

27 NCAC 01B .0136 EXPUNGEMENT OR SEALING OF DISCIPLINE

(a) By the Chair of the Grievance Committee.

- (1) Expungement of Admonition by the Grievance Committee. A lawyer who accepted an admonition from the Grievance Committee may petition the chair of the committee to expunge the admonition as set forth herein. The petition shall be served upon the State Bar Counsel. The petitioner shall show rehabilitation by executing and attaching to the petition an affidavit certifying the following requirements for expungement of an admonition:
 - (A) The admonition (i) did not involve violation of Rules of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) or attempted violation of Rule 1.19, or (ii) did involve violation of Rule 8.4(c) but the admonition was solely related to the contents of the lawyer's advertising or marketing materials;
 - (B) Five years have elapsed since the effective date of the admonition;
 - (C) The petitioner has not been the subject of any professional discipline since the effective date of the admonition;
 - (D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the admonition and no criminal charges other than minor traffic violations are currently pending against the petitioner;
 - (E) There are no grievances pending against the petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction;
 - (F) There are no disciplinary proceedings pending against the petitioner in the Disciplinary Hearing Commission, in any court, or in any other jurisdiction; and
 - (G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.
- (2) Expungement of Reprimand or Censure by the Grievance Committee. A lawyer who accepted a reprimand or a censure from the Grievance Committee may petition the chair of the committee to expunge the reprimand or the censure as set forth herein. The petition shall be served upon the State Bar Counsel. The petitioner shall show rehabilitation by executing and attaching to the petition an affidavit certifying the following requirements for expungement of a reprimand or censure:
 - (A) The reprimand or censure (i) did not involve violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) or attempted violation of Rule 1.19, or (ii) did involve violation of Rule 8.4(c) but the reprimand or censure was solely related to the contents of the lawyer's advertising or marketing materials;
 - (B) Ten years have elapsed since the effective date of the reprimand or censure;
 - (C) The petitioner has not been the subject of any professional discipline since the effective date of the reprimand or censure;
 - (D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the reprimand or censure and no criminal charges other than minor traffic violations are currently pending against the petitioner;
 - (E) There are no grievances pending against the petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction; and
 - (F) There are no disciplinary proceedings pending against the petitioner in the Disciplinary Hearing Commission, in any court, or in any other jurisdiction; and
 - (G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.
- (3) Determination by the Chair of the Grievance Committee.
 - (A) The Office of Counsel shall have 30 days from the date of service of the petition to produce any information or documentation concerning whether the requirements for expungement are satisfied. Such information shall be transmitted to the petitioner and the chair of the Committee.
 - (B) If the chair of the Grievance Committee concludes that the requirements in Rule .0136(a)(1) have been satisfied, the chair shall enter an order expunging the admonition.

If the chair of the Grievance Committee concludes that the requirements in Rule .0136(a)(2) have been satisfied, the chair shall enter an order expunging the reprimand or censure.

(b) By the Chair of the Disciplinary Hearing Commission.

- (1) Expungement of Admonition Entered by the Disciplinary Hearing Commission. A lawyer in whose case the Disciplinary Hearing Commission entered an order of discipline imposing an admonition may petition the chair of the commission to expunge the admonition as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. The petitioner shall show rehabilitation by executing and attaching to the petition an affidavit certifying the following requirements for expungement of an admonition:
 - (A) The admonition (i) did not involve violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) or attempted violation of Rule 1.19, or (ii) did involve violation of Rule 8.4(c) but the admonition was solely related to the contents of the lawyer's advertising or marketing materials;
 - (B) Five years have elapsed since the effective date of the admonition;
 - (C) The petitioner has not been the subject of any professional discipline since the effective date of the admonition;
 - (D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the admonition and no criminal charges other than minor traffic violations are currently pending against the petitioner;
 - (E) There are no grievances pending against the petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction;
 - (F) There are no disciplinary proceedings pending against the petitioner in the Disciplinary Hearing Commission, in any court, or in any other jurisdiction; and
 - (G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.
- (2) Expungement of Reprimand or Censure Entered by the Disciplinary Hearing Commission. A lawyer in whose case the Disciplinary Hearing Commission entered an order of discipline imposing a reprimand or a censure may petition the chair of the commission to expunge the reprimand or censure as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. The petitioner shall show rehabilitation by executing and attaching to the petition an affidavit certifying the following requirements for expungement of a reprimand or censure:
 - (A) The reprimand or censure (i) did not involve violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) or attempted violation of Rule 1.19 or (ii) did involve violation of Rule 8.4(c) but the reprimand or censure was solely related to the contents of the lawyer's advertising or marketing materials;
 - (B) Ten years have elapsed since the effective date of the reprimand or censure;
 - (C) The petitioner has not been the subject of any professional discipline since the effective date of the reprimand or censure;
 - (D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the reprimand or censure and no criminal charges other than minor traffic violations are currently pending against the petitioner;
 - (E) There are no grievances pending against the petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction;
 - (F) There are no disciplinary proceedings pending against the petitioner in the Disciplinary Hearing Commission, in any court, or in any other jurisdiction; and
 - (G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.
- (3) Determination by the Chair of the Disciplinary Hearing Commission.

