed action shall be required for the motion to pass or the action to be taken.
- (d) Appearances by Complainants and Respondents - No complainant nor any attorney against whom a grievance has been filed may appear before the district grievance committee, present argument to or be present at the committee's deliberations.

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.

27 NCAC 01B .0204 PROCEDURE UPON INSTITUTION OF A GRIEVANCE

- (a) Receipt of Grievance - A grievance may be filed by any person against a member of the North Carolina State Bar. Such grievance must be in writing and signed by the complaining person. A district grievance committee may, however, investigate matters which come to its attention during the investigation of a grievance, whether or not such matters are included in the original written grievance.
- (b) Acknowledgment of Receipt of Grievance from State Bar - The chairperson of the district grievance committee shall send a letter to the complainant within 10 working days of receipt of the grievance from the State Bar, acknowledging that a grievance file has been set up. The acknowledgment letter shall include the name of the district grievance committee member assigned to investigate the matter and shall follow the format set out in Rule .0213 of this subchapter. A copy of the letter shall be sent contemporaneously to the office of counsel of the State Bar.
- (c) Notice to State Bar of Locally Filed Grievances
 - (1) Where a grievance is filed in the first instance with the district grievance committee, the chairperson of the district grievance committee shall notify the office of counsel of the State Bar of the name of the

complainant, respondent attorney, file number and nature of the grievance within 10 working days of receipt of the grievance.

- (2) The chairperson of the district grievance committee shall send a letter to the complainant within 10 working days of receipt of the grievance, acknowledging that a grievance file has been set up. The acknowledgment letter shall include the name of the district grievance committee member assigned to investigate the matter and shall follow the format set out in Rule .0213 of this subchapter.
- (3) Grievances filed initially with the district grievance committee shall be assigned a local file number which shall be used to refer to the grievance. The first two digits of the file number shall indicate the year in which the grievance was filed, followed by the number of the judicial district, the letters GR, and ending with the number of the file. File numbers shall be assigned sequentially during the calendar year, beginning with the number 1. For example, the first locally filed grievance set up in the 10th judicial district in 1994 would bear the following number: 9410GR001.

(d) Assignment to Investigating Member - Within 10 working days after receipt of a grievance, the chairperson shall appoint a member of the district grievance committee to investigate the grievance and shall forward the relevant materials to the investigating member. The letter to the investigating member shall follow the format set out in Rule .0214 of this subchapter.

(e) Investigation of the Grievance

- (1) The investigating member shall attempt to contact the complainant as soon as possible but no later than 15 working days after receiving notice of the assignment. If the initial contact with the complainant is made in writing, the letter shall follow the format set out in Rule .0215 of this subchapter.
- (2) The investigating member shall have the authority to contact other witnesses or individuals who may have information about the subject of the grievance, including the respondent.
- (3) The failure of the complainant to cooperate shall not cause a grievance to be dismissed or abated. Once filed, grievances shall not be dismissed or abated upon the request of the complainant.

(f) Letter of Notice to Respondent Attorney and Responses

- (1) Within 10 working days after receipt of a grievance, the chairperson of the district grievance committee shall send a copy of the grievance and a letter of notice to the respondent attorney. The letter to the respondent attorney shall follow the form set out in Rule .0216 of this subchapter and shall be sent by U.S. Mail to the attorney's last known address on file with the State Bar. The letter of notice shall request the respondent to reply to the investigating attorney in writing within 15 days after receipt of the letter of notice.
- (2) A substance of grievance will be provided to the district grievance committee by the State Bar at the time the file is assigned to the committee. The substance of grievance will summarize the nature of the complaint against the respondent attorney and cite the applicable provisions of the Rules of Professional Conduct, if any.
- (3) The respondent attorney shall respond in writing to the letter of notice from the district grievance committee within 15 days of receipt of the letter. The chairperson of the district grievance committee may allow a longer period for response, for good cause shown.
- (4) If the respondent attorney fails to respond in a timely manner to the letter of notice, the chairperson of the district grievance committee may seek the assistance of the State Bar to issue a subpoena or take other appropriate steps to ensure a proper and complete investigation of the grievance. District grievance committees do not have authority to issue a subpoena to a witness or respondent attorney.
- (5) Unless necessary to complete its investigation, the district grievance committee should not release copies of the respondent attorney's response to the grievance to the complainant. The investigating attorney may summarize the response for the complainant orally or in writing.

