

**SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA
STATE BAR**

SECTION .0100 – PROCEDURES FOR RULING ON QUESTIONS OF LEGAL ETHICS

27 NCAC 01D .0101 DEFINITIONS

- (a) "Assistant executive director" shall mean the assistant executive director of the Bar.
- (b) "Attorney" shall mean any active member of the Bar.
- (c) "Bar" shall mean the North Carolina State Bar.
- (d) "Chairperson" shall mean the chairperson, or in his or her absence, the vice-chairperson of the Ethics Committee of the Bar.
- (e) "Committee" shall mean the Ethics Committee of the Bar.
- (f) "Council" shall mean the council of the Bar.
- (g) "Ethics advisory" shall mean legal ethics opinion issued in writing by the executive director, the assistant executive director, or a designated member of the Bar's staff counsel. All ethics advisories shall be subsequently reviewed and approved, withdrawn or modified by the committee. Ethics advisories shall be designated by the letters "EA", numbered by year and order of issuance, and kept on file at the Bar.
- (h) "Ethics decision" shall mean a written ethics opinion issued by the council in response to a request for an ethics opinion which, because of its special facts or for other reasons, does not warrant issuance of a formal ethics opinion. Ethics decisions shall be designated by the letters "ED," numbered by year and order of issuance, and kept on file at the Bar.
- (i) "Executive director" shall mean the executive director of the Bar.
- (j) "Formal ethics opinion" shall mean a published opinion issued by the council to provide ethical guidance for attorneys and to establish a principle of ethical conduct. A formal ethics opinion adopted under the Revised Rules of Professional Conduct (effective July 24, 1997, and as comprehensively revised in 2003) shall be designated as a "Formal Ethics Opinion" and numbers by year and order of issuance. Formal ethics opinions adopted under the repealed Rules of Professional Conduct (effective October 7, 1985 to July 23, 1997) are designated by the letters "RPC" numbered serially. Formal ethics opinions adopted under the repealed Code of Professional Conduct (effective January 1, 1974 to October 6, 1985) are designated by the letters "CPR" and numbered serially. Formal ethics opinion adopted under the repealed Rules of Professional Conduct and the repealed Code of Professional Conduct are binding unless overruled by a provision of the Bar's current code of ethics, a revision of the rule of ethics upon which the opinion is based, or a subsequent formal ethics opinion on point.
- (k) "Grievance Committee" shall mean the Grievance Committee of the Bar.
- (l) "Informal ethics advisory" shall mean an informal ethics opinion communicated orally or via electronic mail by the executive director, the assistant executive director, or a designated member of the Bar's Legal staff counsel. A written record documenting the name of the inquiring attorney, the date of the informal ethics advisory, and the substance of the advice given shall be kept on file at the Bar. An informal ethics advisory is not binding upon the Bar in a subsequent disciplinary proceeding.
- (m) "President" shall mean the president of the Bar, or, in his or her absence, the presiding officer of the council.
- (n) "Published" shall mean published for comment in the North Carolina State Bar Newsletter (prior to fall 1996), the North Carolina State Bar Journal (fall of 1996 and thereafter) or other appropriate publications of the North Carolina State Bar.
- (o) "Revised Rules of Professional Conduct" shall mean the code of ethics of the Bar effective July 24, 1997, and as comprehensively revised in 2003.

History Note: *Authority G.S. 84-23;*
 Readopted Eff. December 8, 1994;
 Amended Eff. February 5, 2004; March 5, 1998.

**27 NCAC 01D .0102 REQUESTS FOR LEGAL ETHICS OPINIONS AND ETHICS ADVISORIES
(GENERAL PROVISIONS)**

- (a) Any attorney or citizen may request the Bar to rule on actual or contemplated professional conduct of an attorney in the form and manner provided hereinafter. The grant or denial of the request rests with the discretion of the executive director, assistant executive director, committee, or the council.
- (b) Attorneys may initiate a request for an ethics advisory either in writing, by telephone, or in person regarding conduct which they contemplate and in good faith believe is either a routine matter or requires urgent action in order

to protect some legal right, privilege, or interest. If the request is initiated verbally, the requesting attorney must promptly confirm the request in writing.

(c) A request for an ethics advisory, ethics decision, or legal ethics opinion shall present in detail to the executive director or assistant executive director all operative facts upon which the request is based. All requests for either a legal ethics opinion or an ethics decision shall be made in writing.

(d) Any citizen may request either a legal ethics opinion or an ethics decision through any councilor of the judicial district of his or her residence or principal place of business except when the request is regarding the propriety of said councilor's conduct, in which case the citizen may make the request through another councilor in the district or a councilor in an adjoining judicial district.

(e) Any attorney, including a councilor acting pursuant to Paragraph (d) hereinabove, who requests either a legal ethics opinion or an ethics decision concerning acts or contemplated professional conduct of another attorney, shall state the name of that attorney and identify all persons who the requesting attorney has reason to believe would be substantially affected by the question or questions advanced. The councilor shall exercise good faith in preparing the request on behalf of the citizen.

(f) If an attorney willfully fails to identify an attorney who the requesting attorney has reason to believe would be substantially affected by the requested ethics advisory, legal ethics opinion, or ethics decision, his or her willful failure may be treated as misconduct. The requesting attorney shall receive no right, benefit, or immunity under any opinion which has been issued under such circumstances, and the opinion shall be reexamined de novo under the procedures delineated in Rule .0104 of this Subchapter.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .0103 ETHICS ADVISORIES

(a) The executive director, assistant executive director, or designated staff counsel may honor or deny a request for an informal ethics advisory. Except as provided in Rule .0102(b), an attorney requesting an opinion concerning another attorney's professional conduct, past conduct, or matters of first impression shall be asked to submit a written inquiry for referral to the committee. An attorney requesting an opinion involving matters of widespread interest to the Bar or particularly complex factual circumstances may also be asked to submit a written inquiry for referral to the committee.

(b) The Bar's program for providing informal ethics advisories to inquiring attorneys is a designated lawyer's assistance program approved by the Bar and information received by the executive director, assistant executive director, or designated staff counsel from an attorney seeking an informal ethics advisory shall be confidential information pursuant to Rule 1.6(c) of the Revised Rules of Professional Conduct (2003); provided, however, such confidential information may be disclosed as allowed by Rule 1.6(b) and as necessary to respond to a false or misleading statement made about an informal ethics advisory. Further, if an attorney's response to a grievance proceeding relies in whole or in part upon the receipt of an informal ethics advisory, confidential information may be disclosed to Bar counsel, the Grievance Committee or other appropriate disciplinary authority.

(c) An ethics advisory issued by the executive director or assistant executive director shall be promulgated under the authority of the committee and in accordance with such guidelines as the committee may establish and prescribe from time to time.

(d) An ethics advisory shall sanction or disapprove only the matter in issue, not otherwise serve as precedent and not be published.

(e) Ethics advisories shall be reviewed periodically by the committee. If, upon review, a majority of the committee present and voting decides that an ethics advisory should be withdrawn, the requesting attorney shall be notified in writing of the committee's decision by the executive director or assistant executive director. Until such notification, the attorney shall be deemed to have acted ethically and in good faith if he or she acts pursuant to the ethics advisory which is later withdrawn or modified.

(f) If an inquiring attorney disagrees with the ethics advisory issued to him or her, the attorney may request reconsideration of the ethics advisory by writing to the committee prior to the next regularly scheduled meeting of the committee.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 5, 2004; March 5, 1998.*

SECTION .0200 - PROCEDURES FOR THE AUTHORIZED PRACTICE COMMITTEE

27 NCAC 01D .0201 GENERAL PROVISIONS

The purpose of the committee on the authorized practice of law is to protect the public from being unlawfully advised and represented in legal matters by unqualified persons.

*History Note: Authority G.S. 84-37;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.*

27 NCAC 01D .0202 PROCEDURE

- (a) The procedure to prevent and restrain the unauthorized practice of law shall be in accordance with the provisions hereinafter set forth.
- (b) District bars shall not conduct separate proceedings into unauthorized practice of law matters but shall assist and cooperate with the North Carolina State Bar in reporting and investigating matters of alleged unauthorized practice of law.

*History Note: Authority G.S. 84-37;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .0203 DEFINITIONS

Subject to additional definitions contained in other provisions of this subchapter, the following words and phrases, when used in this subchapter, have the meanings set forth in this Rule, unless the context clearly indicates otherwise.

- (1) Appellate division - the appellate division of the General Court of Justice.
- (2) Chairperson of the Authorized Practice Committee - the councilor appointed to serve as chairperson of the Authorized Practice Committee of the State Bar.
- (3) Complainant or the complaining witness - any person who has complained of the conduct of any person, firm or corporation as relates to alleged unauthorized practice of law.
- (4) Complaint - a formal pleading filed in the name of the North Carolina State Bar in the superior court against a person, firm or corporation after a finding of probable cause.
- (5) Council - the Council of the North Carolina State Bar.
- (6) Councilor - a member of the Council of the North Carolina State Bar.
- (7) Counsel - the counsel of the North Carolina State Bar appointed by the council.
- (8) Court or courts of this state - a court authorized and established by the Constitution or laws of the state of North Carolina.
- (9) Defendant - any person, firm or corporation against whom a complaint is filed after a finding of probable cause.
- (10) Investigation - the gathering of information with respect to alleged unauthorized practice of law.
- (11) Investigator - any person designated to assist in investigation of alleged unauthorized practice of law.
- (12) Letter of notice - a communication to an accused individual or corporation setting forth the substance of alleged conduct involving unauthorized practice of law.
- (13) Office of the counsel - the office and staff maintained by the counsel of the North Carolina State Bar.
- (14) Office of the secretary - the office and staff maintained by the secretary of the North Carolina State Bar.
- (15) Party - after a complaint has been filed, the North Carolina State Bar as plaintiff and the accused individual or corporation as defendant.
- (16) Plaintiff - after a complaint has been filed, the North Carolina State Bar.
- (17) Preliminary Hearing - hearing by the Authorized Practice Committee to determine whether probable cause exists.
- (18) Probable Cause - a finding by the Authorized Practice Committee that there is reasonable cause to believe that a person or corporation has engaged in the unauthorized practice of law justifying legal action against such person or corporation.

- (19) Secretary - the secretary of the North Carolina State Bar.
- (20) Supreme Court - the Supreme Court of North Carolina.

History Note: Authority G.S. 84-37;
Readopted Eff. December 8, 1994;
Amended October 6, 2004; February 3, 2000.

27 NCAC 01D .0204 STATE BAR COUNCIL - POWERS AND DUTIES

The Council of the North Carolina State Bar shall have the power and duty:

- (1) to supervise the administration of the Authorized Practice Committee in accordance with the provisions of this Subchapter;
- (2) to appoint a counsel. The counsel shall serve at the pleasure of the council. The counsel shall be a member of the North Carolina State Bar but shall not be permitted to engage in the private practice of law.

History Note: Authority G.S. 84-37;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

27 NCAC 01D .0205 CHAIRPERSON OF THE AUTHORIZED PRACTICE COMMITTEE - POWERS AND DUTIES

(a) The chairperson of the Authorized Practice Committee shall have the power and duty:

- (1) to supervise the activities of the counsel;
- (2) to recommend to the Authorized Practice Committee that an investigation be initiated;
- (3) to recommend to the Authorized Practice Committee that a complaint be dismissed;
- (4) to direct a letter of notice to an accused person or corporation or direct the counsel to issue letters of notice in such cases or under such circumstances as the chairperson deems appropriate;
- (5) to notify the accused and any complainant that a complaint has been dismissed;
- (6) to call meetings of the Authorized Practice Committee for the purpose of holding preliminary hearings;
- (7) to issue subpoenas in the name of the North Carolina State Bar or direct the secretary to issue such subpoenas;
- (8) to administer oaths or affirmations to witnesses;
- (9) to file and verify complaints and petitions in the name of the North Carolina State Bar.

(b) The president, vice-chairperson or senior council member of Authorized Practice Committee shall perform the functions of the chairperson of the committee in any matter when the chairperson or vice-chairperson is absent or disqualified.

History Note: Authority G.S. 84-37;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

27 NCAC 01D .0206 AUTHORIZED PRACTICE COMMITTEE - POWERS AND DUTIES

The Authorized Practice Committee shall have the power and duty

- (1) to direct the counsel to investigate any alleged unauthorized practice of law by any person, firm, or corporation in this State;
- (2) to hold preliminary hearings, find probable cause, and recommend to the Executive Committee that a complaint for injunction be filed in the name of the State Bar against the respondent;
- (3) to dismiss allegations of the unauthorized practice of law upon a finding of no probable cause;
- (4) to issue letters of caution, which may include a demand to cease and desist, to respondents in cases where the Committee concludes either that:
 - (a) there is probable cause established to believe respondent has engaged in the unauthorized practice of law in North Carolina, but
 - (i) respondent has agreed to refrain from engaging in the conduct in the future;
 - (ii) respondent is unlikely to engage in the conduct again; or

- (iii) either referral to a district attorney or complaint for injunction is not warranted under the circumstances; or
- (b) there is no probable cause established to believe respondent has engaged in the unauthorized practice of law in North Carolina, but
 - (i) the conduct of the respondent may be improper and may become the basis for injunctive relief if continued or repeated; or
 - (ii) the Committee otherwise finds it appropriate to caution the respondent.
- (5) to direct counsel to stop an investigation and take no action;
- (6) to refer a matter to another agency, including the district attorney for criminal prosecution and to other committees of the North Carolina State Bar; and
- (7) to issue advisory opinions in accordance with procedures adopted by the council as to whether the actual or contemplated conduct of nonlawyers would constitute the unauthorized practice of law in North Carolina.

History Note: Authority G.S. 84-37;
 Readopted Eff. December 8, 1994;
 Amended Eff. October 6, 2004; February 3, 2000, February 20, 1995.

27 NCAC 01D .0207 COUNSEL - POWERS AND DUTIES

The counsel shall have the power and duty:

- (1) to initiate an investigation concerning the alleged unauthorized practice of law;
- (2) to direct a letter of notice to a respondent when authorized by the chairperson of the Authorized Practice Committee;
- (3) to investigate all matters involving alleged unauthorized practice of law whether initiated by the filing of a complaint or otherwise;
- (4) to recommend to the chairperson of the Authorized Practice Committee that a matter be dismissed because the complaint is frivolous or falls outside the council's jurisdiction; that a letter of notice be issued; or that the matter be considered by the Authorized Practice Committee to determine whether probable cause exists;
- (5) to prosecute all unauthorized practice of law proceedings before the Authorized Practice Committee and the courts;
- (6) to represent the State Bar in any trial or other proceedings concerned with the alleged unauthorized practice of law;
- (7) to employ assistant counsel, investigators, and other administrative personnel in such numbers as the council may from time to time authorize;
- (8) to maintain permanent records of all matters processed and the disposition of such matters;
- (9) to perform such other duties as the council may from time to time direct.

History Note: Authority G.S. 84-37;
 Readopted Eff. December 8, 1994;
 Amended Eff. February 3, 2000.

27 NCAC 01D .0208 SUING FOR INJUNCTIVE RELIEF

- (a) Upon receiving a recommendation from the Authorized Practice Committee that a complaint seeking injunctive relief be filed, the Executive Committee shall review the matter at the same quarterly meeting and determine whether the recommended action is necessary to protect the public interest and ought to be prosecuted.
- (b) If the Executive Committee decides to follow the Authorized Practice Committee's recommendation, it shall direct the counsel to prepare the necessary pleadings as soon as practical for signature by the chairperson and filing with the appropriate tribunal.
- (c) If the Executive Committee decides not to follow the Authorized Practice Committee's recommendation, the matter shall go before the council at the same quarterly meeting to determine whether the recommended action is necessary to protect the public interest and ought to be prosecuted.
- (d) If the council decides not to follow the Authorized Practice Committee's recommendation, the matter shall be referred back to the Authorized Practice Committee for alternative disposition.

(e) If probable cause exists to believe that a respondent is engaged in the unauthorized practice of law and action is needed to protect the public interest before the next quarterly meeting of the Authorized Practice Committee, the chairperson, with the approval of the president, may file and verify a complaint or petition in the name of the North Carolina State Bar.

*History Note: Authority G.S. 84-37;
Adopted Eff. February 3, 2000.*

SECTION .0300 - DISASTER RESPONSE PLAN

27 NCAC 01D .0301 THE DISASTER RESPONSE TEAM

- (a) The disaster response team should be composed of the following:
- (1) the president of the State Bar, or if the president is unavailable, another officer of the State Bar;
 - (2) the counsel or his or her designee;
 - (3) the director of communications or his or her designee;
 - (4) the president of the Young Lawyers Division of the North Carolina Bar Association ("YLD") or his or her designee;
 - (5) the chairperson of the Client Assistance Committee; and
 - (6) other persons, such as the applicable local bar president(s), appointed by the president as necessary or appropriate for response in each individual situation.
- (b) Implementation of the disaster response plan shall be the decision of the president or, if he or she is unavailable, the president-elect, vice-president, or immediate past-president.
- (c) The counsel, or his or her designee, shall be the coordinator of the disaster response team ("coordinator"). If the president or other officer is unavailable to decide whether to implement the disaster response plan for a particular event, then and only then shall the coordinator be authorized to make the decision to implement the disaster response plan.
- (d) It shall be the responsibility of the coordinator to conduct periodic educational programs regarding the disaster response plan and to report regularly to the Client Assistance Committee.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.*

27 NCAC 01D .0302 GENERAL POLICY AND OBJECTIVES

- (a) Rapid Response
- (1) It is essential that the State Bar establish an awareness and sensitivity to disaster situations.
 - (2) The disaster response plan will be disseminated through the publications of the State Bar and continuing legal education programs.
 - (3) The disaster response team shall be properly trained to respond to initial inquiries and appear at the site.
 - (4) The disaster response team will provide victims and/or their families with written materials when requested.
- (b) Effective Mobilization of Resources
- (1) An appropriate press release shall be prepared and disseminated.
 - (2) The coordinator shall confirm the individuals who will make up the disaster response team.
 - (3) Individual assignments of responsibilities shall be made to members of the team by the coordinator.
 - (4) The coordinator shall arrange for the State Bar to be represented at any victims' assistance center established at the disaster site. The coordinator will request the YLD to assist the State Bar by providing additional staffing.
 - (5) The coordinator shall contact the local district attorney(s) and request that he or she prosecute any persons engaging in the unauthorized practice of law (N.C.G.S. 84-2.1, 84-4, 84-7 and 84-8); improper solicitation (N.C.G.S. 84-38); division of fees (N.C.G.S. 84-38); and/or the common law crime of barratry (frequently stirring up suits and quarrels between persons).
- (c) Publicity
- (1) It is important to focus on the fact that disaster response is a public service effort.

- (2) The disaster response team shall ensure approval and dissemination of an even-handed press release.
 - (3) The director of communications will be utilized for press contacts.
 - (4) It is important to ensure that the press release indicates that the State Bar is a resource designed to assist victims, if requested.
- (d) On-site Representation
- (1) It is normally desirable for the disaster response team to arrive at the site of the disaster as soon as possible.
 - (2) Only the president or president-elect or their designee will conduct press interviews on behalf of the State Bar.
 - (3) The availability of the State Bar at the site of the disaster should be made known to victims.
 - (4) The disaster response team shall establish a liaison with the State Emergency Management Division, Red Cross, Salvation Army, and other such organizations to provide assistance to victims and furnish written materials to these organizations.
 - (5) It is crucial that the State Bar not become identified with either side of any potential controversy.
 - (6) All members of the disaster response team must avoid making comments on the merits of claims that may arise from the disaster.
- (e) Dissemination of Information to Affected Individuals
- (1) The team shall emphasize in all public statements that the State Bar's major and only legitimate concern is for those persons affected by the disaster and the public interest.
 - (2) The State Bar's role is limited to monitoring compliance with its disciplinary rules, to requesting reports of any violation needing investigation, and to informing victims of rules concerning client solicitation.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .0303 REPORT ON RESULTS

- (a) The coordinator will promptly convene a meeting of groups involved in the disaster to review the effectiveness of the plan in that particular disaster.
- (b) The coordinator shall prepare a written report concerning significant matters relating to the disaster.
- (c) The written report shall be submitted to the Client Assistance Committee as well as other involved organizations.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

SECTION .0400 - RULES AND REGULATIONS RELATING TO THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CERTAIN CRIMINAL CASES

- 27 NCAC 01D .0401 AUTHORITY**
- 27 NCAC 01D .0402 DETERMINATION OF INDIGENCY**
- 27 NCAC 01D .0403 WAIVER OF COUNSEL**
- 27 NCAC 01D .0404 APPOINTMENT OF COUNSEL**
- 27 NCAC 01D .0405 WITHDRAWAL BY COUNSEL**
- 27 NCAC 01D .0406 PROCEDURE FOR PAYMENT OF COMPENSATION**

History Note: Authority G.S. 7A-459;
Readopted Eff. December 8, 1994;
Amended Eff. May 4, 2000;
Repealed Eff. October 6, 2004.

SECTION .0500 - MODEL PLAN FOR APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CERTAIN CRIMINAL CASES

27 NCAC 01D .0501	PURPOSE
27 NCAC 01D .0502	APPLICABILITY
27 NCAC 01D .0503	LISTS OF ATTORNEYS
27 NCAC 01D .0504	COMMITTEE ON INDIGENT APPOINTMENTS
27 NCAC 01D .0505	PLACEMENT OF ATTORNEYS ON LIST
27 NCAC 01D .0506	APPOINTMENT PROCEDURE (NONCAPITAL CASES)
27 NCAC 01D .0507	APPOINTMENTS IN CAPITAL CASES
27 NCAC 01D .0508	APPELLATE APPOINTMENTS
27 NCAC 01D .0509	ADMINISTRATION
27 NCAC 01D .0510	MISCELLANEOUS

History Note: Authority G.S. 7A-459;
 Readopted Eff. December 8, 1994;
 Repealed Eff. October 6, 2004.

SECTION .0600 - RULES GOVERNING THE LAWYER ASSISTANCE PROGRAM

27 NCAC 01D .0601 PURPOSE

The purpose of the lawyer assistance program is to: (1) protect the public by assisting lawyers and judges who are professionally impaired by reason of substance abuse, addiction, or debilitating mental condition; (2) assist impaired lawyers and judges in recovery; and (3) educate lawyers and judges concerning the causes of and remedies for such impairment.

History Note: Authority G.S. 84-22; 84-23;
 Readopted Eff. December 8, 1994;
 Amended Eff. February 3, 2000.

27 NCAC 01D .0602 AUTHORITY

The council of the North Carolina State Bar hereby establishes the Lawyer Assistance Program Board (the board) as a standing committee of the council. The board has the authority to establish policies governing the State Bar's lawyer assistance program as needed to implement the purposes of this program. The authority conveyed is not limited by, but is fully coextensive with, the authority previously vested in the State Bar's predecessor program, the Positive Action for Lawyers (PALS) program.

History Note: Authority G.S. 84-22; 84-23;
 Readopted Eff. December 8, 1994;
 Amended Eff. February 3, 2000.

27 NCAC 01D .0603 OPERATIONAL RESPONSIBILITY

The board shall be responsible for operating the lawyer assistance program subject to the statutes governing the practice of law, the authority of the council, and the rules of the board.

History Note: Authority G.S. 84-22; 84-23;
 Adopted Eff. February 3, 2000.

27 NCAC 01D .0604 SIZE OF BOARD

The board shall have nine members. Three of the members shall be councilors of the North Carolina State Bar at the time of appointment; three of the members shall be non-lawyers or lawyers with experience and training in the fields of mental health, substance abuse or addiction; and three of the members shall be lawyers who are currently volunteers to the lawyer assistance program. In addition, the board may have the dean of a law school in North Carolina, or the dean's designee, appointed by the council as an ex officio member. No member of the Grievance Committee shall be a member of the board.

