

## **27 NCAC 01D .0902 REINSTATEMENT FROM INACTIVE STATUS**

### **(a) Eligibility to Apply for Reinstatement**

Any member who has been transferred to inactive status may petition the council for an order reinstating the member as an active member of the North Carolina State Bar.

### **(b) Definition of "Year"**

As used in this rule, a year is a 365 day period of time unless a calendar year is specified.

### **(c) Requirements for Reinstatement**

#### **(1) Completion of Petition.**

The member must provide the information requested on a petition form prescribed by the council and must sign the petition under oath.

#### **(2) CLE Requirements Before Inactive.**

Unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (c)(5) of this rule, the member must satisfy the minimum continuing legal education requirements, as set forth in Rule .1518 of this subchapter, for the calendar year in which the member was transferred to inactive status (the "subject year") if such transfer occurred on or after July 1 of the subject year, including any deficit from a prior calendar year that was carried forward and recorded in the member's CLE record for the subject year.

#### **(3) Character and Fitness to Practice.**

The member must have the moral qualifications, competency and learning in the law required for admission to practice law in the state of North Carolina, and must show that the member's resumption of the practice of law within this state will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest.

#### **(4) Additional CLE Requirements.**

If more than one year has elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member must complete 12 hours of approved CLE for each year that the member was inactive up to a maximum of seven years. The CLE hours must be completed within two years prior to filing the petition. For each 12-hour increment, 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the two years prior to filing the petition.

#### **(5) Bar Exam and MPRE Requirement If Inactive Seven or More Years.**

(A) If seven years or more have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member must satisfy the following requirements in lieu of the CLE requirements in paragraphs (c)(2) and (c)(4):

- (1) 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;
- (2) 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; and
- (3) 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.

(B) A member may offset the inactive status period for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A) as follows:

- (1) Active Licensure in Another State. Each year of active licensure in another state during the period of inactive status shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). If the member is not required to satisfy the requirements of paragraph (A) as a consequence of offsetting, the member shall satisfy the CLE

requirements set forth in paragraph (c)(4) for each year that the member was inactive up to a maximum of seven years.

- (2) Military Service. Each calendar year in which an inactive member served on full-time, active military duty, whether for the entire calendar year or some portion thereof, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). If the member is not required to satisfy the requirements of paragraph (A) as a consequence of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (c)(4) for each year that the member was inactive up to a maximum of seven years.

(6) Payment of Fees, Assessments and Costs.

The member must pay all of the following:

- (A) a reinstatement fee in an amount to be determined by the council;
- (B) the membership fee and the Client Security Fund assessment for the year in which the application is filed;
- (C) the annual membership fee, if any, of the member's district bar for the year in which the application is filed and any past due annual membership fees for any district bar with which the member was affiliated prior to transferring to inactive status;
- (D) all attendee fees owed the Board of Continuing Legal Education for CLE courses taken to satisfy the requirements of paragraphs (c)(2), (4), and (5);
- (E) any costs previously assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar; and
- (F) all costs incurred by the North Carolina State Bar in investigating and processing the application for reinstatement.

(d) Service of Reinstatement Petition

The petitioner shall serve the petition on the secretary. The secretary shall transmit a copy of the petition to the members of the Administrative Committee and to the counsel.

(e) Investigation by Counsel

The counsel may conduct any necessary investigation regarding the petition and shall advise the members of the Administrative Committee of any findings from such investigation.

(f) Recommendation of Administrative Committee

After any investigation of the petition by the counsel is complete, the Administrative Committee will consider the petition at its next meeting and shall make a recommendation to the council regarding whether the petition should be granted. The chair of the Administrative Committee may appoint a panel composed of at least three members of the committee to consider any petition for reinstatement and, on behalf of the Administrative Committee, to make a recommendation to the council regarding whether the petition should be granted.

- (1) Conditions Precedent to Reinstatement. Upon a determination that the petitioner has failed to demonstrate competence to return to the practice of law, the committee may require the petitioner to complete a specified number of hours of continuing legal education, which shall be in addition to the requirements set forth in Rule .0902(c)(2) and (4) above, as a condition precedent to the committee's recommendation that the petition be granted,
- (2) Conditions Subsequent to Reinstatement. Upon a determination that the petitioner is fit to return to the practice of law pursuant to the reasonable management of his or her substance abuse, addiction, or debilitating mental condition, the committee may recommend to the council that the reinstatement petition be granted with reasonable conditions to which the petitioner consents. Such conditions may include, but are not limited to, an evaluation by a mental health professional approved by the Lawyer Assistance Program (LAP), compliance with the treatment recommendations of the mental health professional, periodic submission of progress reports by the mental health professional to LAP, and waiver of confidentiality relative to diagnosis and treatment by the mental health professional.
- (3) Failure of Conditions Subsequent to Reinstatement. In the event the petitioner fails to satisfy the conditions of the reinstatement order, the committee shall issue a notice directing the petitioner to show cause, in writing, why the petitioner should not be suspended from the practice of law. Notice shall be served and the right to request a hearing shall be as provided in Rule .0902(g) below. The hearing shall be conducted as provided in Section .1000 of this subchapter provided,

however, the burden of proof shall be upon the petitioner to show by clear, cogent, and convincing evidence that he or she has satisfied the conditions of the reinstatement order.

(g) Hearing Upon Denial of Petition for Reinstatement

(1) Notice of Council Action and Request for Hearing

If the council denies a petition for reinstatement, the petitioner shall be notified in writing within 14 days after such action. The notice shall be served upon the petitioner pursuant to Rule 4 of the N.C. Rules of Civil Procedure and may be served by a State Bar investigator or any other person authorized by Rule 4 of the N.C. Rules of Civil Procedure to serve process.

(2) The petitioner shall have 30 days from the date of service of the notice to file a written request for hearing upon the secretary. The request shall be served upon the secretary pursuant to Rule 4 of the N.C. Rules of Civil Procedure.

(3) Hearing Procedure

The procedure for the hearing shall be as provided in Section .1000 of this subchapter.

(h) Reinstatement by Secretary of the State Bar

Notwithstanding paragraph (f) of this rule, an inactive member may petition for reinstatement pursuant to paragraphs (a) and (b) of this rule and may be reinstated by the secretary of the State Bar upon a finding that the inactive member has complied with or fulfilled the conditions for reinstatement set forth in this rule; there are no issues relating to the inactive member's character or fitness; and the inactive member has paid all fees owed to the State Bar including the reinstatement fee. Reinstatement by the secretary is discretionary. If the secretary declines to reinstate a member, the member's petition shall be submitted to the Administrative Committee at its next meeting and the procedure for review of the reinstatement petition shall be as set forth in paragraph (f) of this rule.

(i) Denial of Petition

When a petition for reinstatement is denied by the council in a given calendar year, the member may not petition again until the following calendar year. The reinstatement fee, costs, and any fees paid pursuant to paragraph (c)(6) shall be retained. However, the State Bar membership fee, Client Security Fund assessment, and district bar membership fee assessed for the year in which the application is filed shall be refunded.

*History Note: Authority G.S. 84-23;*

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