(g) District Grievance Committee Deliberations

- (1) Upon completion of the investigation, the investigating member shall promptly report his or her findings and recommendations to the district grievance committee in writing.
- (2) The district grievance committee shall consider the submissions of the parties, the information gathered by the investigating attorney and such other material as it deems relevant in reaching a recommendation. The district grievance committee may also make further inquiry as it deems appropriate, including investigating other facts and possible violations of the Rules of Professional Conduct discovered during its investigation.
- (3) The district grievance committee shall make a determination as to whether or not it finds that there is probable cause to believe that the respondent violated one or more provisions of the Rules of Professional Conduct.

(h) Report of Committee's Decision

- (1) Upon making a decision in a case, the district grievance committee shall submit a written report to the office of counsel, including its recommendation and the basis for its decision. The original file and grievance materials of the investigating attorney shall be sent to the State Bar along with the report. The letter from the district bar grievance committee enclosing the report shall follow the format set out in Rule .0217 of this subchapter.
- (2) The district grievance committee shall submit its written report to the office of counsel no later than 180 days after the grievance is initiated or received by the district committee. The State Bar may recall any grievance file which has not been investigated and considered by a district grievance committee within 180 days after the matter is assigned to the committee. The State Bar may also recall any grievance file for any reason.
- (3) Within 10 working days of submitting the written report and returning the file to the office of counsel, the chairperson of the district grievance committee shall notify the respondent attorney and the complainant in writing of the district grievance committee's recommendation, as provided in Rule .0202(d)(6) of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01B .0205 RECORD KEEPING

The district grievance committee shall maintain records of all grievances referred to it by the State Bar and all grievances initially filed with the district grievance committee for at least one year. The district grievance committee shall provide such reports and information as are requested of it from time to time by the State Bar.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01B .0206 MISCELLANEOUS

- (a) Assistance and Questions - The office of counsel, including the staff attorneys and the grievance coordinator, are available to answer questions and provide assistance regarding any matters before the district grievance committee.
- (b) Missing Attorneys - Where a respondent attorney is missing or cannot be located, the district grievance committee shall promptly return the grievance file to the office of counsel for appropriate action.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01B .0207 CONFLICTS OF INTEREST

- (a) No district grievance committee shall investigate or consider a grievance which alleges misconduct by any current member of the committee. If a file is referred to the committee by the State Bar or is initiated locally which alleges misconduct by a member of the district grievance committee, the file will be sent to the State Bar for investigation and handling within 10 working days after receipt of the grievance.
- (b) A member of a district grievance committee shall not investigate or participate in deliberations concerning any of the following matters:
 - (1) alleged misconduct of an attorney who works in the same law firm or office with the committee member;
 - (2) alleged misconduct of a relative of the committee member;
 - (3) a grievance involving facts concerning which the committee member or a partner or associate in the committee member's law firm acted as an attorney.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01B .0208 LETTER TO COMPLAINANT WHERE LOCAL GRIEVANCE ALLEGES FEE DISPUTE ONLY

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe

Dear Mr. Smith:

The district grievance committee has received your complaint against the above-listed attorney. Based upon our initial review of the materials which you submitted, it appears that your complaint involves a fee dispute. Accordingly, I would like to take this opportunity to notify you of the North Carolina State Bar Fee Dispute Resolution Program. The program is designed to provide citizens with a means of resolving disputes over attorney fees at no cost to them and without going to court. A pamphlet which describes the program in greater detail is enclosed, along with an application form.

If you would like to participate in the fee dispute resolution program, please complete and return the form to me within 20 days of the date of this letter. If you decide to participate, no grievance file will be opened and the district bar grievance committee will take no other action against the attorney.

If you do not wish to participate in the fee dispute resolution program, you may elect to have your complaint investigated by the district grievance committee. If we do not hear from you within 20 days of the date of this letter, we will assume that you do not wish to participate in fee dispute resolution, and we will handle your complaint like any other grievance. However, the district grievance committee has no authority to attempt to resolve a fee dispute between an attorney and his or her client. Its sole function is to investigate your complaint and make a recommendation to the North Carolina State Bar regarding whether there is probable cause to believe that the attorney has violated one or more provisions of the Rules of Professional Conduct which govern attorneys in this state.

Thank you for your cooperation.