History Note: Authority G.S. 84-22; 84-23;
 Adopted Eff. February 3, 2000;
 Amended Eff. November 16, 2006.

27 NCAC 01D .0605 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The initial members of the board shall be appointed at the next meeting of the council following the creation of the board. Thereafter, members shall be appointed or reappointed, as the case may be, at the first quarterly meeting of the council each calendar year, provided that a vacancy occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.*

27 NCAC 01D .0606 TERM OF OFFICE AND SUCCESSION

The members of the board shall be divided into three classes of equal size to serve in the first instance for terms expiring one, two and three years, respectively, after the first quarterly meeting of the council following creation of the board. Of the initial board, three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer to the lawyer assistance program) shall be appointed to terms of one year; three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer) shall be appointed to terms of two years; and three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer) shall be appointed to terms of three years. Thereafter, the successors in each class of board members shall be appointed to serve for terms of three years. No member shall serve more than two consecutive three-year terms, in addition to service prior to the beginning of a full three-year term, without having been off the board for at least three years. Members of the board serving ex officio shall serve one-year terms and may serve up to three consecutive terms.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000;
Amended Eff. November 16, 2006.*

27 NCAC 01D .0607 APPOINTMENT OF CHAIRPERSON

The chairperson of the board shall be appointed by the council annually at the time of its appointment of board members. The chairperson may be re-appointed for an unlimited number of one-year terms. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and shall represent the board in its dealings with the public. A vacancy occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.*

27 NCAC 01D .0608 APPOINTMENT OF VICE-CHAIRPERSON

The vice-chairperson of the board shall be appointed by the council annually at the time of its appointment of board members. The vice-chairperson may be re-appointed for an unlimited number of one-year terms. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board. A vacancy occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.*

27 NCAC 01D .0609 SOURCE OF FUNDS

Funding for the program shall be provided from the general and appropriate special funds of the North Carolina State Bar and such other funds as may become available by grant or otherwise.

History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.

27 NCAC 01D .0610 MEETINGS

The annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar. The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission, electronic mail or telephone. A quorum of the board for conducting its official business shall be a majority of the members serving at a particular time.

History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.

27 NCAC 01D .0611 ANNUAL REPORT

The board shall prepare at least annually a report of its activities and shall present the same at the annual meeting of the council.

History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.

27 NCAC 01D .0612 POWERS AND DUTIES OF THE BOARD

In addition to the powers and duties set forth elsewhere in these rules, the board shall have the following powers and duties:

- (1) to exercise general supervisory authority over the administration of the lawyer assistance program consistent with these rules;
- (2) to implement programs to investigate and evaluate reports that a lawyer's ability to practice law is impaired because of substance abuse, depression, or other debilitating mental condition; to confer with any lawyer who is the subject of such a report; and, if the report is verified, to provide referrals and assistance to the impaired lawyer;
- (3) to adopt and amend regulations consistent with these rules with the approval of the council;
- (4) to delegate authority to the staff of the lawyer assistance program subject to the review of the council;
- (5) to delegate authority to investigate, evaluate, and intervene with impaired lawyers to committees composed of qualified volunteer lawyers and non-lawyers;
- (6) to submit an annual budget for the lawyer assistance program to the council for approval and to ensure that expenses of the board do not exceed the annual budget approved by the council;
- (7) to report annually on the activities and operations of the board to the council and make any recommendations for changes in the rules or methods of operation of the lawyer assistance program;
- (8) to implement programs to investigate, evaluate, and intervene in cases referred to it by a disciplinary body, and to report the results of the investigation and evaluation to the referring body;
- (9) to promote programs of education and awareness for lawyers, law students, and judges about the causes and remedies of lawyer impairment;
- (10) to train volunteer lawyers to provide peer support, assistance and monitoring for impaired lawyers; and
- (11) to administer the PALS revolving loan fund or other similar fund that may be established for the board's program to assist lawyers who are impaired because of a debilitating mental condition.

History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.

27 NCAC 01D .0613 CONFIDENTIALITY

The lawyer assistance program is an approved lawyers' assistance program in accordance with the requirements of Rule 1.6(c) of the Revised Rules of Professional Conduct. Except as noted herein and otherwise required by law,

information received during the course of investigating, evaluating, and assisting an impaired lawyer shall be privileged and held in the strictest confidence by the staff of the lawyer assistance program, the members of the board, and the members of any committee of the board. If a report of impaired condition is made by members of a lawyer's family, and there is good cause shown, the board may, in its discretion, release information to appropriate members of the lawyer's family if the board or its duly authorized committee determines that such disclosure is in the best interest of the impaired lawyer.

History Note: Authority G.S. 84-22; 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

27 NCAC 01D .0614 RESERVED

History Note: Authority G.S. 84-22; 84-23; 84-28;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000;
Repealed Eff. November 16, 2006.

27 NCAC 01D .0615 REGIONAL CHAPTERS

A committee may, under appropriate rules and regulations promulgated by the board, establish regional chapters, composed of qualified volunteer lawyers and non-lawyers. A regional chapter may perform any or all of the duties and functions set forth in Section .0600 of this Subchapter to the extent provided by the rules of the board.

History Note: Authority G.S. 84-22; 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

27 NCAC 01D .0616 SUSPENSION FOR IMPAIRMENT, REINSTATEMENT

If it appears that a lawyer's ability to practice law is impaired by substance abuse and/or chemical addiction, the board, or its duly authorized committee, may petition any superior court judge to issue an order, pursuant to the court's inherent authority, suspending the lawyer's license to practice law in this state for up to 180 days.

- (a) The petition shall be supported by affidavits of at least two persons setting out the evidence of the lawyer's impairment.
- (b) The petition shall be signed by the executive director of the lawyer assistance program and the executive director of the State Bar.
- (c) The petition shall contain a request for a protective order sealing the petition and all proceedings respecting it.
- (d) Except as set out in 27 NCAC 01D .0606(j) of this Rule, the petition shall request the court to issue an order requiring the attorney to appear in not less than 10 days and show cause why the attorney should not be suspended from the practice of law. No order suspending an attorney's license shall be entered without notice and a hearing, except as provided in 27 NCAC 01D .0606(j) of this Rule.
- (e) The order to show cause shall be served upon the attorney, along with the State Bar's petition and supporting affidavits, as provided in Rule 4 of the North Carolina Rules of Civil Procedure.
- (f) At the show cause hearing, the State Bar shall have the burden of proving by clear, cogent, and convincing evidence that the lawyer's ability to practice law is impaired.
- (g) If the court finds that the attorney is impaired, the court may enter an order suspending the attorney from the practice of law for up to 180 days. The order shall specifically set forth the reasons for its issuance.
- (h) At any time following entry of an order suspending an attorney, the attorney may petition the court for an order reinstating the attorney to the practice of law.
- (i) A hearing on the reinstatement petition will be held no later than 10 days from the filing of the petition, unless the suspended lawyer agrees to a continuance. At the hearing, the suspended lawyer will have the burden of establishing by clear, cogent, and convincing evidence the following: (1) the lawyer's ability to practice law is no longer impaired; (2) the lawyer's debilitating condition is being treated and/or managed; (3) it is unlikely that the inability to

practice law due to the impairment will recur; and (4) it is unlikely that the interest of the public will be unduly threatened by the reinstatement of the lawyer.

- (j) No suspension of an attorney's license shall be allowed without notice and a hearing unless:
- (1) the State Bar files a petition with supporting affidavits, as provided in 27 NCAC 01D .0606(a)-(c) of this Rule.
 - (2) the State Bar's petition and supporting affidavits demonstrate by clear, cogent, and convincing evidence that immediate and irreparable harm, injury, loss, or damage will result to the public, to the lawyer who is the subject of the petition, or to the administration of justice before notice can be given and a hearing had on the petition.
 - (3) the State Bar's petition specifically seeks the temporary emergency relief of suspending *ex parte* the attorney's license for up to 10 days or until notice be given and a hearing held, whichever is shorter, and the State Bar's petition requests the court to endorse an emergency order entered hereunder with the hour and date of its entry.
 - (4) the State Bar's petition requests that the emergency suspension order expire by its own terms 10 days from the date of entry, unless, prior to the expiration of the initial 10-day period, the court agrees to extend the order for an additional 10-day period for good cause shown or the respondent attorney agrees to an extension of the suspension period.
- (k) The respondent attorney may apply to the court at any time for an order dissolving the emergency suspension order. The court may dissolve the emergency suspension order without notice to the State Bar or hearing, or may order a hearing on such notice as the court deems proper.
- (l) The North Carolina State Bar shall not be required to provide security for payment of costs or damages prior to entry of a suspension order with or without notice to the respondent attorney.
- (m) No damages shall be awarded against the State Bar in the event that a restraining order entered with or without notice and a hearing is dissolved.

History Note: Authority G.S. 84-23; 84-28(i);
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000; September 7, 1995.

27 NCAC 01D .0617 CONSENSUAL INACTIVE STATUS

Notwithstanding the provisions of Rule .0616 of this subchapter, the court may enter an order transferring the lawyer to inactive status if the lawyer consents. The order may contain such other terms and provisions as the parties agree to and which are necessary for the protection of the public. A lawyer transferred to inactive status pursuant to this rule may not petition for reinstatement pursuant to Rule .0902 of this subchapter. The lawyer may apply to the court at any time for an order reinstating the lawyer to active status.

History Note: Authority G.S. 84-23; 84-28(i);
Readopted Eff. December 8, 1994;
Amended Eff. March 8, 2013; February 3, 2000.

27 NCAC 01D .0618 AGENTS OF THE STATE BAR

All members of the board and its duly appointed committees shall be deemed to be acting as agents of the State Bar when performing the functions and duties set forth in this subchapter.

History Note: Authority G.S. 84-22; 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

27 NCAC 01D .0619 JUDICIAL COMMITTEE

The Judicial Committee of the Lawyer Assistance Program Board shall implement a program of intervention for members of the judiciary with substance abuse problems affecting their professional conduct. The committee shall consist of at least two members of the state's judiciary. The committee will be governed by the rules of the Lawyer Assistance Program Board where applicable. 27 NCAC 01D .0616 and .0617 of this Subchapter are not applicable to the committee.

History Note: Authority G.S. 84-22; 84-23;

*Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.*

**27 NCAC 01D .0620 REHABILITATION CONTRACTS FOR LAWYERS IMPAIRED BY
SUBSTANCE ABUSE**

The board, or its duly authorized committee, has the authority to enter into rehabilitation contracts with lawyers suffering from substance abuse including contracts that provide for alcohol and/or drug testing. Such contracts may include the following conditions among others:

- (a) that upon receipt of a report of a positive alcohol or drug test for a substance prohibited under the contract, the contract may be amended to include additional provisions considered to be in the best rehabilitative interest of the lawyer and the public; and
- (b) that the lawyer stipulates to the admission of any alcohol and/or drug-testing results into evidence in any *in camera* proceeding brought under this Section without the necessity of further authentication.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. March 7, 1996;
Amended Eff. February 3, 2000.*

**27 NCAC 01D .0621 EVALUATIONS FOR SUBSTANCE ABUSE, ALCOHOLISM, AND/OR OTHER
CHEMICAL ADDICTIONS**

(a) Notice of Need for Evaluation. The Lawyer Assistance Program Board, or its duly authorized committee, may demand that a lawyer obtain a comprehensive evaluation of his or her condition by an approved addiction specialist if the lawyer's ability to practice law is apparently being impaired by substance abuse, alcoholism and/or other chemical addictions. This authority may be exercised upon recommendation of the director of the lawyer assistance program and the approval of at least three members of the board or appropriate committee, which shall include at least one person with professional expertise in chemical addiction. Written notice shall be provided to the lawyer informing the lawyer that the board has determined that an evaluation is necessary and demanding that the lawyer obtain the evaluation by a date set forth in the written notice.

(b) Failure to Comply. If the lawyer does not obtain an evaluation, the director of the lawyer assistance program shall obtain the approval of the chairperson of the board, or the chairperson of the appropriate committee of the board, to file a motion to compel an evaluation pursuant to the authority set forth in G.S. 84-28(i) and (j) and in accordance with the procedure set forth in Rule 35 of the North Carolina Rules of Civil Procedure. All pleadings in such a proceeding shall be filed under seal and all hearings shall be held *in camera*. Written notice of the motion to compel an examination shall be served upon the lawyer in accordance with the North Carolina Rules of Civil Procedure at least ten days before the hearing on the matter.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.*

27 NCAC 01D .0622 GROUNDS FOR COMPELLING AN EVALUATION

An order compelling the lawyer to obtain a comprehensive evaluation by an addiction specialist may be issued if the board establishes that the evaluation will assist the lawyer and the lawyer assistance program to assess the lawyer's condition and any risk that the condition may present to the public, and to determine an appropriate treatment for the lawyer.

*History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.*

27 NCAC 01D .0623 FAILURE TO COMPLY WITH AN ORDER COMPELLING AN EVALUATION

If a lawyer fails to comply with an order compelling a comprehensive evaluation by an addiction specialist, the board, or its duly authorized committee, may file a contempt proceeding to be held *in camera*. If the lawyer fails to comply with a contempt order, the lawyer shall be deemed to have waived confidentiality respecting communications made by the lawyer to the board or its committee. The board, or its duly authorized committee, may seek further relief and may file motions or proceedings in open court.

History Note: Authority G.S. 84-22; 84-23;
Adopted Eff. February 3, 2000.

SECTION .0700 - PROCEDURES FOR FEE DISPUTE RESOLUTION

27 NCAC 01D .0701 PURPOSE AND IMPLEMENTATION

The purpose of the Fee Dispute Resolution Program is to help clients and lawyers settle disputes over fees. The Fee Dispute Resolution Program will attempt to assist lawyers and clients in resolving disputes concerning legal fees and expenses. The State Bar will implement the Fee Dispute Resolution Program under the auspices of the Grievance Committee (the committee) as part of the Attorney Client Assistance Program (ACAP). It will be offered to clients and lawyers at no cost.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 3, 2000; May 4, 2000; March 8, 2007;
March 11, 2010; September 25, 2019.

27 NCAC 01D .0702 JURISDICTION

(a) The committee has jurisdiction over a disagreement arising out of a client-lawyer relationship concerning the fees and expenses charged or incurred for legal services provided by a lawyer licensed to practice law in North Carolina.

(b) The committee does not have jurisdiction over the following:

- (1) a dispute concerning fees or expenses established by a court, federal or state administrative agency, federal or state official, or private arbitrator or arbitrator panel;
- (2) a dispute over fees or expenses that are or were the subject of litigation or arbitration unless
 - (i) a court, arbitrator, or arbitration panel directs the matter to the State Bar for resolution,
 - (ii) both parties to the dispute agree to dismiss the litigation or arbitration without prejudice and pursue resolution through the State Bar's Fee Dispute Resolution program; or
 - (iii) litigation was commenced pursuant to 27 N.C. Admin. Code 1D §.0707(a);
- (3) a dispute between a lawyer and a service provider, such as a court reporter or an expert witness;
- (4) a dispute over fees or expenses that are the subject of a pending Client Security Fund claim, or a Client Security Fund claim that has been fully paid.
- (5) a dispute between a lawyer and a person or entity with whom the lawyer had no client-lawyer relationship; and
- (6) a dispute concerning a fee charged for services provided by the lawyer that do not constitute the practice of law.

(c) The committee will encourage settlement of fee disputes falling within its jurisdiction.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: May 4, 2000; March 11, 2010; August 23, 2012;
September 25, 2019.

27 NCAC 01D .0703 COORDINATOR OF FEE DISPUTE RESOLUTION

The secretary-treasurer of the North Carolina State Bar will designate a member of the staff to serve as coordinator of the Fee Dispute Resolution Program. The coordinator will develop forms, maintain records, and provide statistics on the Fee Dispute Resolution Program. The coordinator will also develop an annual report to the council. The coordinator may also serve as a facilitator.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amended Eff. March 11, 2010; March 8, 2007; May 4, 2000.

27 NCAC 01D .0704 CONFIDENTIALITY

The Fee Dispute Resolution Program is a subcommittee of the Grievance Committee, which maintains all information in the possession of the Fee Dispute Resolution Program. Pursuant to N.C. Gen. Stat. § 84-32.1, documents in the possession of the Fee Dispute Resolution Program are confidential and are not public records.

History Note: Authority G.S. 84-23;
Adopted Eff. March 11, 2010;
Amendments Approved by the Supreme Court: September 25, 2019.

27 NCAC 01D .0705 SELECTION OF FACILITATORS

The secretary-treasurer of the North Carolina State Bar will designate members of the State Bar staff to serve as facilitators.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000;
Amended Eff. March 11, 2010.

27 NCAC 01D .0706 POWERS AND DUTIES OF THE VICE-CHAIRPERSON

The vice-chairperson of the Grievance Subcommittee overseeing ACAP, or his or her designee, who must be a councilor, will:

- (a) approve or disapprove any recommendation that an impasse be declared in any fee dispute; and
- (b) refer to the Grievance Committee all cases in which it appears that
 - (i) a lawyer might have demanded, charged, contracted to receive or received an illegal or clearly excessive fee or a clearly excessive amount for expenses in violation of Rule 1.5 of the Rules of Professional Conduct; or
 - (ii) a lawyer might have failed to refund an unearned portion of a fee in violation of Rule 1.5 the Rules of Professional Conduct, or
 - (iii) a lawyer might have violated one or more Rules of Professional Conduct other than or in addition to Rule 1.5.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000;
Amendments Approved by the Supreme Court: February 5, 2002; March 8, 2007; March 11, 2010; September 25, 2019.

27 NCAC 01D .0707 PROCESSING REQUESTS FOR FEE DISPUTE RESOLUTION

(a) A request for resolution of a disputed fee must be submitted in writing to the coordinator of the Fee Dispute Resolution Program addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. A lawyer is required by Rule of Professional Conduct 1.5 to notify in writing a client with whom the lawyer has a dispute over a fee (i) of the existence of the Fee Dispute Resolution Program and (ii) that if the client does not file a petition for fee dispute resolution within 30 days after the client receives such notification, the lawyer will be permitted by Rule of Professional Conduct 1.5 to file a lawsuit to collect the disputed fee. A lawyer may file a lawsuit prior to expiration of the required 30-day notice period or after the petition is filed by the client only if such filing is necessary to preserve a claim. If a lawyer does file a lawsuit pursuant to the preceding sentence, the lawyer must not take steps to pursue the litigation until the fee dispute resolution process is completed. A client may request fee dispute resolution at any time before either party files a lawsuit. The petition for resolution of a disputed fee must contain:

- (1) the names and addresses of the parties to the dispute;
- (2) a clear and brief statement of the facts giving rise to the dispute;
- (3) a statement that, prior to requesting fee dispute resolution, a reasonable attempt was made to resolve the dispute by agreement;
- (4) a statement that the subject matter of the dispute has not been adjudicated and is not presently the subject of litigation.

(b) A petition for resolution of a disputed fee must be filed (i) before the expiration of the statute of limitation applicable in the General Court of Justice for collection of the funds in issue or (ii) within three years of the termination of the client-lawyer relationship, whichever is later.

(c) The State Bar will process fee disputes and grievances in the following order:

- (1) If a client submits to the State Bar simultaneously a grievance and a request for resolution of disputed fee involving the same attorney-client relationship, the request for resolution of disputed fee will be processed first and the grievance will not be processed until the fee dispute resolution process is concluded.
 - (2) If a client submits a grievance to the State Bar and the State Bar determines it would be appropriate for the Fee Dispute Resolution Program to attempt to assist the client and the lawyer in settling a dispute over a legal fee, the attempt to resolve the fee dispute will occur first. If a grievance file has been opened, it will be stayed until the Fee Dispute Resolution Program has concluded its attempt to facilitate resolution of the disputed fee.
 - (3) If a client submits a request for resolution of a disputed fee to the State Bar while a grievance submitted by the same client and relating to the same attorney-client relationship is pending, the grievance will be stayed while the Fee Dispute Resolution Program attempts to facilitate resolution of the disputed fee.
 - (4) Notwithstanding the provisions of subsections (c)(1),(2), and (3) of this section, the State Bar will process a grievance before it processes a fee dispute or at the same time it processes a fee dispute whenever it determines that doing so is in the public interest.
- (d) The coordinator of the Fee Dispute Resolution Program or a facilitator will review the petition to determine its suitability for fee dispute resolution. If it is determined that the dispute is not suitable for fee dispute resolution, the coordinator and/or the facilitator will prepare a letter setting forth the reasons the petition is not suitable for fee dispute resolution and recommending that the petition be discontinued and that the file be closed. The coordinator and/or the facilitator will forward the letter to the vice-chairperson. If the vice chairperson agrees with the recommendation, the petition will be discontinued and the file will be closed. The coordinator and/or facilitator will notify the parties in writing that the file was closed. Grounds for concluding that a petition is not suitable for fee dispute resolution or for closing a file include, but are not limited to, the following:
- (1) the petition is frivolous or moot; or
 - (2) the committee lacks jurisdiction over one or more of the parties or over the subject matter of the dispute.
- (e) If the vice-chairperson disagrees with the recommendation to close the file, the coordinator will schedule a settlement conference.

*History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000;
Amendments Approved by the Supreme Court: March 8, 2007; March 11, 2010; September 25, 2019.*

27 NCAC 01D .0708 SETTLEMENT CONFERENCE PROCEDURE

- (a) The coordinator will assign the case to a facilitator.
- (b) The State Bar will send a letter of notice to the respondent lawyer by certified mail notifying the respondent that the petition was filed and notifying the respondent of the obligation to provide a written response to the letter of notice, signed by the respondent, within 15 days of service of the letter of notice upon the respondent, and enclosing copies of the petition and of any relevant materials provided by the petitioner.
- (c) Within 15 days after the letter of notice is served upon the respondent, the respondent must provide a written response to the petition signed by the respondent. The facilitator may grant requests for extensions of time to respond. The response must be a full and fair disclosure of all the facts and circumstances pertaining to the dispute. The response shall include all documents necessary to a full and fair understanding of the dispute. The response shall not include documents that are not necessary to a full and fair understanding of the dispute. The facilitator will provide a copy of the response to the petitioner unless the respondent objects in writing.
- (d) The facilitator will conduct an investigation.
- (e) The facilitator will conduct a telephone settlement conference. The facilitator may conduct the settlement conference by conference call or by telephone calls between the facilitator and one party at a time, depending upon which method the facilitator believes has the greater likelihood of success.
- (f) The facilitator will explain the following to the parties:
 - (1) the procedure that will be followed;
 - (2) the differences between a facilitated settlement conference and other forms of conflict resolution;
 - (3) that the settlement conference is not a trial;
 - (4) that the facilitator is not a judge;

- (5) that participation in the settlement conference does not deprive the parties of any right they would otherwise have to pursue resolution of the dispute through the court system if they do not reach a settlement;
 - (6) the circumstances under which the facilitator may communicate privately with any party or with any other person;
 - (7) whether and under what conditions private communications with the facilitator will be shared with the other party or held in confidence during the conference; and
 - (8) that any agreement reached will be reached by mutual consent.
- (g) It is the duty of the facilitator to be impartial and to advise the parties of any circumstance that might cause either party to conclude that the facilitator has a possible bias, prejudice, or partiality.
- (h) It is the duty of the facilitator to timely determine when the dispute cannot be resolved by settlement and to declare that an impasse exists and that the settlement conference should end.
- (i) Upon completion of the settlement conference, the facilitator will prepare a disposition letter to be sent to the parties explaining:
- (1) that the settlement conference resulted in a settlement and the terms of settlement; or
 - (2) that the settlement conference resulted in an impasse.

