

27 NCAC 01D .0903 SUSPENSION FOR FAILURE TO FULFILL OBLIGATIONS OF MEMBERSHIP

(a) Procedure for Enforcement of Obligations of Membership. Whenever a member of the North Carolina State Bar fails to fulfill an obligation of membership in the State Bar, whether established by the administrative rules of the State Bar or by statute, the member shall be subject to administrative suspension from membership pursuant to the procedure set forth in this rule; provided, however, that the procedures for the investigation of and action upon alleged violations of the Rules of Professional Conduct by a member are set forth in subchapter 01B of these rules and that no aspect of any procedure set forth in this rule shall be applicable to the State Bar's investigation of or action upon alleged violations of the Rules of Professional Conduct by a member.

(1) The following are examples of obligations of membership that will be enforced by administrative suspension. This list is illustrative and not exclusive:

- (A) Payment of the annual membership fee, including any associated late fee as set forth in G.S. 84-34;
- (B) Payment of the annual Client Security Fund assessment;
- (C) Payment of the costs of a disciplinary, disability, reinstatement, show cause, or other proceeding of the State Bar as ordered by the chair of the Grievance Committee, the Disciplinary Hearing Commission, the secretary, or the council;
- (D) Filing of a pro hac vice registration statement as required in Rule .0101 of subchapter 01H of these rules; and
- (E) Filing of an annual report form and attending continuing legal education activities as required by Sections .1500 and .1600 of subchapter 01D of these rules.

(b) Notice. Whenever it appears that a member has failed to comply, in a timely fashion, with an obligation of membership in the State Bar as established by the administrative rules of the State Bar or by statute, the secretary shall prepare a written notice directing the member to show cause, in writing, within 30 days of the date of service of the notice why he or she should not be suspended from the practice of law.

(c) Service of the Notice. The notice shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member contained in the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the notice may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar acknowledging such service.

(d) Entry of Order of Suspension upon Failure to Respond to Notice to Show Cause. Whenever a member fails to show cause in writing within 30 days of the service of the notice to show cause upon the member, and it appears that the member has failed to comply with an obligation of membership in the State Bar as established by the administrative rules of the State Bar or by statute, the council may enter an order suspending the member from the practice of law. The order shall be effective 30 days after proof of service on the member. The order shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service, return receipt requested, to the last-known address of the member contained in the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the order may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar acknowledging such service. A member who cannot, with due diligence, be served by registered or certified mail, designated delivery service, personal service, or email shall be deemed served by the mailing of a copy of the order to the member's last known address contained in the records of the North Carolina State Bar.

(e) Procedure upon Submission of a Timely Response to a Notice to Show Cause

- (1) Consideration by Administrative Committee. If a member submits a written response to a notice to show cause within 30 days of the service of the notice upon the member, the Administrative Committee shall consider the matter at its next regularly scheduled meeting. The member may personally appear at the meeting and be heard, may be represented by counsel, and may offer witnesses and documents. The counsel may appear at the meeting on behalf of the State Bar and be heard, and may offer witnesses and documents. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for the apparent failure to fulfill an obligation of membership in the State Bar as established by the administrative rules of the State Bar or by statute.

- (2) Recommendation of Administrative Committee. The Administrative Committee shall determine whether the member has shown cause why the member should not be suspended. If the committee determines that the member has failed to show cause, the committee shall recommend to the council that the member be suspended.
 - (3) Order of Suspension. Upon the recommendation of the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be effective 30 days after proof of service on the member. The order shall be served on the member by mailing a copy thereof by registered or certified mail return receipt requested to the last-known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person effecting the service. Notice may also be by personal service by a State Bar investigator or any other person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process. Unless the member complies with or fulfills the obligation of membership within 30 days after service of the order, the obligations of a disbarred or suspended member to wind down the member's law practice within 30 days set forth in Rule .0128 of Subchapter 01B of these rules shall apply to the member upon the effective date of the order of suspension. If the member fails to fulfill the obligations set forth in Rule .0128 of Subchapter 01B within 30 days of the effective date of the order, the member shall be subject to professional discipline.
- (f) Late Compliance. If a member fulfills the obligation of membership before a suspension order is entered by the council, no order of suspension will be entered.
- (g) Administrative Suspension Pursuant to Statute. The provisions of this rule notwithstanding, if any section of the North Carolina General Statutes requires suspension of an occupational license, the procedure for suspension pursuant to such statute shall be as established by the statute. If no procedure is established by said statute, then the procedures specified in this rule shall be followed.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 6, 2014; August 23, 2012; March 11, 2010; October 8, 2009; March 6, 2008; November 16, 2006; March 2, 2006; October 1, 2003; February 3, 2000; March 5, 1998; March 7, 1996; December 7, 1995;*