

27 NCAC 01D .0616 SUSPENSION FOR IMPAIRMENT, REINSTATEMENT

If it appears that a lawyer's ability to practice law is impaired by substance abuse and/or chemical addiction, the board, or its duly authorized committee, may petition any superior court judge to issue an order, pursuant to the court's inherent authority, suspending the lawyer's license to practice law in this state for up to 180 days.

- (a) The petition shall be supported by affidavits of at least two persons setting out the evidence of the lawyer's impairment.
- (b) The petition shall be signed by the executive director of the lawyer assistance program and the executive director of the State Bar.
- (c) The petition shall contain a request for a protective order sealing the petition and all proceedings respecting it.
- (d) Except as set out in 27 NCAC 01D .0606(j) of this Rule, the petition shall request the court to issue an order requiring the attorney to appear in not less than 10 days and show cause why the attorney should not be suspended from the practice of law. No order suspending an attorney's license shall be entered without notice and a hearing, except as provided in 27 NCAC 01D .0606(j) of this Rule.
- (e) The order to show cause shall be served upon the attorney, along with the State Bar's petition and supporting affidavits, as provided in Rule 4 of the North Carolina Rules of Civil Procedure.
- (f) At the show cause hearing, the State Bar shall have the burden of proving by clear, cogent, and convincing evidence that the lawyer's ability to practice law is impaired.
- (g) If the court finds that the attorney is impaired, the court may enter an order suspending the attorney from the practice of law for up to 180 days. The order shall specifically set forth the reasons for its issuance.
- (h) At any time following entry of an order suspending an attorney, the attorney may petition the court for an order reinstating the attorney to the practice of law.
- (i) A hearing on the reinstatement petition will be held no later than 10 days from the filing of the petition, unless the suspended lawyer agrees to a continuance. At the hearing, the suspended lawyer will have the burden of establishing by clear, cogent, and convincing evidence the following: (1) the lawyer's ability to practice law is no longer impaired; (2) the lawyer's debilitating condition is being treated and/or managed; (3) it is unlikely that the inability to practice law due to the impairment will recur; and (4) it is unlikely that the interest of the public will be unduly threatened by the reinstatement of the lawyer.
- (j) No suspension of an attorney's license shall be allowed without notice and a hearing unless:
 - (1) the State Bar files a petition with supporting affidavits, as provided in 27 NCAC 01D .0606(a)-(c) of this Rule.
 - (2) the State Bar's petition and supporting affidavits demonstrate by clear, cogent, and convincing evidence that immediate and irreparable harm, injury, loss, or damage will result to the public, to the lawyer who is the subject of the petition, or to the administration of justice before notice can be given and a hearing had on the petition.
 - (3) the State Bar's petition specifically seeks the temporary emergency relief of suspending *ex parte* the attorney's license for up to 10 days or until notice be given and a hearing held, whichever is shorter, and the State Bar's petition requests the court to endorse an emergency order entered hereunder with the hour and date of its entry.
 - (4) the State Bar's petition requests that the emergency suspension order expire by its own terms 10 days from the date of entry, unless, prior to the expiration of the initial 10-day period, the court agrees to extend the order for an additional 10-day period for good cause shown or the respondent attorney agrees to an extension of the suspension period.
- (k) The respondent attorney may apply to the court at any time for an order dissolving the emergency suspension order. The court may dissolve the emergency suspension order without notice to the State Bar or hearing, or may order a hearing on such notice as the court deems proper.

- (l) The North Carolina State Bar shall not be required to provide security for payment of costs or damages prior to entry of a suspension order with or without notice to the respondent attorney.
- (m) No damages shall be awarded against the State Bar in the event that a restraining order entered with or without notice and a hearing is dissolved.

History Note: Authority G.S. 84-23; 84-28(i);
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000; September 7, 1995.