History Note Authority G.S. 84-23;
 Adopted Eff. May 4, 2000;
 Amendments Approved by the Supreme Court: March 11, 2010; September 25, 2019.

27 NCAC 01D .0709 RECORD KEEPING

The coordinator of fee dispute resolution will keep a record of each request for fee dispute resolution. The record must contain the following information:

- (1) the petitioner's name;
- (2) the date the petition was received;
- (3) the respondent's name;
- (4) the district in which the respondent resides or maintains a place of business;
- (5) what action was taken on the petition and, if applicable, how the dispute was resolved; and
- (6) the date the file was closed.

History Note: Authority G.S. 84-23;
 Adopted Eff. May 4, 2000;
 Amendments Approved by the Supreme Court: March 11, 2010; September 25, 2019.

27 NCAC 01D .0710 DISTRICT BAR FEE DISPUTE RESOLUTION

History Note: Authority G.S. 84-23;
 Adopted Eff. May 4, 2000;
 Amended Eff. March 11, 2010;
 Repealed Eff. September 25, 2019.

27 NCAC 01D .0711 DISTRICT BAR SETTLEMENT CONFERENCE PROCEEDINGS

History Note: Authority G.S. 84-23;
 Adopted Eff. March 11, 2010;
 Repealed Eff. September 25, 2019.

SECTION .0800 - RESERVED

SECTION .0900 – PROCEDURES FOR THE ADMINISTRATIVE COMMITTEE

27 NCAC 01D .0901 TRANSFER TO INACTIVE STATUS

(a) Petition for Transfer to Inactive Status

Any member who desires to be transferred to inactive status shall file a petition with the secretary addressed to the council setting forth fully

- (1) the member's name and current address;
 - (2) the date of the member's admission to the North Carolina State Bar;
 - (3) the reasons why the member desires transfer to inactive status;
 - (4) that at the time of filing the petition the member is in good standing having paid all membership fees, Client Security Fund assessments, late fees and costs assessed by the North Carolina State Bar, as well as all past due fees, fines and penalties owed to the Board of Continuing Legal Education and without any grievances or disciplinary complaints pending against him or her;
 - (5) any other matters pertinent to the petition.
- (b) **Conditions Upon Transfer.** No member may be voluntarily transferred to disability-inactive status, retired/nonpracticing status, or emeritus pro bono status until:
- (1) the member has paid all membership fees, Client Security Fund assessments, late fees, and costs assessed by the North Carolina State Bar or the Disciplinary Hearing Commission, as well as all past due fees, fines and penalties owed to the Board of Continuing Legal Education;
 - (2) the member acknowledges that the member continues to be subject to the Rules of Professional Conduct and to the disciplinary jurisdiction of the State Bar including jurisdiction in any pending matter before the Grievance Committee or the Disciplinary Hearing Commission; and,
 - (3) in the case of a member seeking emeritus pro bono status, it is determined by the Administrative Committee that the member is in good standing, is not the subject of any matter pending before the Grievance Committee or the Disciplinary Hearing Commission, and will be supervised by an active member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1.
- (c) **Order Transferring Member to Inactive Status.** Upon receipt of a petition which satisfies the provisions of Rule .0901(a) above, the council may, in its discretion, enter an order transferring the member to inactive status and, where appropriate, granting emeritus pro bono status. The order shall become effective immediately upon entry by the council. A copy of the order shall be mailed to the member.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amended Eff. March 6, 2014; March 6, 2008; February 3, 2000; March 7, 1996.*

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;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 7, 1995; March 7, 1996; March 5,
1998; March 3, 1999; February 3, 2000; March 6, 2002; February 27, 2003; March 3, 2005;
March 10, 2011; August 25, 2011; March 8, 2012; March 8, 2013; March 6, 2014; October 2,
2014; September 22, 2016; September 20, 2018; September 25, 2020; December 14, 2021.*

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;*

27 NCAC 01D .0904 REINSTATEMENT FROM SUSPENSION

(a) Compliance Within 30 Days of Service of Suspension Order.

A member who receives an order of suspension for failure to comply with an obligation of membership may preclude the order from becoming effective and shall not be required to file a formal reinstatement petition or pay the reinstatement fee if the member shows within 30 days after service of the suspension order that the member has done the following:

- (1) fulfilled the obligations of membership set forth in the order;
- (2) paid the administrative fees associated with the issuance of the suspension order, including the costs of service;
- (3) paid any other delinquency shown on the financial records of the State Bar including outstanding judicial district bar dues;
- (4) signed and filed CLE annual report forms as required by Rule .1522 of this subchapter;
- (5) completed CLE hours as required by Rules .1518 and .1522 of this subchapter; and
- (6) filed any IOLTA certification required by Rule .1319 of this subchapter.

(b) Reinstatement More than 30 Days after Service of Suspension Order.

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for failure to comply with an obligation of membership may petition the council for an order of reinstatement.

(c) Definition of "Year."

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

(d) 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 Suspended

Unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (d)(4) of this rule, the member must satisfy the minimum continuing legal education (CLE) requirements, as set forth in Rule .1518 of this subchapter, for the calendar year in which the member was suspended (the "subject year") if such transfer occurred on or after July 1 of the subject year, including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year. The member shall also sign and file any delinquent CLE annual report form.

(3) Additional CLE Requirements

If more than one year has elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, the member must complete 12 hours of approved CLE for each year that the member was suspended up to a maximum of seven years. The CLE 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 suspension 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.

(4) Bar Exam and MPRE Requirement If Suspended Seven or More Years

(A) If seven years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member satisfy the following requirements in lieu of the CLE requirements in paragraphs (d)(2) and (d)(3):

- (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 suspended 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 suspension shall offset one year of suspension 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 (d)(3) for each year that the member was suspended up to a maximum of seven years.
- (2) Military Service. Each calendar year in which a suspended member served on full-time, active military duty, whether for the entire calendar year or some portion thereof, shall offset one year of suspension 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 (d)(3) for each year that the member was suspended up to a maximum of seven years.

- (5) **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 will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest.
- (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 or a \$250.00 reinstatement fee if suspended for failure to comply with CLE requirements;
 - (B) all membership fees, Client Security Fund assessments, and late fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;
 - (C) all district bar annual membership fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;
 - (D) all attendee fees, fines and penalties owed the Board of Continuing Legal Education at the time of suspension and attendee fees for CLE courses taken to satisfy the requirements of paragraphs (d)(2) and (3) above;
 - (E) any costs 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 suspending the member, including the costs of service, and in investigating and processing the application for reinstatement.
- (7) **Pro Hac Vice Registration Statements**
The member must file any overdue pro hac vice registration statement for which the member was responsible.
- (8) **IOTLA Certification**
The member must complete any IOLTA certification required by Rule .1319 of this subchapter.
- (9) **Wind Down of Law Practice During Suspension**
The member must demonstrate that the member fulfilled the obligations of a disbarred or suspended member set forth in Rule .0128 of Subchapter 1B during the 30 day period after the effective date of the order of suspension, or that such obligations do not apply to the member due to the nature of the member's legal employment.

(e) **Procedure for Review of Reinstatement Petition.**

The procedure for review of the reinstatement petition shall be as set forth in Rule .0902(c)-(f) above.

(f) **Reinstatement by Secretary of the State Bar.**

At any time during the year after the effective date of a suspension order, a suspended member may petition for reinstatement pursuant to paragraphs (b) and (c) of this rule and may be reinstated by the secretary of the State Bar upon a finding that the suspended member has complied with or fulfilled the obligations of membership set forth in the order; there are no issues relating to the suspended member's character or fitness; and the suspended member has paid the costs of the suspension and reinstatement procedure including the costs of service and 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 Rule .0902(c)-(f).

(g) **Reinstatement from Disciplinary Suspension.**

Notwithstanding the procedure for reinstatement set forth in the preceding paragraphs of this Rule, if an order of reinstatement from disciplinary suspension is granted to a member pursuant to Rule .0129 of Subchapter 1B of these rules, any outstanding order granting inactive status or suspending the same member for failure to fulfill the obligations of membership under this section shall be dissolved and the member shall be reinstated to active status.

(h) **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 (d)(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;

Readopted Eff. December 8, 1994;

Amendments Approved by the Supreme Court: September 7, 1995, March 7, 1996, March 5, 1998, February 27, 2003, October 1, 2003; March 2, 2006; November 16, 2006; October 8, 2009; March 11, 2010; March 10, 2011; March 8, 2012; March 8, 2013; August 27, 2013; March 6, 2014; October 2, 2014; September 22, 2016; September 20, 2018; September 25, 2020; December 14, 2021.

27 NCAC 01D .0905 PRO BONO PRACTICE BY OUT OF STATE LAWYERS

(a) A lawyer licensed to practice in another state but not North Carolina who desires to provide legal services free of charge to indigent persons may file a petition with the secretary addressed to the council setting forth:

- (1) the petitioner's name and address;
- (2) the state(s) in which the petitioner is or has been licensed and the date(s) when the petitioner was licensed;
- (3) the name of a member who is employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1 and has agreed to supervise the petitioner; and
- (4) any other matters pertinent to the petition as determined by the council.

(b) Along with the petition, the petitioner shall provide in writing:

- (1) a certificate of good standing from each jurisdiction in which the petitioner has been licensed;
- (2) a record of any professional discipline ever imposed against the petitioner;
- (3) a statement from the petitioner that the petitioner is submitting to the disciplinary jurisdiction of the North Carolina State Bar, and will be governed by the North Carolina Rules of Professional Conduct in regard to any law practice authorized by the council in consequence of the petition; and
- (4) a statement from the member identified in the petition agreeing to supervise the petitioner in the provision of pro bono legal services exclusively for indigent persons.

(c) The petition shall be referred to the Administrative Committee for review. After reviewing the petition and other pertinent information, the committee shall make a recommendation to the council regarding whether the petition should be granted.

(d) Upon receipt of a petition and other information satisfying the provisions this rule, the council may, in its discretion, enter an order permitting the petitioner to provide legal services to indigent persons on a pro bono basis under the supervision of a member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1. The order shall become effective immediately upon entry by the council. A copy of the order shall be mailed to the petitioner and to the supervising member. No person permitted to practice pursuant to such an order shall pay any membership fee to the North Carolina State Bar or any district bar or any other charge ordinarily imposed upon active members, nor shall any such person be required to attend continuing legal education courses.

(e) A petitioner may be a compensated employee of a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1 and, if granted pro bono practice status, may provide legal services to the indigent clients of that corporation subject to the following conditions:

- (1) the petitioner has filed an application for admission with the North Carolina Board of Law Examiners (BLE) and has never previously been denied admission to the North Carolina State Bar for any reason; a copy of the petitioner's application shall be provided with the petition for pro bono practice;
- (2) if the petitioner is granted pro bono practice status, that status will terminate when the BLE makes its final ruling on the petitioner's application for admission; and
- (3) the petitioner is supervised in the provision of all legal services to indigent persons as set forth in Paragraph (d).

(f) A lawyer who is paid in-house counsel for a business organization with offices in North Carolina may petition under this rule to provide legal services to indigent persons on a pro bono basis under the supervision of a member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1.

(g) Permission to practice under this rule terminates upon notice from the member identified in the petition pursuant to Rule .0905(a)(3) above, or from the nonprofit corporation employing such member, that the out-of-state lawyer is no longer supervised by any member employed by the corporation. In addition, permission to practice under this rule being entirely discretionary on the part of the council, the order granting such permission may be withdrawn by the council for good cause shown without notice to the out-of-state lawyer or an opportunity to be heard.

History Note: Authority G.S. 84-7.1;

*Eff. March 6, 2008;
Amendments Approved by the Supreme Court: September 22, 2016; September 24, 2015.*

**SECTION .1000 - RULES GOVERNING REINSTATEMENT HEARINGS BEFORE THE
ADMINISTRATIVE COMMITTEE**

27 NCAC 01D .1001 REINSTATEMENT HEARINGS

(a) Notice: Time and Place of Hearing:

- (1) Time and Place of Hearing. The chairperson of the Administrative Committee shall fix the time and place of the hearing within 30 days after the member's request for hearing is filed with the secretary. The hearing shall be held as soon as practicable after the request for hearing is filed but in no event more than 90 days after such request is filed unless otherwise agreed by the member and the chairperson of the committee.
- (2) Notice to Member. The notice of the hearing shall include the date, time and place of the hearing and shall be served upon the member at least 10 days before the hearing date.

(b) Hearing Panel

- (1) Appointment. The chairperson of the committee shall appoint a hearing panel consisting of three members of the committee to consider the petition and make a recommendation to the council.
- (2) Presiding Panel Member. The chairperson shall appoint one of the three members of the panel to serve as the presiding member. The presiding member shall rule on any question of procedure that may arise in the hearing; preside at the deliberations of the panel; sign the written determination of the panel; and report the panel's determination to the council.
- (3) Quorum. A majority of the panel members is necessary to decide the matter.
- (4) Panel Recommendation. Following the hearing on a contested reinstatement petition, the panel will make a written recommendation to the council on behalf of the committee regarding whether the member's license should be reinstated. The recommendation shall include appropriate findings of fact and conclusions of law.

(c) Burden of Proof:

- (1) Reinstatement from Inactive Status. The burden of proof shall be upon the member to show by clear, cogent and convincing evidence that he or she has satisfied the requirements for reinstatement as set forth in 27 NCAC 01D .0902(b) of this Subchapter.
- (2) Reinstatement from Suspension for Nonpayment of Membership Fees, Late Fee, Client Security Fund Assessment, District Bar Membership Fees, or Assessed Costs. The burden of proof shall be upon the member to show by clear, cogent and convincing evidence that he or she has satisfied the requirements for reinstatement as set forth in 27 NCAC 01D .0904(c) of this Subchapter.
- (3) Reinstatement from Suspension for Failure to Comply with the Rules Governing the Administration of the Continuing Legal Education Program. The burden of proof shall be upon the member to show by clear, cogent and convincing evidence that he or she has:
 - (A) satisfied the requirements for reinstatement as set forth in 27 NCAC 01D .0904(c) of this Subchapter;
 - (B) cured any continuing legal education deficiency for which the member was suspended; and
 - (C) paid the reinstatement fee required by 27 NCAC 01D .1512 and .1609(a) of this Subchapter.

(d) Conduct of Hearing:

- (1) Member's Rights. The member shall have these rights at the hearing:
 - (A) to appear personally and be heard;
 - (B) to be represented by counsel;
 - (C) to call and examine witnesses;
 - (D) to offer exhibits; and
 - (E) to cross-examine witnesses.
- (2) State Bar Appears Through Counsel. The counsel shall appear at the hearing on behalf of the State Bar and shall have the right:
 - (A) to be heard;
 - (B) to call and examine witnesses;
 - (C) to offer exhibits; and

- (D) to cross-examine witnesses.
 - (3) Rules of Procedure and Evidence. The hearing will be conducted in accordance with the North Carolina Rules of Civil Procedure for nonjury trials insofar as practicable and the Rules of Evidence applicable in superior court, unless otherwise provided by this subchapter or the parties agree to other rules.
 - (4) Report of Hearing; Costs. The hearing shall be reported by a certified court reporter. The member shall pay the costs associated with obtaining the court reporter's services for the hearing. The member shall pay the costs of the transcript and shall arrange for the preparation of the transcript with the court reporter. The member shall be taxed with all other costs of the hearing, but such costs shall not include any compensation to the members of the hearing panel.
- (e) Hearing Panel Recommendation. The written recommendation of the hearing panel shall be served upon the member within seven days of the date of the hearing.

History Note: Authority G.S. 84-23;
 Adopted Eff. March 7, 1996;
 Amended Eff. February 3, 2000; March 5, 1998.

27 NCAC 01D .1002 REVIEW AND ORDER OF COUNCIL

(a) Review by Council of Recommendation of Hearing Panel.

- (1) Record to Council:
 - (A) Compilation of Record. The member will compile 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 member and counsel agree in writing to shorten the record. Any agreements regarding the record shall be included in the record transmitted to the council.
 - (B) Transmission of Record to Council. The member shall provide a copy of the record to the counsel not later than 90 days after the hearing unless an extension is granted by the president of the State Bar for good cause shown. The member will transmit a copy of the record to each member of the council no later than 30 days before the council meeting at which the petition is to be considered.
 - (C) Costs. The member shall bear all of the costs of transcribing, copying, and transmitting the record to the members of the council.
 - (D) Dismissal for Failure to Comply. If the member fails to comply fully with any of the provisions of this Rule, the counsel may file a motion the secretary to dismiss the petition.
- (2) Oral or Written Argument. In his or her discretion, the president of the State Bar may permit counsel for the state bar and the member to present oral or written argument, but the council will not consider additional evidence not in the record transmitted from the hearing panel, absent a showing that the ends of justice so require or that undue hardship will result if the additional evidence is not presented.

- (b) Order by Council. The council will review the recommendation of the hearing panel and the record and will determine whether and upon what conditions the member will be reinstated.
- (c) Costs. The council may tax the costs attributable to the proceeding against the member.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711;
 Readopted Eff. December 8, 1994;
 Amended Eff. March 7, 1996.

27 NCAC 01D .1003 REFERRAL FROM THE BOARD

When the board refers a matter to the council for determination after a hearing by the committee, the board shall transmit to the committee:

- (1) a notice of referral from the board to the committee, clearly identifying the member whose license is in question and the nature of the matter being referred;
- (2) copies of all relevant written materials accumulated or created by the board;
- (3) copies of all written materials submitted to the board by the member whose license is in questions;
- (4) a written statement of the board's findings and determinations in the matter that is being referred.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1004 TIME OF HEARING

A matter referred to the committee for hearing shall be heard not less than 30 days and not more than 90 days after the date the notice of referral is received from the board by the committee.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1005 NOTICE OF HEARING

- (a) Time of Notice to Member - A member with respect to whom a matter has been referred for hearing shall receive notice of the hearing at least 20 days prior to the hearing.
- (b) Service of Notice on Member - The notice of hearing shall be served on the member by registered mail.
- (c) Content of Notice to Member - The notice of the hearing shall include:
 - (1) notice of the date, time, and place of the hearing;
 - (2) notice to the member that he or she may submit for consideration written materials, including a written statement of explanation, at any time prior to or during the hearing;
 - (3) notice to the member that he or she may personally appear and be heard during the hearing;
 - (4) notice to the member that he or she may be represented by counsel at the hearing.
- (d) Notice to the Board - Notice shall be transmitted to the board at least 20 days prior to the hearing of the date, time, and place of the hearing.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1006 THE HEARING

- (a) Nature of Inquiry: Suspension - When the matter being heard involves the question of whether a member's license shall be suspended for noncompliance, the purpose of the hearing shall be to determine, as a matter of fact:
 - (1) whether the member was in compliance with the requirements of the rules at the time the board made its determination;
 - (2) if the member was not in compliance, whether there is good cause why his or her license should not be suspended.
- (b) Nature of Inquiry: Reinstatement - When the matter being heard involves the question of whether the license of a suspended member shall be reinstated, the purpose of the hearing shall be to determine, as a matter of fact:
 - (1) whether the continuing legal education deficiency which gave rise to the member's suspension had been cured at the time the board made its determination that it had not been cured;
 - (2) if the deficiency had been cured at the time the board made its determination, whether the suspended member had paid the required reinstatement fee at the time the board made its determination.
- (c) The Forum - A matter before the committee for a hearing shall be heard by a panel of three members of the committee, one of whom shall serve as the presiding member, designated as provided in Rule .1007 of this Section.
- (d) Member's Right to be Heard - A member whose license is the subject of a hearing shall have the right to:
 - (1) to appear personally at the hearing;
 - (2) to speak and be heard at the hearing on any aspect of the matter being heard;
 - (3) submit for consideration relevant written materials, including a written statement of explanation, at any time prior to or during the hearing;
 - (4) be represented by counsel at the hearing.
- (e) Information from the Board:
 - (1) The panel shall consider the written materials described in Rule .1003 of this Section transmitted by the board to the committee.
 - (2) A member of the board, or other person authorized by the board, may attend the hearing and may present oral or written information and argument on any aspect of the matter being heard.
- (f) Effect of Board's Findings on Issues of Accreditation and Approval - When the board has determined that a member has failed to comply with the requirements of the rules or that a suspended member has failed to cure a

deficiency, upon its finding that credits essential to compliance or reinstatement were acquired in a course or program that was not properly accredited or approved:

- (1) the board's finding that the course or program was not properly accredited or approved shall be presumed by the panel to be correct; and
 - (2) the member may rebut the presumption of correctness by satisfying the panel that the course or program had in fact been properly accredited or approved; or
 - (3) the member may rebut the presumption of correctness by satisfying the panel that the board acted contrary to its rules in failing to accredit or approve the course or program.
- (g) Deliberations of the Panel - The panel shall conduct its deliberations, make its determinations, and adopt its recommendations in private.
- (h) Decision of the Panel - The panel shall consider a matter in accord with the process described in Rules .1008 and .1009 of this Section and shall put its determinations and recommendations in writing.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1007 THE PANEL

- (a) Assignment of Matter to Panel - A matter referred by the board for hearing and determination shall be assigned to a panel for hearing.
- (b) Members of the Panel - A hearing panel shall consist of three members of the committee.
- (c) Designation of Members - The members of a hearing panel shall be designated by the chairperson of the committee.
- (d) Designation of Presiding Member - The chairperson of the committee shall designate one of the three members of a panel to serve as the presiding member.
- (e) Duties of Presiding Member - The presiding member shall:
- (1) timely schedule the hearing;
 - (2) assure that proper and timely notice of hearing is given to the member and the board;
 - (3) preside at the hearing and rule on any question of procedure that may arise;
 - (4) preside at the deliberations of the panel;
 - (5) sign the written determinations and recommendations of the panel;
 - (6) report the panel's determinations and recommendations to the committee.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1008 SUSPENSION HEARING: PROCESS FOR DETERMINING A MATTER INVOLVING THE QUESTION OF SUSPENSION

When the matter before the panel is one involving the question of whether a member shall be suspended for failing to comply with the requirements of the rules, the panel shall proceed as follows:

- (1) Examination for Basis for Noncompliance Determination - The panel first shall examine the written information transmitted by the board to the committee, and shall determine whether that information provides a basis for the board's determination that the member had failed to comply with the requirements of the rules at the time the board made its determination.
- (2) When There Is No Basis for Noncompliance Determination - If the written information from the board provides no basis for a determination of noncompliance, the panel shall determine that the member is in compliance and shall report to the committee a recommendation that the member not be suspended.
- (3) When There Is Some Basis for Noncompliance Determination - If the written information from the board provides some basis for a determination of noncompliance, the panel then shall consider all information submitted to the panel or to the board by the member bearing on the issue of whether the member was in compliance with the requirements of the rules at the time the board made its determination.
- (4) Assessing the Information on the Issue of Compliance:
 - (a) Based on all the information before it, the panel shall determine whether it is persuaded that the member was not in compliance with the requirements of the rules at the time the board made its determination.