- (A) The Office of Counsel shall have 30 days from the date of service of the petition to file a response with information or documentation concerning whether the requirements for expungement are satisfied. The response shall be transmitted to the petitioner.
- (B) If the chair of the commission concludes that the requirements in Rule .0136(b)(1) have been satisfied, the chair shall enter an order expunging the admonition. If the chair of the commission concludes that the requirements in Rule .0136(b)(2) have been satisfied, the chair shall enter an order expunging the reprimand or censure.

(c) Effect of Expungement of Admonition, Reprimand, or Censure.

- (1) An admonition, reprimand, or censure that is expunged by the chair of the Grievance Committee or by the chair of the Disciplinary Hearing Commission shall be removed from the petitioner's disciplinary record and from the State Bar website. For disciplinary actions expunged by the Disciplinary Hearing Commission, all filings in the case shall be removed from the publicly accessible records of the commission.
- (2) In determining the disposition of any future grievances against the petitioner, the State Bar's Grievance Committee will not consider expunged discipline.
- (3) The State Bar shall maintain a confidential record of expunged discipline, including all filings in the Disciplinary Hearing Commission case that resulted in the discipline, which will not be available for public inspection and will not be disclosed except as provided in subsection (h) of this rule.
- (4) The petitioner will not be held thereafter to have made a false statement by reason of failing to recite or acknowledge the expunged discipline. This subsection shall not apply in a DHC or judicial disciplinary proceeding in which the petitioner has been found to have engaged in misconduct and the tribunal is determining what discipline should be imposed.

(d) Sealing Order of Stayed Suspension Entered by the Disciplinary Hearing Commission.

- (1) A lawyer in whose case the Disciplinary Hearing Commission entered an order imposing a stayed suspension of the lawyer's law license may petition the chair of the commission to seal the order of discipline as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. The petitioner shall show rehabilitation by executing and attaching to the petition an affidavit certifying the following requirements for sealing an order of discipline:
 - (A) The order of discipline imposing the stayed suspension (i) did not involve violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) or attempted violation of Rule 1.19, or (ii) the stayed suspension did involve violation of Rule 8.4(b) and/or Rule 8.4(c) but the order of discipline was related solely to the lawyer's failure to file and/or pay personal income taxes;
 - (B) Ten years have elapsed since the effective date of the stayed suspension;
 - (C) The petitioner has not been the subject of any professional discipline since the effective date of the stayed suspension;
 - (D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the order of discipline and no criminal charges other than minor traffic violations are currently pending against the petitioner;
 - (E) There are no grievances pending against the petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction;
 - (F) There are no disciplinary proceedings pending against the petitioner in the Disciplinary Hearing Commission, in any court, or in any other jurisdiction;
 - (G) The suspension imposed in the order of discipline was entirely stayed, no portion of the suspension was activated by the commission, and the period of the stay was not extended by the commission due to noncompliance with conditions; and
 - (H) The petitioner has not previously been granted expungement or sealing of a disciplinary action.
- (2) Determination by Chair of the Commission.
 - (A) The Office of Counsel shall have 30 days from the date of service of the petition to file a response with information or documentation concerning whether the requirements for sealing a disciplinary order are satisfied. The response shall be transmitted to the petitioner.