Sincerely yours,

Chairperson
District Bar Grievance Committee

cc: PERSONAL & CONFIDENTIAL
Director of Investigations,
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 23, 2007.*

27 NCAC 01B .0209 LETTER TO COMPLAINANT WHERE LOCAL GRIEVANCE ALLEGES FEE DISPUTE AND OTHER VIOLATIONS

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe

Dear Mr. Smith:

The district grievance committee has received your complaint against the above-listed attorney. Based upon our initial review of the materials which you submitted, it appears that your complaint involves a fee dispute as well as other possible violations of the rules of ethics. Accordingly, I would like to take this opportunity to notify you of the North Carolina State Bar Fee Dispute Resolution Program. The program is designed to provide citizens with a means of resolving disputes over attorney fees at no cost to them and without going to court. A pamphlet which describes the program in greater detail is enclosed, along with an application form.

If you would like to participate in the fee dispute resolution program, please complete and return the form to me within 20 days of the date of this letter. If you decide to participate, the fee dispute resolution committee will handle those portions of your complaint which involve an apparent fee dispute.

If you do not wish to participate in the fee dispute resolution program, you may elect to have your entire complaint investigated by the district grievance committee. If we do not hear from you within 20 days of the date of this letter, we will assume that you do not wish to participate in fee dispute resolution, and we will handle your entire complaint like any other grievance. However, the district grievance committee has no authority to attempt to resolve a fee dispute between an attorney and his or her client. Its sole function is to investigate your complaint and make a recommendation to the North Carolina State Bar regarding whether there is probable cause to believe that the attorney has violated one or more provisions of the Rules of Professional Conduct which govern attorneys in this state.

Thank you for your cooperation.

Sincerely yours,

Chairperson
District Bar Grievance Committee

cc: PERSONAL & CONFIDENTIAL
Director of Investigations
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 23, 2007.*

**27 NCAC 01B .0210 LETTER TO COMPLAINANT/RESPONDENT WHERE DISTRICT COMMITTEE
RECOMMENDS FINDING OF NO PROBABLE CAUSE**

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No.

Dear Mr. Smith:

The district grievance committee has completed its investigation of your grievance. Based upon its investigation, the committee does not believe that there is probable cause to find that the attorney has violated any provisions of the Rules of Professional Conduct. The committee will forward a report with its recommendation to the North Carolina State Bar Grievance Committee. The final decision regarding your grievance will be made by the North Carolina State Bar Grievance Committee. You will be notified in writing of the State Bar's decision.

If you have any questions or wish to communicate further regarding your grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611

Neither I nor any member of the district grievance committee can give you any advice regarding any legal rights you may have regarding the matters set out in your grievance. You may pursue any questions you have regarding your legal rights with an attorney of your choice.

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Respondent Attorney

PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

**27 NCAC 01B .0211 LETTER TO RESPONDENT WHERE DISTRICT COMMITTEE RECOMMENDS
FINDING OF PROBABLE CAUSE**

Ms. Jane Doe
Anywhere, N.C.

Re: Grievance of John Smith
Our File No.

Dear Ms. Doe:

The district grievance committee has completed its investigation of Mr. Smith's grievance and has voted to recommend that the North Carolina State Bar Grievance Committee find probable cause to believe that you violated one or more provisions of the Rules of Professional Conduct. Specifically, the [] district grievance committee found that there is probable cause to believe that you may have violated [set out brief description of rule allegedly violated and pertinent facts].

The final decision in this matter will be made by the North Carolina State Bar Grievance Committee and you will be notified in writing of the State Bar's decision. The complainant has been notified that the district grievance committee has concluded its investigation and that the grievance has been sent to the North Carolina State Bar for final resolution, but has not been informed of the district committee's specific recommendation.

If you have any questions or wish to communicate further regarding this grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611
Tel. 919-828-4620

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

**27 NCAC 01B .0212 LETTER TO COMPLAINANT WHERE DISTRICT COMMITTEE RECOMMENDS
FINDING OF PROBABLE CAUSE**

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No.

Dear Mr. Smith:

The district grievance committee has completed its investigation of your grievance and has forwarded its file to the North Carolina State Bar Grievance Committee in Raleigh for final resolution. The final decision in this matter will be made by the North Carolina State Bar Grievance Committee and you will be notified in writing of the State Bar's decision.

If you have any questions or wish to communicate further regarding your grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611

Neither I nor any member of the district grievance committee can give you any advice regarding any legal rights you may have regarding the matters set out in your grievance. You may pursue any questions you have regarding your legal rights with an attorney of your choice.