- (b) In assessing the information on compliance, when the board's determination of noncompliance is based upon its finding that credits essential to compliance were acquired in a course or program that was not properly accredited or approved, the panel shall give that finding and any rebuttal information from the member the consideration described in Rule .1006(f) of this Section.
- (5) When the Panel Makes a Determination of Compliance - If the panel is not persuaded that the member was not in compliance with the requirements of the rules at the time the board made its determination it shall determine that the member is in compliance and shall report to the committee a recommendation that the member not be suspended.
- (6) When the Panel Makes a Determination of Noncompliance - If the panel is persuaded that the member was not in compliance with the requirements of the rules at the time the board made its determination, the panel then shall consider all information submitted to the panel or to the board by the member and submitted by the board to the panel bearing on the issue of whether there is good cause why the member's license should not be suspended.
- (7) When the Panel Determines That There Is Good Cause - If the panel is satisfied that there is good cause that the member's license should not be suspended, it shall determine that there is good cause and shall report to the committee a recommendation that the member's license not be suspended.
- (8) When the Panel Determines That There Is Not Good Cause - If the panel is not satisfied that there is good cause why the member's license should not be suspended, it shall determine that there is not good cause and shall report to the committee a recommendation that the member's license be suspended.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1009 REINSTATEMENT HEARING: PROCESS FOR DETERMINING A MATTER INVOLVING THE QUESTION OF REINSTATEMENT

When the matter before the panel is one involving the question of whether a suspended member shall be reinstated following a suspension for noncompliance with the rules, the panel shall proceed as follows:

- (1) Examination of the Basis for Determination That Deficiency Not Cured - The panel first shall examine the written information transmitted by the board to the committee and shall determine whether that information provides a basis for the board's determination that the deficiency for which the member's license was suspended had not been cured at the time the board made its determination.
- (2) When There Is No Basis for Determination That Deficiency Not Cured - If the written information from the board provides no basis for a determination that the suspended member's deficiency had not been cured at the time the board made its determination, the panel shall determine that the deficiency had been cured and shall report to the committee a recommendation that the suspended member be reinstated.
- (3) When There Is Some Basis for Determination That Deficiency Not Cured - If the written information from the board provides some basis for a determination that the suspended member's deficiency had not been cured at the time the board made its determination, the panel shall consider all information submitted to the panel or to the board by the member bearing on the issue of whether the deficiency had been cured at the time the board made its determination.
- (4) Assessing the Information on the Issue of Cure:
 - (a) Based upon all the information before it, the panel shall determine whether it is persuaded that the suspended member's deficiency had not been cured at the time the board made its determination.
 - (b) In assessing the information on cure, when the board's determination that the deficiency had not been cured is based upon its finding that credits essential to cure were acquired in a course or program that was not properly accredited or approved, the panel shall give that finding and any rebuttal information from the member the consideration described in Rule .1006(f) of this Section.
- (5) When the Panel Determines That the Deficiency Had Not Been Cured - If the panel is persuaded that the suspended member's deficiency had not been cured at the time the board made its

- determination, it shall determine that the deficiency had not been cured and shall report to the committee a recommendation that the suspended member not be reinstated.
- (6) When the Panel Determines That the Deficiency Had Been Cured - If the panel is persuaded that the suspended member's deficiency had been cured at the time the board made its determination, it shall determine that the deficiency had been cured and then shall consider all information submitted to the panel or to the board by the member and all information submitted by the board to the panel bearing on the issue of whether the reinstatement fee had been paid at the time the board made its determination.
 - (7) When the Panel Determines That Reinstatement Fee Had Been Paid - If the panel is not persuaded that the reinstatement fee had not been paid at the time the board made its determination, the panel shall determine that the fee had been paid and shall report to the committee a recommendation that the member be reinstated.
 - (8) When the Panel Determines That Reinstatement Fee Had Not Been Paid - If the panel has determined that the reinstatement fee had not been paid at the time the board made its determination, the panel shall determine that the fee had not been paid and shall report to the committee a recommendation that the member not be reinstated.
 - (9) When the Member Submits Information Indicating Remedial Intervening Events - When a suspended member submits information indicating that, after the board's determination and prior to the hearing before the panel, the suspended member cured the deficiency (if failure to cure was a basis for the denial), the panel shall remand the matter to the board with a request that it reconsider the matter in light of the new information.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1010 REPORT BY THE PANEL TO THE COMMITTEE

- (a) Report by the Panel - At the first meeting of the committee following a panel's hearing a matter, the panel shall report to the committee its determinations and recommendations.
- (b) When Report Recommends Reinstatement or No Suspension - If the panel reports to the committee, in a matter involving the question of suspension, a recommendation that the member not be suspended, or, in a matter involving the question of reinstatement, a recommendation that the member be reinstated, the committee shall accept the report, and the panel's recommendation shall be the recommendation of the committee.
- (c) When Report Recommends Suspension or No Reinstatement - If the panel reports to the committee, in a matter involving the question of suspension, a recommendation that the member be suspended, or, in a matter involving the question of reinstatement, a recommendation that the member not be reinstated, the committee shall consider the information reported by the panel and shall determine whether there is any basis for the panel's recommendation.
- (d) When Information Contains No Basis for Panel's Recommendation - If the information reported by the panel contains no basis for the panel's recommendation of suspension or its recommendation of no reinstatement, the committee shall reject the panel's recommendation and shall recommend, in a suspension matter, that the member not be suspended or, in a reinstatement matter, that the member be reinstated.
- (e) When Information Contains Some Basis for Panel's Recommendation - If the information reported by the panel contains some basis for the panel's recommendation of suspension, or its recommendation of no reinstatement, the committee shall accept the panel's recommendation and shall recommend, in a suspension matter, that the member be suspended or, in a reinstatement matter, that the member not be reinstated.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1011 REPORT BY THE COMMITTEE TO THE COUNCIL

At the first meeting of the council following the committee's receiving the report of a panel on a matter, the committee shall report to the council for final action the committee's recommendation in the matter.

History Note: Authority G.S. 84-23; Order of the NC Supreme Court, dated October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

SECTION .1100 - RESERVED FOR FUTURE CODIFICATION

SECTION .1200 - RESERVED FOR FUTURE CODIFICATION

SECTION .1300 - RULES GOVERNING THE ADMINISTRATION OF THE PLAN FOR INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

27 NCAC 01D .1301 PURPOSE

(a) The IOLTA Board of Trustees (board) shall carry out the provisions of the Plan for Interest on Lawyers' Trust Accounts and administer the IOLTA program (NC IOLTA). Any funds remitted to the North Carolina State Bar from banks by reason of interest earned on general trust accounts established by lawyers pursuant to Rule 1.15-2(b) of the Rules of Professional Conduct or interest earned on trust or escrow accounts maintained by settlement agents pursuant to G.S. 45A-9 shall be deposited by the North Carolina State Bar through the board in a special account or accounts which shall be segregated from other funds of whatever nature received by the State Bar.

(b) The funds received, and any interest, dividends, or other proceeds earned on or with respect to these funds, net of banking charges described in section .1316(e)(1), shall be used for programs concerned with the improvement of the administration of justice, under the supervision and direction of the NC IOLTA Board. The board will award grants or non-interest bearing loans under the four categories approved by the North Carolina Supreme Court being mindful of its tax exempt status and the IRS rulings that private interests of the legal profession are not to be funded with IOLTA funds.

(c) The programs for which the funds may be awarded are:

- (1) providing civil legal services for indigents;
- (2) enhancement and improvement of grievance and disciplinary procedures to protect the public more fully from incompetent or unethical attorneys;
- (3) development and maintenance of a fund for student loans to enable meritorious persons to obtain a legal education who would not otherwise have adequate funds for this purpose;
- (4) such other programs designed to improve the administration of justice as may from time to time be proposed by the board and approved by the Supreme Court of North Carolina.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 8, 2012; March 6, 2008; March 6, 1997; April 3, 1996.*

27 NCAC 01D .1302 JURISDICTION: AUTHORITY

The Board of Trustees of the North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA) is created as a standing committee by the North Carolina State Bar Council pursuant to Chapter 84 of the North Carolina General Statutes for the disposition of funds received by the North Carolina State Bar from interest on trust accounts or from other sources intended for the provision of legal services to the indigent and the improvement of the administration of justice.

*History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amended Effective March 8, 2007.*

27 NCAC 01D .1303 OPERATIONAL RESPONSIBILITY

The responsibility for operating the program of the board rests with the governing body of the board, subject to the statutes governing the practice of law, the authority of the council and the rules of governance of the board.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1304 SIZE OF BOARD

The board shall have nine members, at least six of whom must be attorneys in good standing and authorized to practice law in the state of North Carolina.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1305 LAY PARTICIPATION

The board may have no more than three members who are not licensed attorneys.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1306 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The members of the board shall be appointed by the Council of the North Carolina State Bar. The July quarterly meeting is when the appointments are made. Vacancies occurring by reason of death, resignation or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1307 TERM OF OFFICE

Each member who is appointed to the board shall serve for a term of three years beginning on September 1.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1308 STAGGERED TERMS

It is intended that members of the board shall be elected to staggered terms such that three members are appointed in each year.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1309 SUCCESSION

Each member of the board shall be entitled to serve for two full three-year terms. No member shall serve more than two consecutive three-year terms, in addition to service prior to the beginning of a full three-year term, without having been off the board for at least three years.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1310 APPOINTMENT OF CHAIRPERSON

The chairperson of the board shall be appointed from time to time as necessary by the council. The term of such individual as chairperson shall be for one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1311 APPOINTMENT OF VICE-CHAIRPERSON

The vice chairperson of the board shall be appointed from time to time as necessary by the council. The term of such individual as vice chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the board. The vice chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1312 SOURCE OF FUNDS

Funding for the program carried out by the board shall come from funds remitted from depository institutions by reason of interest earned on trust accounts established by lawyers pursuant to Rule 1.15 of the Rules of Professional Conduct and Rule .1316 of this subchapter or interest earned on trust or escrow accounts maintained by settlement agents pursuant to G.S. 45A-9; voluntary contributions from lawyers; and interest, dividends, or other proceeds earned on the board's funds from investments or from other sources intended for the provision of legal services to the indigent and the improvement of the administration of justice.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 8, 2012; February 5, 2009; March 8, 2007.

27 NCAC 01D .1313 FISCAL RESPONSIBILITY

All funds of the board shall be considered funds of the North Carolina State Bar, with the beneficial interest in those funds being vested in the board for grants to qualified applicants in the public interest, less administrative costs. These funds shall be administered and disbursed by the board in accordance with rules or policies developed by the North Carolina State Bar and approved by the North Carolina Supreme Court. The funds shall be used only to pay the administrative costs of the IOLTA program and to fund grants approved by the board under the four categories approved by the North Carolina Supreme Court as outlined above.

(a) Maintenance of Accounts: Audit - The funds of the IOLTA program shall be maintained in a separate account from funds of the North Carolina State Bar such that the funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited on an annual basis. The audit will be conducted after the books are closed at a time determined by the auditors, but not later than March 31 of the year following the year for which the audit is to be conducted.

(b) Investment Criteria - The funds of the board shall be handled, invested and reinvested in accordance with investment policies adopted by the Council of the North Carolina State Bar for handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursements - Disbursement of funds of the board in the nature of grants to qualified applicants in the public interest, less administrative costs, shall be made by the board in accordance with policies developed by the North Carolina State Bar and approved by the North Carolina Supreme Court. The board shall adopt an annual operational budget and disbursements shall be made in accordance with the budget as adopted. The board shall determine the signatories on the IOLTA accounts.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: September 28, 2017.

27 NCAC 01D .1314 MEETINGS

The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be a majority of the total membership of the board.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1315 ANNUAL REPORT

The board shall prepare at least annually a report of its activities and shall present same to the council one month prior to its annual meeting.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1316 IOLTA ACCOUNTS

(a) **IOLTA Account Defined.** Pursuant to order of the North Carolina Supreme Court, every general trust account, as defined in the Rules of Professional Conduct, must be an interest or dividend-bearing account. (As used herein, "interest" shall refer to both interest and dividends.) Funds deposited in a general, interest-bearing trust account must be available for withdrawal upon request and without delay (subject to any notice period that the bank is required to reserve by law or regulation). Additionally, pursuant to G.S. 45A-9, a settlement agent who maintains a trust or escrow account for the purposes of receiving and disbursing closing funds and loan funds shall direct that any interest earned on funds held in that account be paid to the NC State Bar to be used for the purposes authorized under the Interest on Lawyers Trust Account Program according to Section .1316(d) below. For the purposes of these rules, all such accounts shall be known as "IOLTA Accounts" (also referred to as "Accounts").

(b) **Eligible Banks.** Lawyers may maintain one or more IOLTA Account(s) only at banks and savings and loan associations chartered under North Carolina or federal law, as required by Rule 1.15 of the Rules of Professional Conduct, that offer and maintain IOLTA Accounts that comply with the requirements set forth in this Subchapter (Eligible Banks). Settlement agents shall maintain any IOLTA Account as defined by G.S. 45A-9 and Paragraph (a) above only at an Eligible Bank; however, a settlement agent that is not a lawyer may maintain an IOLTA Account at any bank that is insured by the Federal Deposit Insurance Corporation and has a certificate of authority to transact business from the North Carolina Secretary of State, provided the bank is approved by NC IOLTA. The determination of whether a bank is eligible shall be made by NC IOLTA, which shall maintain (i) a list of participating Eligible Banks available to all members of the State Bar and to all settlement agents, and (ii) a list of banks approved for non-lawyer settlement agent IOLTA Accounts available to non-lawyer settlement agents. A bank that fails to meet the requirements of this Subchapter shall be subject only to termination of its eligible or approved status by NC IOLTA. A violation of this Rule shall not be the basis for civil liability.

(c) **Notice Upon Opening or Closing IOLTA Account.** Every lawyer/law firm or settlement agent maintaining IOLTA Accounts shall advise NC IOLTA of the establishment or closing of each IOLTA Account. Such notice shall include (i) the name of the bank where the account is maintained, (ii) the name of the account, (iii) the account number, and (iv) the name and bar number of the lawyer(s) in the firm and/or the name(s) of any non-lawyer settlement agent(s) maintaining the account. The North Carolina State Bar shall furnish to each lawyer/law firm or settlement agent maintaining an IOLTA Account a suitable plaque explaining the program, which plaque shall be exhibited in the office the lawyer/law firm or settlement agent.

(d) **Directive to Bank.** Every lawyer or law firm and every settlement agent maintaining a North Carolina IOLTA Accounts shall direct any bank in which an IOLTA Account is maintained to:

- (1) remit interest, less any deduction for allowable reasonable bank service charges or fees, (as used herein, "service charges" shall include any charge or fee charged by a bank on an IOLTA Account) as defined in Paragraph (e), at least quarterly to NC IOLTA;
- (2) transmit with each remittance to NC IOLTA a statement showing for each account: (i) the name of the law firm/lawyer or settlement agent maintaining the account, (ii) the lawyer/law firm's or settlement agent's IOLTA Account number, (iii) the earnings period, (iv) the average balance of the account for the earnings period, (v) the type of account, (vi) the rate of interest applied in computing remittance, (vii) the amount of any service charges for the earnings period, and (viii) the net remittance for the earnings period; and
- (3) transmit to the law firm/lawyer or settlement agent maintaining the account a report showing the amount remitted to NC IOLTA, the earnings period, and the rate of interest applied in computing the remittance.

(e) **Allowable Reasonable Service Charges.** Eligible Banks may elect to waive any or all service charges on IOLTA Accounts. If a bank does not waive service charges on IOLTA Accounts, allowable reasonable service charges may be assessed but only against interest earned on the IOLTA Account or funds deposited by the lawyer/law firm or settlement agent in the IOLTA Account for the purpose of paying such charges. Allowable reasonable service charges may be deducted from interest on an IOLTA Account only at the rates and in accordance with the bank's standard practice for comparable non-IOLTA accounts. Allowable reasonable service charges for IOLTA Accounts are: (i) a reasonable Account maintenance fee, (ii) per check charges, (iii) per deposit charges, (iv) a fee in lieu of a minimum balance, (v) federal deposit insurance fees, and (vi) automated transfer (Sweep) fees. All service charges other than allowable reasonable service charges assessed against an IOLTA Account are the responsibility of and shall be paid by the lawyer or law firm. No service charges in excess of the interest earned on the Account for any month or quarter shall be deducted from interest earned on other IOLTA Accounts or from the principal of the Account.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 23, 2012; March 8, 2012; January 28, 2010; February 5, 2009; March 6, 2008.*

27 NCAC 01D .1317 COMPARABILITY REQUIREMENTS FOR IOLTA ACCOUNTS

(a) **Comparability of Interest Rate.** Eligible Banks that offer and maintain IOLTA Accounts must pay to an IOLTA Account the highest interest rate generally available from the bank to non-IOLTA Accounts (Comparable Rate) when the IOLTA Account meets or exceeds the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available from the bank to non-IOLTA accounts, an Eligible Bank may consider factors, in addition to the IOLTA account balance, customarily considered by the bank when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts.

(b) **Options for Satisfying Requirement.** An Eligible Bank may satisfy the Comparable Rate requirement by electing one of the following options:

- (1) use an account product that has a Comparable Rate;
- (2) without actually changing the IOLTA Account to the bank's Comparable Rate product, pay the Comparable Rate on the IOLTA Account; or
- (3) pay the benchmark rate (Benchmark), which shall be determined by NC IOLTA periodically, but not more frequently than every six months, to reflect the overall Comparable Rate for the NC IOLTA program. The Benchmark shall be a rate equal to the greater of: (i) 0.65 percent or (ii) 65 percent of the Federal Funds Target Rate as of the first business day of the IOLTA remitting period, and shall be net of allowable reasonable service charges. When applicable, NC IOLTA will express the Benchmark in relation to the Federal Funds Target Rate.

(c) **Options for Account Types.** An IOLTA Account may be established as:

- (1) subject to Paragraph (d), a business checking account with an automated investment feature (Sweep Account), such as an overnight investment in financial institution daily repurchase agreements or money market funds invested solely in or fully collateralized by US government securities, which are US Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;
- (2) a checking account paying preferred interest rates, such as market based or indexed rates;
- (3) a public funds interest-bearing checking account, such as accounts used for governmental agencies and other non-profit organizations;
- (4) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or
- (5) any other suitable interest-bearing deposit account offered by the bank to its non-IOLTA customers.

(d) **Financial Requirements for Sweep Accounts.** If a bank establishes an IOLTA Account as described in Paragraph (c)(1), the following requirements must be satisfied: an overnight investment in a financial institution daily repurchase agreement shall be fully collateralized by United States government securities, as described in this Rule, and may be established only with an Eligible Bank that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in United States government securities or repurchase agreements fully collateralized by United States government securities, as described in this Rule, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(e) **Interest Calculation.** Interest shall be calculated in accordance with an Eligible Bank's standard practice for comparable non-IOLTA Accounts.

(f) **Higher Rates and Waiver of Service Charges Allowed.** Nothing in this rule shall preclude a participating bank from paying a higher interest rate than described above or electing to waive any service charges on IOLTA Accounts.

*History Note: Authority G.S. 84-23;
Eff. July 1, 2010.*

27 NCAC 01D .1318 CONFIDENTIALITY

(a) As used in this rule, "confidential information" means all information regarding IOLTA account(s) other than (1) a lawyer's/law firm's or settlement agent's status as a participant, former participant, or non-participant in NC IOLTA, and (2) information regarding the policies and practices of any bank in respect of IOLTA trust accounts, including rates of interest paid, service charge policies, the number of IOLTA accounts at such bank, the total amount on deposit in all IOLTA accounts at such bank, the total amounts of interest paid to NC IOLTA, and the total amount of service charges imposed by such bank upon such accounts.

(b) Confidential information shall not be disclosed by the staff or trustees of NC IOLTA to any person or entity, except that confidential information may be disclosed (1) to any chairperson of the grievance committee, staff attorney, or investigator of the North Carolina State Bar upon his or her written request specifying the information requested and stating that the request is made in connection with a grievance complaint or investigation regarding one or more trust accounts of a lawyer/law firm or settlement agent; or (2) in response to a lawful order or other process issued by a court of competent jurisdiction, or a subpoena, investigative demand, or similar notice issued by a federal, state, or local law enforcement agency.

*History Note: Authority - Order of the NC Supreme Court;
Eff. March 6, 2008;
Recodified from Rule .1317 Eff. July 1, 2010;
Amended Eff. March 8, 2012.*

27 NCAC 01D .1319 CERTIFICATION

Every lawyer admitted to practice in North Carolina shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts maintained by the lawyer or his or her law firm are established and maintained as IOLTA accounts as prescribed by Rule 1.15 of the Rules of Professional Conduct and Rule .1316 of this subchapter or that the lawyer is exempt from this provision because he or she does not maintain any general trust account(s) for North Carolina client funds. Any lawyer acting as a settlement agent who maintains a trust or escrow account used for the purpose of receiving and disbursing closing and loan funds shall certify annually on or before June 30 to the North Carolina State Bar that such accounts are established and maintained as IOLTA accounts as prescribed by G.S. 45A-9 and Rule .1316 of this subchapter.

*History Note: Authority - Order of the N.C. Supreme Court;
Eff. March 6, 2008;
Amended Eff. February 5, 2009;
Recodified from Rule .1318 Eff. July 1, 2010;
Amended Eff. March 8, 2012.*

27 NCAC 01D .1320 NONCOMPLIANCE

Every lawyer must comply with all of the administrative requirements of this Rule, including the certification required in Rule .1319 of this Subchapter. A lawyer's failure to comply with the mandatory provisions of this Subchapter shall be reported to the Administrative Committee which may initiate proceedings to suspend administratively the lawyer's active membership status and eligibility to practice law pursuant to Rule .0903 of this Subchapter.

*History Note: Order of the N.C. Supreme Court;
Adopted Eff. March 6, 2008;
Amended Eff. January 28, 2010;
Recodified from Rule .1319 Eff. July 1, 2010.*

27 NCAC 01D .1321 SEVERABILITY

If any provision of this plan or the application thereof is held invalid, the invalidity does not affect other provisions or application of the plan which can be given effect without the invalid provision or application, and to this end the provisions of the plan are severable.

*History Note: Order of the N.C. Supreme Court;
Eff. March 6, 2008;
Recodified from Rule .1320 Eff. July 1, 2010.*

**SECTION .1400 - RULES GOVERNING THE ADMINISTRATION OF THE CLIENT SECURITY FUND
OF THE NORTH CAROLINA STATE BAR**

27 NCAC 01D .1401 PURPOSE; DEFINITIONS

(a) The Client Security Fund of the North Carolina State Bar was established by the Supreme Court of North Carolina pursuant to an order dated August 29, 1984. The fund is a standing committee of the North Carolina State Bar Council pursuant to an order of the Supreme Court dated October 10, 1984, as amended. Its purpose is to reimburse, in whole or in part in appropriate cases and subject to the provisions and limitations of the Supreme Court's orders and these Rules, clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina, which conduct occurred on or after January 1, 1985.

(b) As used herein the following terms have the meaning indicated.

- (1) "Applicant" shall mean a person who has suffered a reimbursable loss because of the dishonest conduct of an attorney and has filed an application for reimbursement.
- (2) "Attorney" shall mean an attorney who, at the time of alleged dishonest conduct, was licensed to practice law by the North Carolina State Bar. The fact that the alleged dishonest conduct took place outside the state of North Carolina does not necessarily mean that the attorney was not engaged in the practice of law in North Carolina.
- (3) "Board" shall mean the Board of Trustees of the Client Security Fund.
- (4) "Council" shall mean the North Carolina State Bar Council.
- (5) "Dishonest conduct" shall mean wrongful acts committed by an attorney against an applicant in the nature of embezzlement from the applicant or the wrongful taking or conversion of monies or other property of the applicant, which monies or other property were entrusted to the attorney by the applicant by reason of an attorney-client relationship between the attorney and the applicant or by reason of a fiduciary relationship between the attorney and the applicant customary to the practice of law.
- (6) "Fund" shall mean the Client Security Fund of the North Carolina State Bar.
- (7) "Reimbursable losses" shall mean only those losses of money or other property which meet all of the following tests:
 - (A) the dishonest conduct which occasioned the loss occurred on or after January 1, 1985;
 - (B) the loss was caused by the dishonest conduct of an attorney acting either as an attorney for the applicant or in a fiduciary capacity for the benefit of the applicant customary to the private practice of law in the matter in which the loss arose;
 - (C) the applicant has exhausted all viable means to collect applicant's losses and has complied with these Rules.
- (8) The following shall not be deemed "reimbursable losses":
 - (A) losses of spouses, parents, grandparents, children and siblings (including foster and half relationships), partners, associates or employees of the attorney(s) causing the losses;
 - (B) losses covered by any bond, security agreement or insurance contract, to the extent covered thereby;
 - (C) losses incurred by any business entity with which the attorney or any person described in Part (b)(8)(A) of this Rule is an officer, director, shareholder, partner, joint venturer, promoter or employee;
 - (D) losses, reimbursement for which has been otherwise received from or paid by or on behalf of the attorney who committed the dishonest conduct;
 - (E) losses arising in investment transactions in which there was neither a contemporaneous attorney-client relationship between the attorney and the applicant nor a contemporaneous fiduciary relationship between the attorney and the applicant customary to the practice of law. By way of illustration but not limitation, for purposes of this Rule [Part (b)(8)(E) of this Rule], an attorney authorized or permitted by a person or entity other than the applicant as escrow or similar agent to hold funds deposited by the applicant for investment purposes shall not be deemed to have a fiduciary relationship with the applicant customary to the practice of law.
- (9) "State Bar" shall mean the North Carolina State Bar.
- (10) "Supreme Court" shall mean the North Carolina Supreme Court.

