

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 disbarring the member. The order of disbarment is effective on the date the council accepts the member's resignation.

(c) Public Record - The order disbarring 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.*