

## **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.

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