- (11) "Supreme Court orders" shall mean the orders of the Supreme Court dated August 29, 1984, and October 10, 1984, as amended, authorizing the establishment of the Client Security Fund of the North Carolina State Bar and approving the rules of procedure of the Fund.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1402 JURISDICTION: AUTHORITY

(a) G.S. 84 vests in the State Bar authority to control the discipline, disbarment, and restoration of licenses of attorneys; to formulate and adopt rules of professional ethics and conduct; and to do all such things necessary in the furtherance of the purposes of the statutes governing the practice of the law as are not themselves prohibited by law. G.S. 84-22 authorizes the State Bar to establish such committees, standing or special, as from time to time the council deems appropriate for the proper discharge of its duties; and to determine the number of members, composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to such committees. The rules of the State Bar, as adopted and amended from time to time, are subject to approval by the Supreme Court under G.S. 84-21.

(b) The Supreme Court orders, entered in the exercise of the Supreme Court's inherent power to supervise and regulate attorney conduct, authorized the establishment of the Fund, as a standing committee of the council, to be administered by the State Bar under rules and regulations approved by the Supreme Court.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1403 OPERATIONAL RESPONSIBILITY

The responsibility for operating the Fund and the program of the board rests with the board, subject to the Supreme Court orders, the statutes governing the practice of law, the authority of the council, and the rules of the board.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1404 SIZE OF BOARD

The board shall have five members, four of whom must be attorneys in good standing and authorized to practice law in the state of North Carolina.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1405 LAY PARTICIPATION

The board shall have one member who is not a licensed attorney.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1406 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The members of the board shall be appointed by the council. Any member of the board may be removed at any time by the affirmative vote of a majority of the members of the council at a regularly called meeting. Vacancies occurring by reason of death, disability, resignation, or removal of a member shall be filled by appointment of the president of the State Bar with the approval of the council at its next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1407 TERM OF OFFICE

Each member who is appointed to the board, other than a member appointed to fill a vacancy created by the death, disability, removal or resignation of a member, shall serve for a term of five years beginning as of the first day of the

month following the date upon which the appointment is made by the council. A member appointed to fill a vacancy shall serve the remainder of the vacated term.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1408 STAGGERED TERMS

It is intended that members of the board shall be elected to staggered terms such that one member is appointed in each year.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1409 SUCCESSION

Each member of the board shall be entitled to serve for one full five-year term. A member appointed to fill a vacated term may be appointed to serve one full five-year term immediately following the expiration of the vacated term but shall not be entitled as of right to such appointment. No person shall be reappointed to the board until the expiration of three years following the last day of the previous term of such person on the board.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1410 APPOINTMENT OF CHAIRPERSON

The chairperson of the board shall be appointed from the members of the board annually by the council. The term of the chairperson shall be one year. The chairperson may be reappointed by the council thereafter during tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1411 APPOINTMENT OF VICE-CHAIRPERSON

The vice-chairperson of the board shall be appointed from the members of the board annually by the council. The term of the vice-chairperson shall be one year. The vice chairperson may be reappointed by the council thereafter during tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him by the chairperson or by the board.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1412 SOURCE OF FUNDS

Funds for the program carried out by the board shall come from assessments of members of the State Bar as ordered by the Supreme Court, from voluntary contributions, and as may otherwise be received by the Fund.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1413 FISCAL RESPONSIBILITY

All funds of the board shall be considered funds of the State Bar and shall be maintained, invested, and disbursed as follows:

- (1) Maintenance of Accounts; Audit - The State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited annually in connection with the audits of the State Bar.
- (2) Investment Criteria - The funds of the board shall be kept, invested, and reinvested in accordance with investment policies adopted by the council for dues, rents, and other revenues received by the State Bar in carrying out its official duties. In no case shall the funds be invested or reinvested in

investments other than such as are permitted to fiduciaries under the General Statutes of North Carolina.

- (3) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary of the State Bar.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1414 MEETINGS

The annual meeting of the board shall be held in October of each year in connection with the annual meeting of the State Bar. The board by resolution may set other regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission or telephone. A quorum of the board for conducting its official business shall be a majority of the members serving at a particular time. Written minutes of all meetings shall be prepared and maintained.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1415 ANNUAL REPORT

The board shall prepare at least annually a report of its activities and shall present the same to the council at the annual meeting of the State Bar.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1416 APPROPRIATE USES OF THE CLIENT SECURITY FUND

(a) The board may use or employ the Fund for only the following purposes within the scope of the board's objectives as heretofore outlined:

- (1) to make reimbursements on approved applications as herein provided;
- (2) to purchase insurance to cover such losses in whole or in part as is deemed appropriate;
- (3) to invest such portions of the Fund as may not be needed currently to reimburse losses, in such investments as are permitted to fiduciaries by the General Statutes of North Carolina;
- (4) to pay the administrative expenses of the board, including employment of counsel to prosecute subrogation claims.

(b) The board with the authorization of the council shall, in the name of the North Carolina State Bar, enforce any claims which the board may have for restitution, subrogation, or otherwise, and may employ and compensate consultants, agents, legal counsel, and such other employees as it deems necessary and appropriate.

History Note: Authority - Orders of the North Carolina Supreme Court, August 29, 1984, October 10, 1984; Readopted Effective December 8, 1994; Amendments Approved by the Supreme Court: September 28, 2017.

27 NCAC 01D .1417 APPLICATIONS FOR REIMBURSEMENT

(a) The board shall prepare a form of application for reimbursement which shall require the following minimum information, and such other information as the board may from time to time specify:

- (1) the name and address of the applicant;
- (2) the name and address of the attorney who is alleged to have engaged in dishonest conduct;
- (3) the amount of the alleged loss for which application is made;
- (4) the date on or period of time during which the alleged loss occurred;
- (5) a general statement of facts relative to the application;
- (6) a description of any relationship between the applicant and the attorney of the kinds described in Rule .1401(b)(8)(A) and (C) of this Section;
- (7) verification by the applicant;
- (8) all supporting documents, including:
 - (A) copies of any court proceedings against the attorney;

- (B) copies of all documents showing any reimbursement or receipt of funds in payment of any portion of the loss.
- (b) The application shall contain the following statement in boldface type:

"IN ESTABLISHING THE CLIENT SECURITY FUND PURSUANT TO ORDER OF THE SUPREME COURT OF NORTH CAROLINA, THE NORTH CAROLINA STATE BAR DID NOT CREATE OR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL ATTORNEYS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES FROM THE CLIENT SECURITY FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE BOARD ADMINISTERING THE FUND AND NOT A MATTER OF RIGHT. NO APPLICANT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENT SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE."

- (c) The application shall be filed in the office of the State Bar in Raleigh, North Carolina, attention Client Security Fund Board, and a copy shall be transmitted by such office to the chairperson of the board.

History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.

27 NCAC 01D .1418 PROCESSING APPLICATIONS

- (a) The board shall cause an investigation of all applications filed with the State Bar to determine whether the application is for a reimbursable loss and the extent, if any, to which the application should be paid from the Fund.
- (b) The chairperson of the board shall assign each application to a member of the board for review and report. Wherever possible, the member to whom such application is referred shall practice in the county wherein the attorney practices or practiced.
- (c) A copy of the application shall be served upon or sent by registered mail to the last known address of the attorney who it is alleged committed an act of dishonest conduct.
- (d) After considering a report of investigation as to an application, any board member may request that testimony be presented concerning the application. In all cases, the alleged defalcating attorney or his or her representative will be given an opportunity to be heard by the board if the attorney so requests.
- (e) The board shall operate the Fund so that, taking into account assessments ordered by the Supreme Court but not yet received and anticipated investment earnings, a principal balance of approximately one million dollars (\$1,000,000) is maintained. Subject to the foregoing, the board shall, in its discretion, determine the amount of loss, if any, for which each applicant should be reimbursed from the Fund. In making such determination, the board shall consider, inter alia, the following:
- (1) the negligence, if any, of the applicant which contributed to the loss;
 - (2) the comparative hardship which the applicant suffered because of the loss;
 - (3) the total amount of reimbursable losses of applicants on account of any one attorney or firm or association of attorneys;
 - (4) the total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund;
 - (5) the total amount of insurance or other source of funds available to compensate the applicant for any reimbursable loss.
- (f) The board may, in its discretion, allow further reimbursement in any year of a reimbursable loss reimbursed in part by it in prior years.
- (g) Provided, however, and the foregoing notwithstanding, in no case shall the Fund reimburse the otherwise reimbursable losses sustained by any one applicant as a result of the dishonest conduct of one attorney in an amount in excess of one hundred thousand dollars (\$100,000).
- (h) No reimbursement shall be made to any applicant unless reimbursement is approved by a majority vote of the entire board at a duly held meeting at which a quorum is present.
- (i) No attorney shall be compensated by the board for prosecuting an application before it.
- (j) An applicant may be advised of the status of the board's consideration of the application and shall be advised of the final determination of the board.
- (k) All applications, proceedings, investigations, and reports involving applicants for reimbursement shall be kept confidential until and unless the board authorizes reimbursement to the applicant, or the attorney alleged to have engaged in dishonest conduct requests that the matter be made public. All participants involved in an application, investigation, or proceeding (including the applicant) shall conduct themselves so as to maintain the confidentiality

of the application, investigation or proceeding. This provision shall not be construed to deny relevant information to be provided by the board to disciplinary committees or to anyone else to whom the council authorizes release of information.

(l) The board may, in its discretion, for newly discovered evidence or other compelling reason, grant a request to reconsider any application which the board has denied in whole or in part; otherwise, such denial is final and no further consideration shall be given by the board to such application or another application upon the same alleged facts.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 1997.*

27 NCAC 01D .1419 SUBROGATION FOR REIMBURSEMENT

(a) In the event reimbursement is made to an applicant, the State Bar shall be subrogated to the amount reimbursed and may bring an action against the attorney or the attorney's estate either in the name of the applicant or in the name of the State Bar. As a condition of reimbursement, the applicant may be required to execute a "subrogation agreement" to such effect. Filing of an application constitutes an agreement by the applicant that the North Carolina State Bar shall be subrogated to the rights of the applicant to the extent of any reimbursement. Upon commencement of an action by the State Bar pursuant to its subrogation rights, it shall advise the reimbursed applicant at his or her last known address. A reimbursed applicant may then join in such action to recover any loss in excess of the amount reimbursed by the Fund. Any amounts recovered from the attorney by the board in excess of the amount to which the Fund is subrogated, less the board's actual costs of such recovery, shall be paid to or retained by the applicant as the case may be.

(b) Before receiving a payment from the Fund, the person who is to receive such payment or his or her legal representative shall execute and deliver to the board a written agreement stating that in the event the reimbursed applicant or his or her estate should ever receive any restitution from the attorney or his or her estate, the reimbursed applicant agrees that the Fund shall be repaid up to the amount of the reimbursement from the Fund plus expenses.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1420 AUTHORITY RESERVED BY THE SUPREME COURT

The Fund may be modified or abolished by the Supreme Court. In the event of abolition, all assets of the Fund shall be disbursed by order of the Supreme Court.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;
Readopted Eff. December 8, 1994.*

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1501 SCOPE, PURPOSE AND DEFINITIONS

(a) Scope

Except as provided herein, these rules shall apply to every active member licensed by the North Carolina State Bar.

(b) Purpose

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining attorneys who do not comply with such rules. The Revised Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

At a time when all aspects of life and society are changing rapidly or becoming subject to pressures brought about by change, laws and legal principles are also in transition (through additions to the body of law, modifications and amendments) and are increasing in complexity. One cannot render competent legal services without continuous education and training.

The same changes and complexities, as well as the economic orientation of society, result in confusion about the ethical requirements concerning the practice of law and the relationships it creates. The data accumulated in the discipline program of the North Carolina State Bar argue persuasively for the establishment of a formal program for continuing and intensive training in professional responsibility and legal ethics.

It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients' affairs while avoiding the ethical problems which can be caused by disorganization.

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these minimum continuing legal education requirements is the same as the purpose of the Revised Rules of Professional Conduct themselves—to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

(c) Definitions

- (1) "Active member" shall include any person who is licensed to practice law in the state of North Carolina and who is an active member of the North Carolina State Bar.
- (2) "Administrative Committee" shall mean the Administrative Committee of the North Carolina State Bar.
- (3) "Approved program" shall mean a specific, individual educational program approved as a continuing legal education program under these rules by the Board of Continuing Legal Education.
- (4) "Board" means the Board of Continuing Legal Education created by these rules.
- (5) "Continuing legal education" or "CLE" is any legal, judicial or other educational program accredited by the board. Generally, CLE will include educational programs designed principally to maintain or advance the professional competence of lawyers and/or to expand an appreciation and understanding of the professional responsibilities of lawyers.
- (6) "Council" shall mean the North Carolina State Bar Council.
- (7) "Credit hour" means an increment of time of 60 minutes which may be divided into segments of 30 minutes or 15 minutes, but no smaller.
- (8) "Inactive member" shall mean a member of the North Carolina State Bar who is on inactive status.
- (9) "In-house continuing legal education" shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, or similar entities primarily for the education of their members. The board may exempt from this definition those programs which it finds
 - (A) to be conducted by public or quasi-public organizations or associations for the education of their employees or members;
 - (B) to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law.
- (10) A "newly admitted active member" is one who becomes an active member of the North Carolina State Bar for the first time, has been reinstated, or has changed from inactive to active status.
- (11) "On demand" program shall mean an accredited educational program accessed via the internet that is available at any time on a provider's website and does not include live programming.
- (12) "Online" program shall mean an accredited educational program accessed through a computer or telecommunications system such as the internet and can include simultaneously broadcast and on demand programming.
- (13) "Participatory CLE" shall mean programs or segments of programs that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.
- (14) "Professional responsibility" shall mean those programs or segments of programs devoted to a) the substance, underlying rationale, and practical application of the Rules of Professional Conduct; b) the professional obligations of the lawyer to the client, the court, the public, and other lawyers; c) moral philosophy and ethical decision-making in the context of the practice of law; and d) the effects of stress, substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities and the prevention, detection, treatment, and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions. This definition shall be interpreted consistent with the provisions of Rule .1501(c)(4) or (6) above.
- (15) "Professionalism" programs are programs or segments of programs devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards

of professional conduct which transcend the requirements of the Rules of Professional Conduct. Such programs address principles of competence and dedication to the service of clients, civility, improvement of the justice system, diversity of the legal profession and clients, advancement of the rule of law, service to the community, and service to the disadvantaged and those unable to pay for legal services.

- (16) "Registered sponsor" shall mean an organization that is registered by the board after demonstrating compliance with the accreditation standards for continuing legal education programs as well as the requirements for reporting attendance and remitting sponsor fees for continuing legal education programs.
- (17) "Rules" shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina (Section .1500 of this subchapter).
- (18) "Sponsor" is any person or entity presenting or offering to present one or more continuing legal education programs, whether or not an accredited sponsor.
- (19) "Technology training" shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. §143B-1320(a)(11), or successor statutory provision, for a definition of "information technology"), including education on an information technology product, device, platform, application, or other tool, process, or methodology. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 and the course content requirements in Rule .1602(e) of this subchapter.
- (20) "Year" shall mean calendar year.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: March 6, 1997; March 3, 1999; June 7, 2001; March 3, 2005; March 8, 2007; October 9, 2008; August 25, 2011; April 5, 2018; September 20, 2018; September 25, 2019.

27 NCAC 01D .1502 JURISDICTION: AUTHORITY

The Council of the North Carolina State Bar hereby establishes the Board of Continuing Legal Education (board) as a standing committee of the council, which board shall have authority to establish regulations governing a continuing legal education program and a law practice assistance program for attorneys licensed to practice law in this state.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1503 OPERATIONAL RESPONSIBILITY

The responsibility for operating the continuing legal education program and the law practice assistance program shall rest with the board, subject to the statutes governing the practice of law, the authority of the council, and the rules of governance of the board.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1504 SIZE OF BOARD

The board shall have nine members, all of whom must be attorneys in good standing and authorized to practice in the state of North Carolina.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1505 LAY PARTICIPATION

The board shall have no members who are not licensed attorneys.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;

Readopted Eff. December 8, 1994.

27 NCAC 01D .1506 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The members of the board shall be appointed by the council. The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1507 TERM OF OFFICE

Each member who is appointed to the board shall serve for a term of three years beginning as of the first day of the month following the date on which the appointment is made by the council. See, however, Rule .1508 of this Section.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1508 STAGGERED TERMS

It is intended that members of the board shall be elected to staggered terms such that three members are appointed in each year. Of the initial board, three members shall be elected to terms of one year, three members shall be elected to terms of two years, and three members shall be elected to terms of three years. Thereafter, three members shall be elected each year.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1509 SUCCESSION

Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Thereafter, no person may be reappointed without having been off the board for at least three years.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1510 APPOINTMENT OF CHAIRPERSON

The chairperson of the board shall be appointed from time to time as necessary by the council. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1511 APPOINTMENT OF VICE-CHAIRPERSON

The vice-chairperson of the board shall be appointed from time to time as necessary by the council. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

*History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1512 SOURCE OF FUNDS

(a) Funding for the program carried out by the board shall come from sponsor's fees and attendee's fees as provided below, as well as from duly assessed penalties for noncompliance and from reinstatement fees.

- (1) Registered sponsors located in North Carolina (for programs offered in or outside North Carolina), registered sponsors not located in North Carolina (for programs offered in North Carolina), and all other sponsors located in or outside of North Carolina (for programs offered in North Carolina) shall, as a condition of conducting an approved program, agree to remit a list of North Carolina attendees and to pay a fee for each active member of the North Carolina State Bar who attends the program for CLE credit. The sponsor's fee shall be based on each credit hour of attendance, with a proportional fee for portions of a program lasting less than an hour. The fee shall be set by the board upon approval of the council. Any sponsor, including a registered sponsor, that conducts an approved program which is offered without charge to attendees shall not be required to remit the fee under this section. Attendees who wish to receive credit for attending such an approved program shall comply with paragraph (a)(2) of this rule.
- (2) The board shall fix a reasonably comparable fee to be paid by individual attorneys who attend for CLE credit approved continuing legal education programs for which the sponsor does not submit a fee under Rule .1512(a)(1) above. Such fee shall accompany the member's annual affidavit. The fee shall be set by the board upon approval of the council.

(b) Funding for a law practice assistance program shall be from user fees set by the board upon approval of the council and from such other funds as the council may provide.

(c) No Refunds for Exemptions and Record Adjustments.

- (1) Exemption Claimed. If a credit hour of attendance is reported to the board, the fee for that credit hour is earned by the board regardless of an exemption subsequently claimed by the member pursuant to Rule .1517 of this subchapter. No paid fees will be refunded and the member shall pay the fee for any credit hour reported on the annual report form for which no fee has been paid at the time of submission of the member's annual report form.
- (2) Adjustment of Reported Credit Hours. When a sponsor is required to pay the sponsor's fee, there will be no refund to the sponsor or to the member upon the member's subsequent adjustment, pursuant to Rule .1522(a) of this subchapter, to credit hours reported on the annual report form. When the member is required to pay the attendee's fee, the member shall pay the fee for any credit hour reported after any adjustment by the member to credit hours reported on the annual report form.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: September 22, 2016; April 5, 2018; September 25, 2019.

27 NCAC 01D .1513 FISCAL RESPONSIBILITY

All funds of the board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit - The North Carolina State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria - The funds of the board shall be handled, invested and reinvested in accordance with investment policies adopted by the council for the handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary-treasurer of the North Carolina State Bar pursuant to authority of the council. The members of the board shall serve on a voluntary basis without compensation, but may be reimbursed for the reasonable expenses incurred in attending meetings of the board or its committees.

(d) All revenues resulting from the CLE program, including fees received from attendees and sponsors, late filing penalties, late compliance fees, reinstatement fees, and interest on a reserve fund shall be applied first to the expense of administration of the CLE program including an adequate reserve fund; provided, however, that a portion of each sponsor or attendee fee, in an amount to be determined by the council, shall be paid to the Chief Justice's

Commission on Professionalism and to the North Carolina Equal Access to Justice Commission for administration of the activities of these commissions. Excess funds may be expended by the council on lawyer competency programs approved by the council.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Effective December 8, 1994; Amended Eff. November 5, 2015; December 30, 1998.

27 NCAC 01D .1514 MEETINGS

The annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar. The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission or telephone. A quorum of the board for conducting its official business shall be a majority of the members serving at a particular time.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1515 ANNUAL REPORT

The board shall prepare at least annually a report of its activities and shall present the same to the council one month prior to its annual meeting.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

27 NCAC 01D .1516 POWERS, DUTIES, AND ORGANIZATION OF THE BOARD

(a) The board shall have the following powers and duties:

- (1) to exercise general supervisory authority over the administration of these rules;
- (2) to adopt and amend regulations consistent with these rules with the approval of the council;
- (3) to establish an office or offices and to employ such persons as the board deems necessary for the proper administration of these rules, and to delegate to them appropriate authority, subject to the review of the council;
- (4) to report annually on the activities and operations of the board to the council and make any recommendations for changes in the rules or methods of operation of the continuing legal education program;
- (5) to submit an annual budget to the council for approval and to ensure that expenses of the board do not exceed the annual budget approved by the council;
- (6) to administer a law office assistance program for the benefit of lawyers who request or are required to obtain training in the area of law office management.

(b) The board shall be organized as follows:

- (1) Quorum - Five members shall constitute a quorum of the board.
- (2) The Executive Committee - The executive committee of the board shall be comprised of the chairperson, a vice-chairperson elected by the members of the board, and a member to be appointed by the chairperson. Its purpose is to conduct all necessary business of the board that may arise between meetings of the full board. In such matters it shall have complete authority to act for the board.
- (3) Other Committees - The chairperson may appoint committees as established by the board for the purpose of considering and deciding matters submitted to them by the board.

(c) Appeals - Except as otherwise provided, the board is the final authority on all matters entrusted to it under Section .1500 and Section .1600 of this subchapter. Therefore, any decision by a committee of the board pursuant to a delegation of authority may be appealed to the full board and will be heard by the board at its next scheduled meeting. A decision made by the staff pursuant to a delegation of authority may also be reviewed by the full board but should first be appealed to any committee of the board having jurisdiction on the subject involved. All appeals shall be in writing. The board has the discretion to, but is not obligated to, grant a hearing in connection with any appeal regarding the accreditation of a program.