- (B) If the chair of the commission concludes that the requirements of Rule .0136(d)(1) have been satisfied by the petitioner, the chair shall enter an order sealing the order of stayed suspension and all other filings in the case, including the filings related to the petition to seal the disciplinary order.
- (3) Effect of Sealing an Order of Stayed Suspension.
 - (A) An order of stayed suspension that has been sealed by the chair of the Disciplinary Hearing Commission shall be removed from the State Bar website and all filings in the case shall be removed from the publicly accessible records of the commission.
 - (B) The State Bar will maintain a confidential record of the sealed order of stayed suspension and other filings in the case, which shall not be available for public inspection. The sealed order of stayed suspension may be introduced into evidence and considered in any future disciplinary action against the petitioner. Otherwise, the sealed order of stayed suspension shall not be disclosed except as provided in subsection (h) of this rule.
- (e) Orders of Active Suspension, Activated or Extended Orders of Stayed Suspension, and Orders of Disbarment Shall Not Be Expunged or Sealed. An order of discipline imposing an active suspension, imposing a stayed suspension that was activated or extended due to noncompliance, or imposing disbarment shall not be expunged or sealed.
- (f) Eligibility Limited to Single Disciplinary Action. A lawyer who is granted expungement or sealing of professional discipline pursuant to this rule is not eligible for expungement or sealing of additional professional discipline.
- (g) Rescission of Expungement or Sealing of Discipline. Upon receipt of information indicating that a certification in the affidavit supporting a petition to expunge or seal a disciplinary action was false, the Office of Counsel may submit a written request to the chair of the Grievance Committee or file a motion in the Disciplinary Hearing Commission requesting that the expungement or sealing of the disciplinary action be rescinded. The request or motion shall be served upon the lawyer who made the certification and the lawyer shall have 30 days from the date of service to submit a written response. If the chair of the Grievance Committee or the Disciplinary Hearing Commission concludes that the expungement or sealing of the disciplinary action was based upon a false certification by the petitioner, the order of expungement or order sealing the disciplinary order shall be rescinded.
- (h) Confidential State Bar Records. The State Bar shall maintain confidential records of expunged discipline, sealed disciplinary orders, petitions to expunge or seal, and orders granting expungement or sealing pursuant to this rule. These confidential records may be disclosed only as follows:
 - (1) Upon request of a judge of the North Carolina General Court of Justice for the purpose of ascertaining whether a lawyer has previously been granted an expungement or sealing of professional discipline.
 - (2) Upon request of a lawyer seeking confirmation that disciplinary action against the requesting lawyer has been expunged or sealed.
 - (3) Pursuant to a search warrant, grand jury subpoena, or court order directing or authorizing the State Bar to provide records to any law enforcement or national security agency.
 - (4) In response to a petition for expungement by a lawyer to whom expungement or sealing was previously granted and who is therefore ineligible for expungement or sealing of additional disciplinary actions pursuant to section (f) of this rule.
 - (5) In a request to rescind the order of expungement pursuant to section (g) of this rule.
 - (6) In a DHC or judicial disciplinary proceeding in which the petitioner has been found to have engaged in misconduct and the tribunal is determining what discipline should be imposed.
- (i) Removal of Disciplinary Record of Deceased Lawyer from State Bar Website. One year after the State Bar is notified of a lawyer's death, the State Bar shall remove from the State Bar website any orders of discipline entered against the lawyer.
- (j) Removal of Orders of Dismissal from State Bar Website. Three years after the entry of an order by the Disciplinary Hearing Commission dismissing all charges of misconduct against a lawyer, the lawyer against whom the dismissed charges were filed may request that the order of dismissal be removed from the State Bar website. Requests for removal under this section shall be directed to the State Bar Counsel, who shall direct that the order be removed from the website if the order dismissed all charges of misconduct against the lawyer and three years have elapsed since entry of the order.

History Note: Authority G.S. 84-23; 84-28;
 Approved by the Supreme Court: March 19, 2025.