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Respondent Attorney

PERSONAL AND CONFIDENTIAL
Director of Investigations

The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01B .0213 LETTER TO COMPLAINANT ACKNOWLEDGING GRIEVANCE

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No. []

Dear Mr. Smith:

I am the chairperson of the [] district grievance committee. Your grievance against [respondent attorney] [was received in my office]\[has been forwarded to my office by the North Carolina State Bar] on [date]. I have assigned [investigator's name], a member of the [] district grievance committee, to investigate your grievance. []'s name, address and telephone number are as follows: [].

Please be sure that you have provided all information and materials which relate to or support your complaint to the [] district grievance committee. If you have other information which you would like our committee to consider, or if you wish to discuss your complaint, please contact the investigating attorney by telephone or in writing as soon as possible.

After []'s investigation is complete, the [] district grievance committee will make a recommendation to the North Carolina State Bar Grievance Committee regarding whether or not there is probable cause to believe that [respondent attorney] violated one or more provisions of the Rules of Professional Conduct. Your complaint and the results of our investigation will be sent to the North Carolina State Bar at that time. The [] district grievance committee's recommendation is not binding upon the North Carolina State Bar Grievance Committee, which will make the final determination. You will be notified in writing when the [] district grievance committee's investigation is concluded.

Neither the investigating attorney nor any member of the [] district grievance committee can give you any legal advice or represent you regarding any underlying legal matter in which you may be involved. You may pursue any questions you have about your legal rights with an attorney of your own choice.

Thank you very much for your cooperation.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01B .0214 LETTER TO INVESTIGATING ATTORNEY ASSIGNING GRIEVANCE

James Roe
[] District Grievance Committee Member

Anywhere, N.C.

Re: Grievance of John Smith against Jane Doe
Our File No. []

Dear Mr. Roe:

Enclosed you will find a copy of the grievance which I recently received regarding the above-captioned matter. Please investigate the complaint and provide a written report with your recommendations by [deadline].

Thank you very much.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01B .0215 LETTER TO COMPLAINANT FROM INVESTIGATING ATTORNEY

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No. []

Dear Mr. Smith:

I am the member of the [] district grievance committee assigned to investigate your grievance against [respondent attorney]. It is part of my job to ensure that you have had a chance to explain your complaint and that the [] district grievance committee has copies of all of the documents which you believe relate to your complaint.

If you have other information or materials which you would like the [] district grievance committee to consider, or if you would like to discuss this matter, please contact me as soon as possible.

If you have already fully explained your complaint, you do not need to take any additional action regarding your grievance. The [] district grievance committee will notify you in writing when its investigation is complete. At that time, the matter will be forwarded to the North Carolina State Bar Grievance Committee in Raleigh for its final decision. You will be notified in writing of the North Carolina State Bar's decision.

Thank you very much for your cooperation.

Sincerely yours,

[] Investigating Member
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Chairperson, [] District Grievance Committee

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01B .0216 LETTER OF NOTICE TO RESPONDENT ATTORNEY

Ms. Jane Doe
Anywhere, N.C.

Re: Grievance of John Smith
Our File No. []

Dear Ms. Doe:

Enclosed you will find a copy of a grievance which has been filed against you by [complainant] and which was received in my office on [date]. As chairperson of the [] district grievance committee, I have asked [investigating attorney], a member of the committee, to investigate this grievance.

Please file a written response with [investigating attorney] within 15 days from receipt of this letter. Your response should provide a full and fair disclosure of all of the facts and circumstances relating to the matters set out in the grievance.

Thank you.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
[] Investigating member
[] District Grievance Committee

PERSONAL AND CONFIDENTIAL
Director of Investigations
N.C. State Bar

PERSONAL AND CONFIDENTIAL
[] Complainant

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01B .0217 LETTER TRANSMITTING COMPLETED FILE TO NORTH CAROLINA STATE BAR

Director of Investigations
N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611

Re: Grievance of John Smith
File No. []

Dear Director:

The [] district grievance committee has completed its investigation in the above-listed matter. Based upon our investigation, the committee determined in its opinion that there is/is not probable cause to believe that the respondent violated one or more provisions of the Rules of Professional Conduct for the reasons set out in the enclosed report.

We are forwarding this matter for final determination by the North Carolina State Bar Grievance Committee along with the following materials:

1. The original grievance of [complainant].
2. A copy of the file of the investigating attorney.
3. The investigating attorney's report, which includes a summary of the facts and the reason(s) for the committee's decision.

Please let me know if you have any questions or if you need any additional information. Thank you.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*