*History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994;
Amended by council October 22, 2004;
Amended Eff. March 3, 2005.*

27 NCAC 01D .1517 EXEMPTIONS

- (a) Notification of Board. To qualify for an exemption for a particular calendar year, a member shall notify the board of the exemption in the annual report for that calendar year sent to the member pursuant to Rule .1522 of this subchapter. All active members who are exempt are encouraged to attend and participate in legal education programs.
- (b) Government Officials and Members of Armed Forces. The governor, the lieutenant governor, and all members of the council of state, members of the United States Senate, members of the United States House of Representatives, members of the North Carolina General Assembly, full-time principal chiefs and vice-chiefs of any Indian tribe officially recognized by the United States or North Carolina state governments, and members of the United States Armed Forces on full-time active duty are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity.
- (c) Judiciary and Clerks. Members of the state judiciary who are required by virtue of their judicial offices to take an average of (twelve) 12 or more hours of continuing judicial or other legal education annually and all members of the federal judiciary are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such judicial capacities. A full-time law clerk for a member of the federal or state judiciary is exempt from the requirements of these rules for any calendar year in which the clerk serves some portion thereof in such capacity, provided, however, that the exemption shall not exceed two consecutive calendar years and, further provided, that the clerkship begins within one year after the clerk graduates from law school or passes the bar examination for admission to the North Carolina State Bar whichever occurs later.
- (d) Nonresidents. Any active member residing outside of North Carolina who does not practice in North Carolina for at least six (6) consecutive months and does not represent North Carolina clients on matters governed by North Carolina law shall be exempt from the requirements of these rules.
- (e) Law Teachers. An exemption from the requirements of these rules shall be given to any active member who does not practice in North Carolina or represent North Carolina clients on matters governed by North Carolina law and who is:
- (1) A full-time teacher at the School of Government (formerly the Institute of Government) of the University of North Carolina;
 - (2) A full-time teacher at a law school in North Carolina that is accredited by the American Bar Association; or
 - (3) A full-time teacher of law-related courses at a graduate level professional school accredited by its respective professional accrediting agency.
- (f) Special Circumstances Exemptions. The board may exempt an active member from the continuing legal education requirements for a period of not more than one year at a time upon a finding by the board of special circumstances unique to that member constituting undue hardship or other reasonable basis for exemption, or for a longer period upon a finding of a permanent disability.
- (g) Pro Hac Vice Admission. Nonresident attorneys from other jurisdictions who are temporarily admitted to practice in a particular case or proceeding pursuant to the provisions of G.S. 84-4.1 shall not be subject to the requirements of these rules.
- (h) Senior Status Exemption. The board may exempt an active member from the continuing legal education requirements if
- (1) the member is sixty-five years of age or older and
 - (2) the member does not render legal advice to or represent a client unless the member associates with another active member who assumes responsibility for the advice or representation.
- (i) CLE Record During Exemption Period. During a calendar year in which the records of the board indicate that an active member is exempt from the requirements of these rules, the board shall not maintain a record of such member's attendance at accredited continuing legal education programs. Upon the termination of the member's exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education program attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such programs will be required by the board.

(j) Permanent Disability. Attorneys who have a permanent disability that makes attendance at CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The board shall review and approve or disapprove such plans on an individual basis and without delay.

(k) Application for Substitute Compliance and Exemptions. Other requests for substitute compliance, partial waivers, other exemptions for hardship or extenuating circumstances may be granted by the board on a yearly basis upon written application of the attorney.

(l) Bar Examiners. Credit is earned through service as a bar examiner of the North Carolina Board of Law Examiners. The board will award 12 hours of CLE credit for the preparation and grading of a bar examination by a member of the North Carolina Board of Law Examiners.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: February 12, 1997; October 1, 2003; March 3, 2005; October 7, 2010; October 2, 2014; June 9, 2016; September 22, 2016; September 25, 2019.

27 NCAC 01D .1518 CONTINUING LEGAL EDUCATION REQUIREMENTS

(a) Annual Requirement. Each active member subject to these rules shall complete 12 hours of approved continuing legal education during each calendar year beginning January 1, 1988, as provided by these rules and the regulations adopted thereunder.

Of the 12 hours:

- (1) at least 2 hours shall be devoted to the areas of professional responsibility or professionalism or any combination thereof;
- (2) at least 1 hour shall be devoted to technology training as defined in Rule .1501(c)(17) of this subchapter and further explained in Rule .1602(e) of this subchapter; and
- (3) effective January 1, 2002, at least once every three calendar years, each member shall complete an hour of continuing legal education instruction on substance abuse and debilitating mental conditions as defined in Rule .1602 (a). This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.

(b) Carryover. Members may carry over up to 12 credit hours earned in one calendar year to the next calendar year, which may include those hours required by paragraph (a)(1) above. Additionally, a newly admitted active member may include as credit hours which may be carried over to the next succeeding year any approved CLE hours earned after that member's graduation from law school.

(c) Professionalism Requirement for New Members. Except as provided in paragraph (d)(1), each active member admitted to the North Carolina State Bar after January 1, 2011, must complete the North Carolina State Bar Professionalism for New Attorneys Program (PNA Program) in the year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter. CLE credit for the PNA Program shall be applied to the annual mandatory continuing legal education requirements set forth in paragraph (a) above.

- (1) Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish the required content on or before January 1 of each year. To be approved as a PNA Program, the program must be provided by a sponsor registered under Rule .1603 of this subchapter and a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the program. A registered sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no program that is not so designated shall satisfy the PNA Program requirement for new members.
- (2) Timetable and Partial Credit. The PNA Program shall be presented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the

board. The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the board.

- (3) Online and Prerecorded Programs. The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken online (via the Internet) on demand. The program may also be taken as a prerecorded program provided the requirements of Rule .1604(d) of this subchapter are satisfied and at least one hour of each six-hour block consists of live programming.
- (d) Exemptions from Professionalism Requirement for New Members.
- (1) Licensed in Another Jurisdiction. A member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA Program requirement and must notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter.
 - (2) Inactive Status. A newly admitted member who is transferred to inactive status in the year of admission to the State Bar is exempt from the PNA Program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA Program in the year that the member is subject to the requirements set forth in paragraph (a) above unless the member qualifies for the exemption under paragraph (d)(1) of this rule.
 - (3) Exemptions Under Rule .1517. A newly admitted active member who qualifies for an exemption under Rule .1517 of this subchapter shall be exempt from the PNA Program requirement during the period of the Rule .1517 exemption. The member shall notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter. The member must complete the PNA Program in the year the member no longer qualifies for the Rule .1517 exemption or the next calendar year unless the member qualifies for the exemption under paragraph (d)(1) of this rule.
- (e) The board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: February 12, 1997; December 30, 1998; March 3, 1999; November 6, 2001; October 1, 2003; March 11, 2010; August 25, 2011; March 6, 2014; March 5, 2015; June 9, 2016; April 5, 2018; September 20, 2018; September 25, 2019.

27 NCAC 01D .1519 ACCREDITATION STANDARDS

The board shall approve continuing legal education programs that meet the following standards and provisions.

- (a) They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence and proficiency as a lawyer.
- (b) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.
- (c) Credit may be given for continuing legal education programs where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape, satellite transmitted, and online programs.
- (d) Continuing legal education materials are to be prepared, and programs conducted, by an individual or group qualified by practical or academic experience. Credit shall not be given for any continuing legal education program taught or presented by a disbarred lawyer except a program on professional responsibility (including a program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities) taught by a disbarred lawyer whose disbarment date is at least five years (60 months) prior to the date of the program. The advertising for the program shall disclose the lawyer's disbarment.
- (e) Live continuing legal education programs shall be conducted in a setting physically suitable to the educational nature of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.
- (f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the program is presented. These may include written materials printed from a website or computer

presentation. A written agenda or outline for a program satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.

(g) A sponsor of an approved program must timely remit fees as required in Rule .1606 and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the board in accordance with regulations. Participation in an online program must be verified as provided in Rule .1601(d).

(h) Except as provided in Rules .1501 and .1602(h) of this subchapter, in-house continuing legal education and self-study shall not be approved or accredited for the purpose of complying with Rule .1518 of this subchapter.

(i) Programs that cross academic lines, such as accounting-tax seminars, may be considered for approval by the board. However, the board must be satisfied that the content of the program would enhance legal skills or the ability to practice law.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: March 1, 2001; October 1, 2003; February 5, 2009; March 11, 2010; April 5, 2018; September 25, 2019; December 14, 2021.

27 NCAC 01D .1520 REGISTRATION OF SPONSORS AND PROGRAM APPROVAL

(a) Registration of Sponsors. An organization desiring to be designated as a registered sponsor of programs may apply to the board for registered sponsor status. The board shall register a sponsor if it is satisfied that the sponsor's programs have met the accreditation standards set forth in Rule .1519 of this subchapter and the application requirements set forth in Rule .1603 of this subchapter.

(1) Duration of Status. Registered sponsor status shall be granted for a period of five years. At the end of the five-year period, the sponsor must apply to renew its registration pursuant to Rule .1603(b) of this subchapter.

(2) Accredited Sponsors. A sponsor that was previously designated by the board as an "accredited sponsor" shall, on the effective date of paragraph (a)(1) of this rule, be re-designated as a "registered sponsor." Each such registered sponsor shall subsequently be required to apply for renewal of registration according to a schedule to be adopted by the board. The schedule shall stagger the submission date for such applications over a three-year period after the effective date of this paragraph (a)(2).

(b) Program Approval for Registered Sponsors.

(1) Once an organization is approved as a registered sponsor, the continuing legal education programs sponsored by that organization are presumptively approved for credit; however, application must still be made to the board for approval of each program. At least 50 days prior to the presentation of a program, a registered sponsor shall file an application, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(2) The board shall evaluate a program presented by a registered sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the registered sponsor that the program is not approved for credit. Such notice shall be sent by the board to the registered sponsor within 45 days after the receipt of the application. If notice is not sent to the registered sponsor within the 45-day period, the program shall be presumed to be approved. The registered sponsor may request reconsideration of an unfavorable accreditation decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(c) Sponsor Request for Program Approval.

(1) Any organization not designated as a registered sponsor that desires approval of a program shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(2) The board may at any time decline to accredit CLE programs offered by a sponsor that is not registered for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519, and Section .1600 of this subchapter.

(d) Member Request for Program Approval. An active member desiring approval of a program that has not otherwise been approved shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: February 27, 2003; March 3, 2005; October 7, 2010; March 6, 2014; April 5, 2018; September 25, 2019.

27 NCAC 01D .1521 CREDIT HOURS

The board may designate by regulation the number of credit hours to be earned by participation, including, but not limited to, teaching in continuing legal education programs approved by the board.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: September 25, 2019.

27 NCAC 01D .1522 ANNUAL REPORT AND COMPLIANCE PERIOD

(a) Annual Written Report. Commencing in 1989, each active member of the North Carolina State Bar shall provide an annual written report to the North Carolina State Bar in such form as the board shall prescribe by regulation concerning compliance with the continuing legal education program for the preceding year or declaring an exemption under Rule .1517 of this subchapter. The annual report form shall be corrected, if necessary, signed by the member, and promptly returned to the State Bar via mail or online filing. Upon receipt via mail or online filing of a signed annual report form, appropriate adjustments shall be made to the member's continuing legal education record with the State Bar. No further adjustments shall thereafter be made to the member's continuing legal education record unless, on or before July 31 of the year in which the report form is mailed to members, the member shows good cause for adjusting the member's continuing legal education record for the preceding year.

(b) Compliance Period. The period for complying with the requirements of Rule .1518 of this subchapter is January 1 to December 31. A member may complete the requirements for the year on or by the last day of February of the succeeding year provided, however, that this additional time shall be considered a grace period and no extensions of this grace period shall be granted. All members are encouraged to complete the requirements within the appropriate calendar year.

(c) Report. Prior to January 31 of each year, the prescribed report form concerning compliance with the continuing legal education program for the preceding year shall be available on the State Bar's CLE website and a notice of its posting shall be mailed or emailed to all active members of the North Carolina State Bar.

(d) Late Filing Penalty. Any attorney who, for whatever reasons, files the report showing compliance or declaring an exemption after the due date of the last day of February shall pay a \$75.00 late filing penalty. This penalty shall be submitted with the report. A report that is either received by the board or postmarked on or before the due date shall be considered timely filed. An attorney who is issued a notice to show cause pursuant to Rule .1523(b) shall pay a late compliance fee of \$125.00 pursuant to Rule .1523(e) of this subchapter. The board may waive the late filing penalty or the late compliance fee upon a showing of hardship or serious extenuating circumstances or other good cause.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Effective December 8, 1994; Amendments Approved by the Supreme Court: October 1, 2003; March 3, 2005; March 2, 2006; October 9, 2008; September 20, 2018.

27 NCAC 01D .1523 NONCOMPLIANCE

(a) Failure to Comply with Rules May Result in Suspension. A member who is required to file a report of CLE credits and does not do so or who fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and attendee fees, may be suspended from the practice of law in the state of North Carolina.

(b) Notice of Failure to Comply. The board shall notify a member who appears to have failed to meet the requirements of these rules that the member will be suspended from the practice of law in this state, unless the

member shows good cause in writing why the suspension should not be made or the member shows in writing that he or she has complied with the requirements within the 30-day period after service of the notice. 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 according to 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.

(c) Entry of Order of Suspension Upon Failure to Respond to Notice to Show Cause. If a written response attempting to show good cause is not postmarked or received by the board by the last day of the 30-day period after the member was served with the notice to show cause upon the recommendation of the board and the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d) of this Subchapter.

(d) Procedure Upon Submission of a Timely Response to a Notice to Show Cause

- (1) Consideration by the Board. If the member files a timely written response to the notice, the board shall consider the matter at its next regularly scheduled meeting or may delegate consideration of the matter to a duly appointed committee of the board. If the matter is delegated to a committee of the board and the committee determines that good cause has not been shown, the member may file an appeal to the board. The appeal must be filed within 30 calendar days of the date of the letter notifying the member of the decision of the committee. The board shall review all evidence presented by the member to determine whether good cause has been shown or to determine whether the member has complied with the requirements of these rules within the 30-day period after service of the notice to show cause.
- (2) Recommendation of the Board. The board shall determine whether the member has shown good cause why the member should not be suspended. If the board determines that good cause has not been shown or that the member has not shown compliance with these rules within the 30-day period after service of the notice to show cause, then the board shall refer the matter to the Administrative Committee that the member be suspended.
- (3) Consideration by and Recommendation of the Administrative Committee. The Administrative Committee shall consider the matter at its next regularly scheduled meeting. 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 comply with the rules governing the continuing legal education program. Except as set forth above, the procedure for such hearing shall be as set forth in Rule .0903(d)(1) and (2) of this Subchapter.
- (4) Order of Suspension. Upon the recommendation of the Administrative Committee, the council may determine that the member has not complied with these rules and may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d)(3) of this Subchapter.

(e) Late Compliance Fee. Any member to whom a notice to show cause is issued pursuant to Paragraph (b) above shall pay a late compliance fee as set forth in Rule .1522(d) of this Subchapter; provided, however, upon a showing of good cause as determined by the board as described in Paragraph (d)(2) above, the fee may be waived.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amended Eff. August 23, 2012; October 9, 2008; October 1, 2003; February 3, 2000; March 6, 1997; March 7, 1996.

27 NCAC 01D .1524 REINSTATEMENT

(a) Reinstatement Within 30 Days of Service of Suspension Order

A member who is suspended for noncompliance with the rules governing the continuing legal education program may petition the secretary for an order of reinstatement of the member's license at any time up to 30 days after the service of the suspension order upon the member. The secretary shall enter an order reinstating the member to active status upon receipt of a timely written request and satisfactory showing by the member that the member cured the continuing legal education deficiency for which the member was suspended. Such member shall not be required to file a formal reinstatement petition or pay a \$250 reinstatement fee.

(b) Procedure for Reinstatement More than 30 Days After Service of the Order of Suspension

Except as noted below, the procedure for reinstatement more than 30 days after service of the order of suspension shall be as set forth in Rule .0904(c) and (d) of this subchapter, and shall be administered by Administrative Committee.

(c) Reinstatement Petition

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for noncompliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary. The secretary shall transmit a copy of the petition to each member of the board. The reinstatement petition shall contain the information and be in the form required by Rule .0904(c) of this subchapter. If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education programs that the member has attended and the number of credit hours obtained in order to cure any continuing legal education deficiency for which the member was suspended.

(d) Reinstatement Fee

In lieu of the \$125.00 reinstatement fee required by Rule .0904(c)(4)(A), the petition shall be accompanied by a reinstatement fee payable to the board, in the amount of \$250.00.

(e) Determination of Board; Transmission to Administrative Committee

Within 30 days of the filing of the petition for reinstatement with the secretary, the board shall determine whether the deficiency has been cured. The board's written determination and the reinstatement petition shall be transmitted to the secretary within five days of the determination by the board. The secretary shall transmit a copy of the petition and the board's recommendation to each member of the Administrative Committee.

(f) Consideration by Administrative Committee

The Administrative Committee shall consider the reinstatement petition, together with the board's determination, pursuant to the requirements of Rule .0902(c)-(f) of this subchapter.

(g) Hearing Upon Denial of Petition for Reinstatement

The procedure for hearing upon the denial by the Administrative Committee of a petition for reinstatement shall be as provided in Section .1000 of this subchapter.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 7, 1996; March 6, 1997; February 3, 2000;
March 3, 2005; September 25, 2019.

27 NCAC 01D .1525 CONFIDENTIALITY

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994;
Amended Eff. March 3, 1999;
Repealed Eff. October 17, 2001.

27 NCAC 01D .1526 EFFECTIVE DATE

- (a) The effective date of these Rules shall be January 1, 1988.
- (b) Active members licensed prior to July 1 of any calendar year shall meet the continuing legal education requirements of these Rules for such year.
- (c) Active members licensed after June 30 of any calendar year must meet the continuing legal education requirements of these Rules for the next calendar year.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1527 REGULATIONS

The following regulations (Section .1600 of the Rules of the North Carolina State Bar) for the continuing legal education program are hereby adopted and shall remain in effect until revised or amended by the board with the approval of the council. The board may adopt other regulations to implement the continuing legal education program with the approval of the council.

History Note: Authority Order of the NC Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994.

SECTION .1600 – REGULATIONS GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1601 GENERAL REQUIREMENTS FOR PROGRAM APPROVAL

(a) Approval. CLE programs may be approved upon the written application of a sponsor, including a registered sponsor, or of an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:

- (1) If advance approval is requested by a sponsor, the application and supporting documentation, including one substantially complete set of the written materials to be distributed at the program, shall be submitted at least 50 days prior to the date on which the program is scheduled. If advance approval is requested by an active member, the application need not include a complete set of written materials.
- (2) In all other cases, the application and supporting documentation shall be submitted by the sponsor not later than 50 days after the date the program was presented or prior to the end of the calendar year in which the program was presented, whichever is earlier. Active members requesting credit must submit the application and supporting documentation within 50 days after the date the program was presented or, if the 50 days have elapsed, as soon as practicable after receiving notice from the board that the program accreditation request was not submitted by the sponsor.
- (3) The application shall be submitted on a form furnished by the board.
- (4) The application shall contain all information requested on the form.
- (5) The application shall be accompanied by a program outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.
- (6) The application shall include a detailed calculation of the total CLE hours and hours of professional responsibility.

(b) Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors, including registered sponsors, and active members seeking credit for an approved program shall furnish, upon request of the board, a copy of all materials presented and distributed at a CLE program. Written materials consisting merely of an outline without citation or explanatory notations generally will not be sufficient for approval. Any sponsor, including a registered sponsor, that expects to conduct a CLE program for which suitable written materials will not be made available to all attendees may obtain approval for that program only by application to the board at least 50 days in advance of the program showing why written materials are not suitable or readily available for such a program.

(c) Facilities. Sponsors must provide a facility conducive to learning with sufficient space for taking notes.

(d) Online CLE. The sponsor of an online program must have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an online program provided the total time spent participating in the program is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the board within 30 days after a member completes his or her participation in the program.

(e) Records. Sponsors, including registered sponsors, shall within 30 days after the program is concluded

- (1) furnish to the board a list of the names of all North Carolina attendees together with their North Carolina State Bar membership numbers; the list shall be in alphabetical order and in a format prescribed by the board;
- (2) remit to the board the appropriate sponsor fee; and, if payment is not received by the board within 30 days after the program is concluded, interest at the legal rate shall be incurred; provided, however, the board may waive such interest upon a showing of good cause by a sponsor; and
- (3) furnish to the board a complete set of all written materials distributed to attendees at the program.

(f) Announcement. Sponsors that have advanced approval for programs may include in their brochures or other program descriptions the information contained in the following illustration:

This program has been approved by the Board of Continuing Legal Education of the North Carolina State Bar for continuing legal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility.

(g) Notice. Sponsors not having advanced approval shall make no representation concerning the approval of the program for CLE credit by the board. The board will mail a notice of its decision on CLE program approval requests within 45 days of their receipt when the request for approval is submitted before the program and within 45 days when the request is submitted after the program. Approval thereof will be deemed if the notice is not timely mailed. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the board or if the board timely notifies the sponsor that the matter has been tabled and the reason therefor.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: October 1, 2003; March 3, 2005; March 6, 2008; October 7, 2010; April 5, 2018; September 25, 2019.

27 NCAC 01D .1602 COURSE CONTENT REQUIREMENTS

(a) Professional Responsibility Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions - Accredited professional responsibility programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such program or segment of a program.

(b) Law School Courses - Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved programs. Computation of CLE credit for such courses shall be as prescribed in Rule .1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.

(c) Law Practice Management Programs - A CLE accredited program on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited program on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Programs- A program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g. word processing); learning to use office equipment (except as permitted by paragraph (e) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Technology Training Programs – A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer or improving law office management and must satisfy the requirements of paragraphs (c) and (d) of this rule as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool, process, or methodology to increase the efficiency of performing tasks

necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training programs on Microsoft Office, Excel, Access, Word, Adobe, etc.; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology unless the program is solely about using the IT tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT tool, process, or methodology.

(f) Activities That Shall Not Be Accredited CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

- (1) courses within the normal college curriculum such as English, history, social studies, and psychology;
- (2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(c);
- (3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from programs dealing with development of law office procedures and management designed to raise the level of service provided to clients).

(g) Service to the Profession Training - A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's program trains volunteer attorneys in service to the profession, and if such program or segment meets the requirements of Rule .1519(b)-(g) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such program or program segment.

(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys, except as follows:

- (1) programs exempted by the board under Rule .1501(c)(9) of this subchapter; and
- (2) live programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

(i) Bar Review/Refresher Course. Programs designed to review or refresh recent law school graduates or attorneys in preparation for any bar exam shall not be approved for CLE credit.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: March 6, 1997; March 5, 1998; March 3, 1999; March 1, 2001; June 7, 2001; March 3, 2005; March 2, 2006; March 8, 2007; October 9, 2008; March 6, 2014; June 9, 2016; September 20, 2018; September 25, 2019.

27 NCAC 01D .1603 REGISTERED SPONSORS

(a) Application for Registered Sponsor Status. To be designated as a registered sponsor of programs under Rule .1520(a) of this subchapter, a sponsor must satisfy the following requirements:

- (1) File a completed application for registered sponsor status on a form furnished by the board.
- (2) During the three years prior to application, present at least five original programs that were approved for CLE credit by the board.
- (3) During the three years prior to application, substantially comply with the requirements in Rule .1601(a) and (e) of this subchapter on application for program approval, remitting sponsor fees, and reporting attendance for every program approved for credit.

(b) Renewal of Registration. To retain registered sponsor status, a sponsor must apply for renewal every five years, as required by Rule .1520(a)(1), and must satisfy the requirements of paragraphs (a) of this rule. To facilitate staggered renewal applications, at the time that this rule becomes effective, any sponsor previously designated as an "accredited sponsor" shall be designated a registered sponsor and shall be assigned an initial renewal year which shall be not more than three years later.

(c) Revocation of Registered Sponsor Status. The board may at any time revoke the registration of a registered sponsor for failure to satisfy the requirements of Section .1500 and Section .1600 of this subchapter.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: April 5, 2018; September 25, 2019.

27 NCAC 01D .1604 ACCREDITATION OF PRERECORDED SIMULTANEOUS BROADCAST, AND COMPUTER-BASED PROGRAMS

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court March 6, 2014; March 6, 2008, March 2, 2006;
March 3, 2005; March 6, 1997;
Repealed Eff. September 25, 2019.

27 NCAC 01D .1605 COMPUTATION OF CREDIT

(a) Computation Formula - CLE and professional responsibility hours shall be computed by the following formula:
Sum of the total minutes of actual instruction / 60 = Total Hours

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

- (1) introductory remarks;
- (2) breaks;
- (3) business meetings;
- (4) speeches in connection with banquets or other events which are primarily social in nature;
- (5) question and answer sessions at a ratio in excess of 15 minutes per CLE hour and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.

(c) Teaching - As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education program or a continuing paralegal education program held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Programs accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three hours of credit for each thirty minutes of presentation. Repeat programs qualify for one-half of the credits available for the initial program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.

(d) Teaching Law Courses

- (1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school. A member may also earn CLE credit by teaching a course or a class at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.
- (2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.
- (3) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.

- (4) Credit Hours. Credit for teaching described in Rule .1605(d)(1) – (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:
- (A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).
 - (B) Teaching a Class. 1.0 Hour of CLE credit for every 50 – 60 minutes of teaching.
 - (5) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: March 3, 1999; October 1, 2003; November 16, 2006; August 23, 2012; September 25, 2019.

27 NCAC. 01D .1606 FEES

(a) Sponsor Fee - The sponsor fee, a charge paid directly by the sponsor, shall be paid by all sponsors of approved programs presented in North Carolina and by registered sponsors located in North Carolina for approved programs wherever presented, except that no sponsor fee is required where approved programs are offered without charge to attendees. In any other instance, payment of the fee by the sponsor is optional. The amount of the fee, per approved CLE hour per active member of the North Carolina State Bar in attendance, is \$3.50. This amount shall be allocated as follows: \$1.25 to the Board of Continuing Legal Education to administer the CLE program; \$1.00 to the Chief Justice's Commission on Professionalism; \$1.00 to the North Carolina Equal Access to Justice Commission; and \$.25 to the State Bar to administer the funds distributed to the commissions. The fee is computed as shown in the following formula and example which assumes a 6-hour program attended by 100 North Carolina lawyers seeking CLE credit:

Fee: $\$3.50 \times \text{Total Approved CLE Hours (6)} \times \text{Number of NC Attendees (100)} = \text{Total Sponsor Fee (\$2,100)}$

(b) Attendee Fee - The attendee fee is paid by the North Carolina attorney who requests credit for a program for which no sponsor fee was paid. An attorney will be invoiced for any attendees fees owed following the submission of the attorney's annual report form pursuant to Rule .1522(a) of this subchapter. Payment shall be remitted within 30 (thirty) days of the date of the invoice. The amount of the fee, per approved CLE hour for which the attorney claims credit, is \$3.50. This amount shall be allocated as follows: \$1.25 to the Board of Continuing Legal Education to administer the CLE program; \$1.00 to the Chief Justice's Commission on Professionalism; \$1.00 to the North Carolina Equal Access to Justice Commission; and \$0.25 to the State Bar to administer the funds distributed to the commissions. It is computed as shown in the following formula and example which assumes that the attorney attended a program approved for 3 hours of CLE credit:

Fee: $\$3.50 \times \text{Total Approved CLE hours (3.0)} = \text{Total Attendee Fee (\$10.50)}$

(c) Fee Review - The board will review the level of the fee at least annually and adjust it as necessary to maintain adequate finances for prudent operation of the board in a nonprofit manner. The council shall annually review the assessments for the Chief Justice's Commission on Professionalism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.

(d) Uniform Application and Financial Responsibility - The fee shall be applied uniformly without exceptions or other preferential treatment for a sponsor or attendee. The board shall make reasonable efforts to collect the sponsor fee from the sponsor of a CLE program when appropriate under Rule .1606(a) above. However, whenever a sponsor fee is not paid by the sponsor of a program, regardless of the reason, the lawyer requesting CLE credit for the program shall be financially responsible for the fee.

(e) Failure to Timely Pay Sponsor Fee - A sponsor's failure to pay sponsor fees within ninety (90) days following the completion of a program will result in the denial of that sponsor's subsequent program applications until fees are paid.

History Note: Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted Eff. December 8, 1994; Amendments Approved by the Supreme Court: December 30, 1998; October 1, 2003; February 5, 2009; October 8, 2009; November 5, 2015; April 5, 2018; September 25, 2019; December 14, 2021.

27 NCAC 01D .1607	RESERVED
27 NCAC 01D .1608	RESERVED
27 NCAC 01D .1609	RESERVED
27 NCAC 01D .1610	RESERVED
27 NCAC 01D .1611	RESERVED

SECTION .1700 - THE PLAN OF LEGAL SPECIALIZATION

27 NCAC 01D .1701 PURPOSE

The purpose of this plan of certified legal specialization is to assist in the delivery of legal services to the public by identifying to the public those lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, so that the public can more closely match its needs with available services; and to improve the competency of the bar by establishing an additional incentive for lawyers to participate in continuing legal education and meet the other requirements of specialization.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .1702 JURISDICTION: AUTHORITY

The Council of the North Carolina State Bar (the council) with the approval of the Supreme Court of North Carolina hereby establishes the Board of Legal Specialization (board) as a standing committee of the council, which board shall be the authority having jurisdiction under state law over the subject of specialization of lawyers.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .1703 OPERATIONAL RESPONSIBILITY

The responsibility for operating the specialization program rests with the board, subject to the statutes governing the practice of law, the authority of the council and the rules of governance of the board.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .1704 SIZE OF BOARD

The board shall have nine members, six of whom must be attorneys in good standing and authorized to practice law in the state of North Carolina. The lawyer members of the board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who specialize.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .1705 LAY PARTICIPATION

The board shall have three members who are not licensed attorneys.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .1706 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The members of the board shall be appointed by the council. The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1707 TERM OF OFFICE

Each member who is appointed to the board shall serve for a term of three years beginning as of the first day of the month following the date on which the appointment is made by the council. See, however, Rule .1708 of this Section.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1708 STAGGERED TERMS

It is intended that members of the board shall be elected to staggered terms such that three members are appointed in each year. Of the initial board, three members (two lawyers and one nonlawyer) shall be elected to terms of one year; three members (two lawyers and one nonlawyer) shall be elected to terms of two years; and three members (two lawyers and one nonlawyer) shall be elected to terms of three years. Thereafter, three members (two lawyers and one nonlawyer) shall be elected in each year.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1709 SUCCESSION

Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Thereafter, no person may be reappointed without having been off of the board for at least three years: provided, however, that any member who is designated chairperson at the time that the member's second three-year term expires may serve one additional year on the board in the capacity of chair.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 5, 2015; October 9, 2008.

27 NCAC 01D .1710 APPOINTMENT OF CHAIRPERSON

The chairperson of the board shall be appointed from time to time as necessary by the council from among the lawyer members of the board. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1711 APPOINTMENT OF VICE-CHAIRPERSON

The vice-chairperson of the board shall be appointed from time to time as necessary by the council from among the lawyer members of the board. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during his or her tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1712 SOURCE OF FUNDS

Funding for the program carried out by the board shall come from such application fees, examination fees, course accreditation fees, annual fees or recertification fees as the board, with the approval of the council, may establish.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1713 FISCAL RESPONSIBILITY

All funds of the board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

- (1) Maintenance of Accounts: Audit - The North Carolina State Bar shall maintain a separate account for funds of the board such that such funds and expenditure therefrom can be readily identified. The accounts of the board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.
- (2) Investment Criteria - The funds of the board shall be handled, invested and reinvested in accordance with investment policies adopted by the council for the handling of dues, rents and other revenues received by the North Carolina State Bar in carrying out its official duties.
- (3) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary-treasurer of the North Carolina State Bar.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1714 MEETINGS

The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, electronic mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be four or more of the members serving at the time of the meeting.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 28, 2017; December 14, 2021.*

27 NCAC 01D .1715 ANNUAL REPORT

The board shall prepare at least annually a report of its activities and shall present same to the council one month prior to its annual meeting.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1716 POWERS AND DUTIES OF THE BOARD

Subject to the general jurisdiction of the council and the North Carolina Supreme Court, the board shall have jurisdiction of all matters pertaining to regulation of certification of specialists in the practice of law and shall have the power and duty

- (1) to administer the plan;
- (2) subject to the approval of the council and the Supreme Court, to designate areas in which certificates of specialty may be granted and define the scope and limits of such specialties and to provide procedures for the achievement of these purposes;
- (3) to appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter identified;
- (4) to make and publish standards for the certification of specialists, upon the board's own initiative or upon consideration of recommendations made by the specialty committees, such standards to be designed to produce a uniform level of competence among the various specialties in accordance with the nature of the specialties;
- (5) to certify specialists or deny, suspend or revoke the certification of specialists upon the board's own initiative, upon recommendations made by the specialty committees or upon requests for review of recommendations made by the specialty committees;
- (6) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;
- (7) to propose and request the council to make amendments to this plan whenever appropriate;

- (8) to cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct to the appropriate disciplinary authority;
- (9) to evaluate and approve, or disapprove, any and all continuing legal education courses, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the board for the certification of specialists and in connection therewith to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the providers of continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, organizations providing continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists;
- (10) to cooperate with other organizations, boards, and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization including, but not limited to, utilizing appropriate and qualified organizations that are ABA accredited, to prepare and administer the written specialty examinations for specialties based predominantly on federal law;
- (11) notwithstanding any conflicting provision of the certification standards for any area of specialty, to direct any of the specialty committees not to administer a specialty examination if, in the judgment of the board, there are insufficient applicants or such would otherwise not be in the best interest of the specialization program.

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amendments Approved by the Supreme Court: November 16, 2006; December 14, 2021.

27 NCAC 01D .1717 RETAINED JURISDICTION OF THE COUNCIL

The council retains jurisdiction with respect to the following matters:

- (1) upon recommendation of the board, establishing areas in which certificates of specialty may be granted;
- (2) amending this plan;
- (3) hearing appeals taken from actions of the board;
- (4) establishing or approving fees to be charged in connection with the plan;
- (5) regulating attorney advertisements of specialization under the Rules of Professional Conduct.

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.

27 NCAC 01D .1718 PRIVILEGES CONFERRED AND LIMITATIONS IMPOSED

The board in the implementation of this plan shall not alter the following privileges and responsibilities of certified specialists and other lawyers.

- (1) No standard shall be approved which shall in any way limit the right of a certified specialist to practice in all fields of law. Subject to the Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he or she is certified as a specialist in a particular field of law.
- (2) No lawyer shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. Subject to the Rules of Professional Conduct, any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, or advertise his or her availability to practice in any field of law consistent with the Rules of Professional Conduct, even though he or she is not certified as a specialist in that field.
- (3) All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the specialist may be a member.
- (4) Participation in the program shall be on a completely voluntary basis.

- (5) A lawyer may be certified as a specialist in no more than two fields of law.
- (6) When a client is referred by another lawyer to a lawyer who is a recognized specialist under this plan on a matter within the specialist's field of law, such specialist shall not take advantage of the referral to enlarge the scope of his or her representation and, consonant with any requirements of the Rules of Professional Conduct, such specialist shall not enlarge the scope of representation of a referred client outside the area of the specialty field.
- (7) Any lawyer certified as a specialist under this plan shall be entitled to advertise that he or she is a "Board Certified Specialist" in his or her specialty to the extent permitted by the Rules of Professional Conduct.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: December 14, 2021.*

27 NCAC 01D .1719 SPECIALTY COMMITTEES

(a) The board shall establish a separate specialty committee for each specialty in which specialists are to be certified. Each specialty committee shall be composed of seven members appointed by the board, one of whom shall be designated annually by the chairperson of the board as chairperson of the specialty committee. Members of each specialty committee shall be lawyers licensed and currently in good standing to practice law in this state who, in the judgment of the board, are competent in the field of law to be covered by the specialty. Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the board to staggered terms of office and the initial appointees shall serve as follows: two shall serve for one year after appointment; two shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment by the board to a vacancy shall be for the remaining term of the member leaving the specialty committee. All members shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term, provided, however, that the board may reappoint the chairperson of a committee to a third three-year term if the board determines that the reappointment is in the best interest of the specialization program. Meetings of the specialty committee shall be held at regular intervals at such times, places and upon such notices as the specialty committee may from time to time prescribe or upon direction of the board.

(b) Each specialty committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan in that specialty. Each specialty committee shall advise and make recommendations to the board as to standards for the specialty and the certification of individual specialists in that specialty. Each specialty committee shall be charged with actively administering the plan in its specialty and with respect to that specialty shall

- (1) recommend to the board reasonable and nondiscriminatory standards applicable to that specialty;
- (2) make recommendations to the board for certification, continued certification, denial, suspension, or revocation of certification of specialists and for procedures with respect thereto;
- (3) administer procedures established by the board for applications for certification and continued certification as a specialist and for denial, suspension, or revocation of such certification;
- (4) administer examinations and other testing procedures, if applicable, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as specialists;
- (5) make recommendations to the board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty;
- (6) perform such other duties and make such other recommendations as may be delegated to or requested of the specialty committee by the board.

(c) The board may appoint advisory members to a specialty committee to assist with the development, administration, and grading of the examination, the drafting of standards for a subspecialty, and any other activity set forth in Paragraph (b) of this Rule. Advisory members shall be non-voting except as to any specific activity delegated to the advisory members by the board or by the chair of the specialty committee, including the evaluation of applications for certification. No more than five advisory members may be appointed to a specialty committee. Advisory members shall be lawyers licensed and currently in good standing to practice law in this state who, in the judgment of the board, are competent in the field of law to be covered by the specialty. Advisory members shall hold office for an initial term of three years and shall thereafter serve at the discretion of the board for not more than

two additional three-year terms. Appointment by the board to a vacancy shall be for the remaining term, if any, of the advisory member being replaced.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 10, 2011; November 7, 1996.*

27 NCAC 01D .1720 MINIMUM STANDARDS FOR CERTIFICATION OF SPECIALISTS

(a) To qualify for certification as a specialist, a lawyer applicant must pay any required fee, comply with the following minimum standards, and meet any other standards established by the board for the particular area of specialty.

- (1) The applicant must be licensed in a jurisdiction of the United States for at least five years immediately preceding his or her application and must be licensed in North Carolina for at least three years immediately preceding his or her application. The applicant must be currently in good standing to practice law in this state and the applicant's disciplinary record with the courts, the North Carolina State Bar, and any other government licensing agency must support qualification in the specialty.
- (2) The applicant must make a satisfactory showing according to objective and verifiable standards, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the five calendar years immediately preceding the calendar year of application. Such substantial involvement shall be defined as to each specialty from a consideration of its nature, complexity, and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. It is a measurement of actual experience within the particular specialty according to any of several standards. It may be measured by the time spent on legal work within the areas of the specialty, the number or type of matters handled within a certain period of time or any combination of these or other appropriate factors. However, within each specialty, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit certification of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless as a criterion of competence. Substantial involvement may vary from specialty to specialty, but, if measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than 25 percent of the total practice of a lawyer engaged in a normal full-time practice. Reasonable and uniform practice equivalents may be established including, but not limited to, successful pursuit of an advance educational degree, teaching, judicial, government, or corporate legal experience.
- (3) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education in the specialty accredited by the board for the specialty, the minimum being an average of 12 hours of credit for continuing legal education, or its equivalent, for each of the three calendar years immediately preceding application. Upon establishment of a new specialty, this standard may be satisfied in such manner as the board, upon advice from the appropriate specialty committee, may prescribe or may be waived if, and to the extent, creditable continuing legal education courses have not been available during the three years immediately preceding establishment of the specialty.
- (4) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of qualification in the specialty through peer review. The applicant must provide, as references, the names of at least ten lawyers, all of whom are licensed and currently in good standing to practice law in this state, or in any state, or judges, who are familiar with the competence and qualification of the applicant as a specialist. None of the references may be persons related to the applicant or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his or her application consents to confidential inquiry by the board or appropriate disciplinary body and other persons regarding the applicant's competence and qualifications to be certified as a specialist. An applicant must receive a minimum of five favorable peer reviews to be considered by the board for compliance with this standard.
 - (A) Each specialty committee shall evaluate the information provided by an applicant's references to make a recommendation to the board as to the applicant's qualification in

the specialty through peer review. The evaluation shall include a determination of the weight to be given to each peer review and shall take into consideration a reference's years of practice, primary practice areas and experience in the specialty, and the context in which a reference knows the applicant.

- (5) The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability in the specialty for which certification is applied. The examination must be applied uniformly to all applicants within each specialty area. The board shall assure that the contents and grading of the examination are designed to produce a uniform level of competence among the various specialties.

(b) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications, references, tests and test scores, files, reports, investigations, hearings, findings, recommendations, and adverse determinations shall be confidential so far as is consistent with the effective administration of this plan, fairness to the applicant and due process of law.

(c) The board may adopt uniform rules waiving the requirements of Rules .1720(a)(4) and (5) above for members of a specialty committee, including advisory members, at the time that the initial written examination for that specialty or any subspecialty of the specialty is given, and permitting said members to file applications to become a board certified specialist in that specialty upon compliance with all other required minimum standards for certification of specialists.

(d) Upon written request of the applicant and with the recommendation of the appropriate specialty committee, the board may for good cause shown waive strict compliance with the criteria relating to substantial involvement, continuing legal education, or peer review, as those requirements are set forth in the standards for certification for specialization. However, there shall be no waiver of the requirements that the applicant pass a written examination and be licensed to practice law in North Carolina for five years preceding the application.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 27, 2013; August 23, 2012; March 8, 2012; March 10, 2011; March 3, 2005.*

27 NCAC 01D .1721 MINIMUM STANDARDS FOR CONTINUED CERTIFICATION OF SPECIALISTS

(a) The period of certification as a specialist shall be five years. During such period the board or appropriate specialty committee may require evidence from the specialist of his or her continued qualification for certification as a specialist, and the specialist must consent to inquiry by the board, or appropriate specialty committee of lawyers and judges, the appropriate disciplinary body, or others in the community regarding the specialist's continued competence and qualification to be certified as a specialist. Application for and approval of continued certification as a specialist shall be required prior to the end of each five-year period. To qualify for continued certification as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board with respect to the specialty both continued knowledge of the law of this state and continued competence and must comply with the following minimum standards.

- (1) The specialist's disciplinary record with the courts, the North Carolina State Bar, and any other government licensing agency supports qualification in the specialty.
- (2) The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the entire period of certification as a specialist. Substantial involvement for continued certification shall be determined in accordance with the principles set forth in Rule .1720(a)(2) of this subchapter and the specific standards for each specialty. In addition, unless prohibited or limited by the standards for a particular specialty, the following judicial service may be substituted for the equivalent years of practice experience if the applicant's judicial service included presiding over cases in the specialty: service as a full-time state or federal trial, appellate, or bankruptcy judge (including service as a federal magistrate judge); service as a judge for the courts of a federally recognized Indian tribe; service as an administrative law judge for the Social Security Administration; and service as a commissioner or deputy commissioner of the Industrial Commission.
- (3) The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education accredited by the board for the specialty during the period of certification as a specialist, the minimum being an average of 12

hours of credit for continuing legal education, or its equivalent, for each year during the entire period of certification as a specialist.

- (4) The specialist must comply with the requirements set forth in Rule .1720(a)(1).
- (5) The specialist must make a satisfactory showing of qualification in the specialty through peer review. The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in any state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .1720(a)(4) of this subchapter apply to this standard.

(b) Upon written request of the applicant and with the recommendation of the appropriate specialty committee, the board may for good cause shown waive strict compliance with the criteria relating to substantial involvement, continuing legal education, or peer review, as those requirements are set forth in the standards for continued certification. Before or after taking a continuing legal education course that is not in the specialty or a related field, a specialist may petition the board to approve the program as satisfying the continuing legal education criteria for recertification. The petition shall show the relevancy of the program to the specialist's proficiency as a specialist, and be referred to the specialty committee for its recommendation prior to a decision by the board.

(c) After the period of initial certification, a specialist may request, in advance and in writing, approval from the board for a waiver of one year of the substantial involvement necessary to satisfy the standards for the specialist's next recertification. The specialist may request a waiver of one year of substantial involvement for every five years that the specialist has met the substantial involvement standard beginning with the period of initial certification. However, none of the years for which a waiver is requested may be consecutive. When a waiver of the substantial involvement requirement is granted, the specialist must satisfy all of the other requirements for recertification.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: March 6, 2002; February 5, 2009; March 8, 2012;
August 27, 2013; March 27, 2019.

27 NCAC 01D .1722 ESTABLISHMENT OF ADDITIONAL STANDARDS

The board may establish, on its own initiative or upon the specialty committee's recommendation, additional or more stringent standards for certification than those provided in Rules .1720 and .1721 of this Section. Additional standards or requirements established under this Rule need not be the same for initial certification and continued certification as a specialist. It is the intent of the plan that all requirements for certification or recertification in any area of specialty shall be no more or less stringent than the requirements in any other area of specialty.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1723 REVOCATION OR SUSPENSION OF CERTIFICATION AS A SPECIALIST

(a) Automatic Revocation or Suspension of Specialty Certification Following Professional Discipline. The board shall revoke its certification of a lawyer as a specialist if the lawyer is disbarred or receives a disciplinary suspension, any part of which is or subsequently becomes active, from the Disciplinary Hearing Commission of the North Carolina State Bar, a North Carolina court of law, or, if the lawyer is licensed in another jurisdiction in the United States, from a court of law or the regulatory authority of that jurisdiction. The board shall suspend its certification of a lawyer as a specialist if the lawyer receives a disciplinary suspension, all of which is stayed. If a stayed disciplinary suspension ends without becoming active, the lawyer may be reinstated as a specialist if the lawyer applies for recertification and satisfies all of the requirements for recertification as set forth in the recertification standards for the relevant specialty. During a suspension from specialty certification, application for recertification shall be deferred until the end of the suspension. This provision, and any amendment thereto, shall apply to discipline received on or after the effective date of the provision or the amendment as appropriate.

(b) Discretionary Revocation or Suspension. The board may revoke its certification of a lawyer as a specialist if the specialty is terminated or may suspend or revoke such certification if it is determined, upon the board's own initiative or upon recommendation of the appropriate specialty committee and after hearing before the board as provided in Rule .1802 and Rule .1803, that

- (1) the certification of the lawyer as a specialist was made contrary to the rules and regulations of the board;
- (2) the lawyer certified as a specialist made a false representation, omission or misstatement of material fact to the board or appropriate specialty committee;
- (3) the lawyer certified as a specialist has failed to abide by all rules and regulations promulgated by the board;
- (4) the lawyer certified as a specialist has failed to pay the fees required;
- (5) the lawyer certified as a specialist no longer meets the standards established by the board for the certification of specialists;
- (6) the lawyer certified as a specialist received public discipline from the North Carolina State Bar on or after the effective date of this provision, other than suspension or disbarment from practice and the board finds that the conduct for which the professional discipline was received reflects adversely on the specialization program and the lawyer's qualification as a specialist; or
- (7) the lawyer certified as a specialist was sanctioned or received public discipline on or after the effective date of this provision from any state or federal court or, if the lawyer is licensed in another jurisdiction, from the regulatory authority of that jurisdiction in the United States, and the board finds that the conduct for which the sanctions or professional discipline was received reflects adversely on the specialization program and the lawyer's qualification as a specialist.

(c) Report to Board. A lawyer certified as a specialist has a duty to inform the board promptly of any fact or circumstance described in Rules .1723(a) and (b) above.

(d) Reinstatement. If the board revokes its certification of a lawyer as a specialist, the lawyer cannot again be certified as a specialist unless he or she so qualifies upon application made as if for initial certification as a specialist and upon such other conditions as the board may prescribe. If the board suspends certification of a lawyer as a specialist, such certification cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the board may prescribe.

History Note: Authority G.S. 84-23;
 Readopted Effective December 8, 1994;
 Amendments Approved by the Supreme Court: February 5, 2004; April 5, 2018.

27 NCAC 01D .1724 RIGHT TO HEARING AND APPEAL TO COUNCIL

A lawyer who is denied certification or continued certification as a specialist or whose certification is suspended or revoked shall have the right to a hearing before the board and, thereafter, the right to appeal the ruling made thereon by the board to the council under such rules and regulations as the board and council may prescribe. (See Section .1800 of this Subchapter.)

History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.

27 NCAC 01D .1725 AREAS OF SPECIALTY

There are hereby recognized the following specialties:

- (1) bankruptcy law
 - (a) consumer bankruptcy law
 - (b) business bankruptcy law
- (2) estate planning and probate law
- (3) real property law
 - (a) real property - residential
 - (b) real property - business, commercial, and industrial
- (4) family law
- (5) criminal law
 - (a) federal and state criminal law
 - (b) state criminal law
 - (c) juvenile delinquency law
- (6) immigration law
- (7) workers' compensation
- (8) Social Security disability law

- (9) elder law
- (10) appellate practice
- (11) trademark law
- (12) utilities law
- (13) privacy and information security law

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: July 29, 1998; February 27, 2003; February 5, 2009; March 8, 2012; March 6, 2014; April 5, 2018.

27 NCAC 01D .1726 CERTIFICATION STANDARDS OF THE SPECIALTIES OF BANKRUPTCY LAW, ESTATE PLANNING AND PROBATE LAW, REAL PROPERTY LAW, FAMILY LAW, AND CRIMINAL LAW

Previous decisions approving the certification standards for the areas of specialty listed above are hereby reaffirmed.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1727 INACTIVE STATUS

(a) Petition for Inactive Status. The board may transfer a certified specialist to inactive status upon receipt of a petition, on a form approved by the board, demonstrating that the petitioner satisfies the following conditions:

- (1) Certified for five years or more;
- (2) Special circumstances unique to the specialist constituting undue hardship or other reasonable basis for exempting the specialist from the substantial involvement standard for continued certification; including, but not limited to, marriage to active-duty military personnel requiring frequent relocation, active duty in the military reserves, disability lasting a total of six months or more over a 12-month period of time, and illness of an immediate family member requiring leaves of absence from work in excess of six months or more over a 12-month period of time; and
- (3) Discontinuation of all representations of specialist certification in all communications about the lawyer's practice.

(b) Duration of Inactive Status. If the petitioner qualifies, inactive status shall be granted by the board for a period of not more than one year at a time. No more than three years of inactive status, whether consecutive or periodic, shall be granted to any certified specialist.

(c) Designation During Inactive Status. During the period of inactive status, the certified specialist shall be listed in the board's records as inactive. An inactive specialist shall not represent that he or she is certified during any period of inactive status; however, an inactive specialist may advertise or communicate prior dates of certification (e.g., Board Certified Specialist in Family Law 1987-2003).

(d) Annual Requirements. During the period of inactive status, the specialist shall not be required to satisfy the substantial involvement standard for continued certification in the specialty or to pay any fees; however, the specialist shall be required to satisfy the continuing legal education (CLE) standard for continued certification in the specialty. If a five-year period of certification ends during a year of inactive status, application for continued certification pursuant to Rule .1721 of this subchapter shall be deferred until return to active status.

(e) Return to Active Status. To return to active status as a certified specialist, an inactive specialist shall petition the board on a form approved by the board. The inactive specialist shall be reinstated to active status upon demonstration that he or she satisfied the CLE standard for continued certification in the specialty and the recommendation of the specialty committee. Passage of a written examination in the specialty shall not be required unless the inactive specialist failed to satisfy the CLE standard for continued certification during the period of inactivity.

(f) The right to petition for inactive status pursuant to this rule is in addition to the right to request a waiver of substantial involvement allowed by Rule .1721(c) of this subchapter.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.

SECTION .1800 - HEARING AND APPEAL RULES OF THE BOARD OF LEGAL SPECIALIZATION

**27 NCAC 01D .1801 INCOMPLETE APPLICATIONS; RECONSIDERATION OF APPLICATIONS
REJECTED BY SPECIALTY COMMITTEE; AND RECONSIDERATION
PROCEDURE**

(a) Incomplete Applications. The executive director of the North Carolina State Bar Board of Legal Specialization (the board) will review every application to determine if the application is complete. An application is incomplete if it does not include complete answers to every question on the application and copies of all documents requested on the application. The applicant will be notified in writing if an application is incomplete. The applicant must submit the information necessary to complete the application within 21 days of the date of the notice. If the applicant fails to provide the required information during the requisite time period, the executive director will return the application to the applicant together with a refund of the application fee less a fifty dollar (\$50.00) administrative fee. The decision of the executive director to reject an application as incomplete is final unless the applicant shows good cause for an extension of time to provide the required information. This provision does not apply to an application with respect to which fewer than five completed peer review forms have been timely filed with the board.

(b) Denial of Application by Specialty Committee. The executive director shall refer all complete applications to the specialty committee for review for compliance with the standards for certification in the specialty area for which certification is sought.

After reviewing the applications, the specialty committee shall recommend to the board the acceptance or rejection of the applications. The specialty committee shall notify the board of its recommendations in writing and the reason for any negative recommendation must be specified.

- (1) Notification to Applicant of the Specialty Committee's Action. The executive director shall promptly notify the applicant in writing of the specialty committee's recommendation of rejection of the application and the board's intention to act in accordance with the committee's recommendation. The notification must specify the reason for the recommendation of rejection of the application and shall inform the applicant of the right to petition pursuant to paragraph (c) of this rule for reconsideration of the recommendation of the specialty committee.

(c) Petition for Reconsideration. Within 14 days of the date of the notice from the executive director that an application has been recommended for rejection by a specialty committee, the applicant may petition the board for reconsideration. The petition shall be in writing and shall include the following information: the applicant's election between a reconsideration hearing on the written record or in-person; and the reasons for which the applicant believes the specialty committee's recommendation should not be accepted.

(d) Reconsideration Procedure. Upon receipt of a petition filed pursuant to paragraph (c) of this rule, a three-member panel of the board, to be appointed by the chairperson of the board, shall reconsider an application pursuant to the following procedures:

- (1) Notice. The chairperson of the panel shall set the time and place of the hearing to reconsider the applicant's application as soon as practicable after the applicant's request for reconsideration is received. The applicant shall be notified of the date at least 10 days prior to the time set for the hearing.
- (2) Reconsideration on the Written Record. If the applicant elects to have the matter decided on the written record, the applicant will not be present at the hearing and no witnesses will appear before the panel except the executive director of the specialization program, or a staff designee, who shall provide administrative support to the panel. At least 10 days prior to the hearing, the applicant shall provide the panel with copies of any documents that the applicant would like to be considered by the panel.
- (3) Reconsideration In-Person. If the applicant elects to be present at the hearing, the applicant may be represented by counsel or represent himself or herself at such hearing. The applicant may offer witnesses and documents and may question any witness. At least 10 days prior to the hearing, the applicant shall provide the panel with copies of any documents that the applicant wants considered by the panel and, if the reconsideration is in-person, with the names of prospective witnesses. At least ten days prior to the hearing, the applicant shall be provided with copies of any documents that the executive director will submit to the panel, except confidential peer review forms or information, and with the names of prospective witnesses. Additional documents may be considered at the discretion of the panel.
- (4) Burden of Proof. The applicant must make a clear and convincing showing that the application satisfies the standards for certification in the applicable specialty
- (5) Conduct of Reconsideration Hearing.

- (A) Preservation of Record. The hearing shall be recorded unless the applicant agrees in writing that the hearing shall not be recorded or, if the applicant wants an official transcript, the applicant pays the costs associated with obtaining a court reporter and makes all arrangements for the court reporter's services and for the preparation of the transcript.
- (B) Procedural Rules. The reconsideration hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted and may be considered by the panel according to its probative value if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- (C) Decision of the Panel. The decision of the panel shall be by a majority of the members of the panel and shall be binding upon the board. Written notification of the decision shall be sent to the applicant. If the board's decision is unfavorable, the notification shall set forth the grounds for the decision and shall notify the applicant of the right to appeal the decision to the North Carolina State Bar Council (the council) pursuant to Rule .1804 of this subchapter.

(e) Failure of Applicant to Petition the Board for Reconsideration Within the Time Allowed by These Procedures. If the applicant does not petition the board for reconsideration of the specialty committee's recommendation of rejection of the application within the time allowed by these rules, the board shall act on the matter at its next board meeting.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015; March 11, 2010; February 5, 2009; November 16, 2006; June 1, 1995.*

27 NCAC 01D .1802 DENIAL, REVOCATION, OR SUSPENSION OF CONTINUED CERTIFICATION AS A SPECIALIST

- (a) Denial of Continued Certification. The board, upon its initiative or upon recommendation of the appropriate specialty committee, may deny continued certification of a specialist, if the applicant does not meet the requirements as found in Rule .1721(a) of this Subchapter.
- (b) Revocation and Suspension of Certification as a Specialist. The board shall revoke the certification of a lawyer as provided in Rule .1723(a) of this Subchapter and may revoke or suspend the certification of a lawyer as provided in Rule .1723(b) of this Subchapter.
- (c) Notification of Board Action. The executive director shall notify the lawyer of the board's action to grant or deny continued certification as a specialist upon application for continued certification pursuant to Rule .1721(a) of this Subchapter, or to revoke or suspend continued certification pursuant to Rule .1723(a) or (b) of this Subchapter. If the board's action is unfavorable, the notification shall set forth the grounds for the action and shall notify the lawyer of the right to a hearing if allowed by these rules.
- (d) Request for Hearing. Within 14 days of the date of the notice from the executive director of the board that the lawyer has been denied continued certification pursuant to Rule .1721(a) of this Subchapter or that certification has been revoked or suspended pursuant to Rule .1723(b) of this Subchapter, the lawyer must request a hearing before the board in writing. There is no right to a hearing upon automatic revocation pursuant to Rule .1723(a) of this Subchapter.
- (e) Hearing Procedure. Except as set forth in Rule .1802(f) below, the procedures set forth in Rule .1801(d) of this Subchapter shall be followed when a lawyer requests a hearing regarding the denial of continued certification pursuant to Rule .1721(a) of this Subchapter or the revocation or suspension of certification under Rule .1723(b) of this Subchapter.
- (f) Burden of Proof: Preponderance of the Evidence. A three-member panel of the board shall apply the preponderance of the evidence rule in determining whether the lawyer's certification should be continued, revoked, or suspended. The burden of proof is upon the lawyer.
- (g) Notification of Board's Decision. After the hearing, the board shall timely notify the lawyer of its decision regarding continued certification as a specialist. If the board's decision is unfavorable, the notification shall set forth the grounds for the decision and the lawyer's appeal rights under Rule .1804 of this Subchapter.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 11, 2010; February 5, 2004.

27 NCAC 01D .1803 RECONSIDERATION OF FAILED EXAMINATION

- (a) Review of Examination. Within 45 days of the date of the notice from the board's executive director that the applicant has failed the written examination, the applicant may review his or her examination at the office of the board at a time designated by the executive director. The applicant will be given the applicant's scores for each question on the examination. The applicant shall not copy, transcribe, or remove the examination from the board's office (or any other location established by the board for the review of the examination) and shall be subject to such other restrictions as the board deems necessary to protect the content of the examination.
- (b) Petition for Grade Review. If, after reviewing the examination, the applicant feels an error or errors were made in the grading, the applicant may file with the executive director a petition for grade review. The petition must be filed within 30 days after the last day of the exam review period and should set out in detail the examination questions and answers which, in the opinion of the applicant, have been incorrectly graded. Supporting information may be filed to substantiate the applicant's claim.
- (c) Denial of Petition by Chair. The director of the specialization program shall review the petition and determine whether, if all grading objections of the petitioner are decided in the petitioner's favor, the petitioner's grade on the examination would be changed to a passing grade. If the director determines that the petitioner's grade would not be changed to passing, the director shall notify the chair who may deny the petition on this basis.
- (d) Review Procedure. The applicant's examination and petition shall be submitted to a panel consisting of three members of the specialty committee (the grade review panel). All identifying information shall be redacted from the examination and petition prior to submission to the grade review panel. The grade review panel shall review the petition of the applicant and determine whether the grade of the examination should be changed. The grade review panel shall make a written report to the board setting forth its recommendation relative to the grade on the applicant's examination and an explanation of its recommendation.
- (e) Decision of the Board. The board shall consider the petition and the report of the grade review panel and shall certify the applicant if it determines by majority vote that the applicant has satisfied all of the standards for certification.
- (f) Failure of Examination Prepared and Administered by a Testing Organization on Behalf of the Board. Notwithstanding paragraphs (a) – (d) of this rule, if the board is utilizing a qualified organization to prepare and administer the certification examination for a specialty pursuant to Rule .1716(10) of this subchapter, an applicant for such specialty shall only be entitled to the review and appeal procedures of the organization.

History Note: Authority G.S. 84-23;
Adopted Eff. March 11, 2010;
Amended Eff. September 24, 2015; March 6, 2014.

27 NCAC 01D .1804 APPEAL TO THE COUNCIL

- (a) Appealable Decisions. An appeal may be taken to the council from a decision of the board which denies an applicant certification (i.e., when an applicant's application has been rejected because it is not in compliance with the standards for certification or when an applicant fails the written specialty examination), denies an applicant continued certification as a specialist, or suspends or revokes a specialist's certification. The rejection of an application because it is incomplete shall not be appealable.
- (b) Filing the Appeal. An appeal from a decision of the board as described in Paragraph (a) may be taken by filing with the executive director of the North Carolina State Bar (the State Bar) a written notice of appeal not later than 21 days after the date of the notice of the board's decision to the applicant who is denied certification or continued certification or to a lawyer whose certification is suspended or revoked.
- (c) Appeal Procedure. The appeal to the council shall be under such rules and regulations as the council may prescribe.
- (d) Scope of Review. Review by the council shall be limited to whether the applicant was provided with procedural rights and whether the board, or the reconsideration panel where applicable, applied the correct procedural standards and State Bar rules in rendering its decision. The applicant shall have the burden of making a clear and convincing showing of arbitrary, capricious, or fraudulent denial of procedural rights or misapplication of the procedural standards or State Bar rules.
- (e) Notice of the Council's Decision. The applicant shall receive written notice of the council's decision.

(f) Costs. The council may tax the costs attributable to the proceeding against the applicant.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 11, 2010.

27 NCAC 01D .1805 JUDICIAL REVIEW

- (a) Appeals - The appellant or the board may appeal from an adverse ruling by the council.
- (b) Wake County Superior Court - All appeals from the council shall lie to the Wake County Superior Court. [See N.C. State Bar v. Du Mont, 304 N.C. 627, 286 S.E.2d 89 (1982).]
- (c) Judicial Review Procedures - Article 4 of G.S. 150B shall be complied with by all parties relative to the procedures for judicial review of the council's decision.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1806 ADDITIONAL RULES PERTAINING TO HEARING AND APPEALS

- (a) Notices. Every notice required by these rules shall be deemed sufficient if sent to the applicant at the address listed on the applicant's last application to the board or the address in the official membership records of the State Bar.
- (b) Expenses Related to Hearings and Appeals. In its discretion, the board may direct that the necessary expenses incurred in any investigation, processing, and hearing of any matter to the board or appeal to the council be paid by the board or appeal to the council be paid by the board. However, all expenses related to travel to any hearing or appeal for the applicant, his or her attorney, and witnesses called by the applicant shall be paid by the applicant.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. March 11, 2010.

SECTION .1900 - RULES CONCERNING THE ACCREDITATION OF CONTINUING LEGAL EDUCATION FOR THE PURPOSES OF THE BOARD OF LEGAL SPECIALIZATION

27 NCAC 01D .1901 GENERAL PROVISIONS

- (a) An applicant for certification in a specialty field must make a satisfactory showing of the requisite number of hours of continuing legal education (CLE) in the specialty field for each of the last three years prior to application in accord with the standards adopted by the board in the field. In no event will the number of hours be less than an average of 12 hours per year. The average number of hours is computed by adding all hours of continuing legal education credits in the field for three years and dividing by three.
- (b) An applicant for continued certification must make a satisfactory showing of the requisite number of hours of continuing legal education (CLE) in the specialty field for each of the five years of certification in accord with the standards adopted by the board in the field. In no event will the number of hours be less than an average of 12 hours per year. The average number of hours is computed by adding all hours of continuing legal education credits in the field for the five years and dividing by five.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1902 DEFINITIONS

- (a) Applicant - The person applying for certification or continued certification of specialization.
- (b) Board - The North Carolina State Bar Board of Legal Specialization.
- (c) Committee - The specialty committee appointed by the board in the applicant's specialty field.
- (d) Sponsor - An organization offering continuing legal education courses for attendance by attorneys.
- (e) Accredited Sponsor - A sponsor which has demonstrated to the satisfaction of the board that the continuing legal education programs offered by it meet the accreditation standards on a continuing basis warranting a presumption of accreditation.

- (f) Accreditation - A determination by the board that the continuing legal education activities further the professional competence of the applicant and a certain number of hours of continuing legal education credit should be awarded for participation in the continuing legal education activity.
- (g) Continuing Legal Education (CLE) - Attendance at lecture-type instruction meeting the standards in Rule .1903 of this Section or participation in alternative activities described in Rule .1905 of this Section.
- (h) Specialty Field - An area of the law as defined by the board in which the board certifies specialists.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1903 ACCREDITATION STANDARDS FOR LECTURE-TYPE CLE ACTIVITIES

- (a) The CLE activity shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence in the applicant's specialty field.
- (b) The CLE activity shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, or ethical obligations of lawyers in the applicant's specialty field.
- (c) The CLE activity may be live; prerecorded in audio or video format; simultaneously broadcast by telephone, satellite, live web streaming (webcasting), or video conferencing; or online. A prerecorded audio or video CLE activity must comply with the minimum registration and verification of attendance requirements in Rule .1604(d) of this chapter.
- (d) Continuing legal education materials are to be prepared and activities conducted by an individual or group qualified by practical or academic experience in a setting suitable to the educational activity of the program.
- (e) Except when not suitable or readily available because of the topic or the nature of the lecture, thorough, high quality, and carefully prepared written materials shall be provided to all attendees prior to or at the time the instruction is presented. Absence of materials should be the exception and not the rule.

History Note Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01D .1904 COMPUTATION OF HOURS OF INSTRUCTION

- (a) Hours of CLE will be computed by adding the number of minutes of actual instruction, dividing by 60 and rounding the results to the nearest one-tenth of an hour.
- (b) Only actual instruction will be included in computing the total hours of actual instruction. The following will be excluded:
 - (1) introductory remarks;
 - (2) breaks;
 - (3) business meetings;
 - (4) keynote speeches or speeches in connection with meals;
 - (5) question and answer sessions in excess of 15 minutes per hour of instruction;
 - (6) programs of less than 60 minutes in length.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .1905 ALTERNATIVES TO LECTURE-TYPE CLE COURSE INSTRUCTION

- (a) Teaching - Preparation and presentation of written materials at an accredited CLE course will qualify for CLE credit at the rate of six hours of credit for each hour of presentation as computed under Rule .1904 of this Subchapter. In the case of joint preparation and/or presentation, each preparer and presenter will receive a proportionate share of the total credit available. Repeat presentations of substantially the same materials will qualify for one-half the credit available for the initial presentation. Instruction at an academic institution will qualify for three hours of CLE credit per semester hour taught in the specialty field.
- (b) Publication - Publication of a scholarly article in the applicant's specialty field will qualify for CLE credit in the discretion of the specialty committee, subject to board approval, based on a review of the article, its content, and its quality. No more than ten hours of credit will be given for a single article.
- (c) Self-study - An individual may review video or audio tapes or manuscripts of lectures from qualified CLE courses, which lectures would meet the accreditation standards in Rule .1903 of this Subchapter and receive credit

according to the computation of hours in Rule .1904 of this Subchapter provided that no more than two hours per year of self-study shall qualify to meet the CLE requirements for certification or recertification.

(d) Advanced degrees - Attendance at courses of instruction at a law school which can be credited toward the earning of an advanced degree in the specialty field of the applicant will qualify for one hour of CLE credit per semester hour taken if attained in the required period prior to application for certification or recertification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. February 5, 2009; March 7, 1996.

27 NCAC 01D .1906 ACCREDITATION OF COURSES

(a) All courses offered by an accredited sponsor which relate to the specialty field as defined by the board shall be accredited and credit for attendance shall be given for the hours of instruction related to the specialty field of the applicant as determined by the board.

(b) The applicant shall make a showing that any course for which the applicant desires CLE credit offered by a sponsor not on the accredited sponsor list meets the accreditation standards of Rule .1903 of this Section. The board will then determine the number of hours of credit based upon the standards of Rule .1904 of this Section.

(c) An accredited sponsor may not represent or advertise that a CLE course is approved or that the attendees will be given CLE credit by the board unless such sponsor provides a brochure or other appropriate information describing the topics, hours of instruction, and instructors for its CLE offerings in a specialty field at least 30 days in advance of the date of the course.

(d) An unaccredited sponsor desiring advance accreditation of a course and the right to designate its accreditation for the appropriate number of CLE credits in its solicitations shall submit a brochure or other appropriate information describing the topics, hours of instruction, location, and instructors for its CLE offerings at least 60 days prior to the date of the course.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 1, 2003.

27 NCAC 01D .1907 ACCREDITATION OF SPONSOR

(a) The following is the list of accredited sponsors:

- (1) North Carolina Bar Foundation;
- (2) North Carolina Academy of Trial Lawyers;
- (3) Wake Forest University Continuing Legal Education;
- (4) University of North Carolina at Chapel Hill Continuing Legal Education;
- (5) Duke University School of Law Continuing Legal Education;
- (6) Norman Adrian Wiggins School of Law Continuing Legal Education;
- (7) Middle District Bankruptcy Seminar;
- (8) UCB Estate Planning and Taxation Seminar;
- (9) any member of the Association of Continuing Legal Education Administrators;
- (10) University of Miami School of Law;
- (11) any of the following groups: American Bar Association, American College of Probate Counsel, American College of Trial Counsel, American patent Law Association, Association of American Law Schools, Association of Life Insurance Counsel, Conference of Chief Justices, Council on Legal Education for Professional Responsibility, Inc., Federal Bar Association, Federal Communications Bar Association, Judge Advocates Association, Maritime Law Association of the United States, National Association of Attorneys General, National Association of Bar Executives, National Association of Bar Presidents, National Association of Bar Counsel, National Association of Women Lawyers, National Bar Association, National Conference of Bar Examiners, National Conference of Commissioners on Uniform State Laws, National Conference of Judicial Councils, National District Attorneys Association, and National Legal Aid and Defender Association.

(b) Any sponsor not listed in Paragraph (a) of this Rule desiring to attain accredited sponsor status must submit to the board a description of the courses offered for the two years prior to application to the board for accredited sponsor status. The board may request copies of any course materials used in any of the offered courses. If, in the

judgment of the board, the sponsor has met the accreditation standards of Rule .1903 of this Section for each of the courses offered, the board will designate the sponsor as an accredited sponsor.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .1908 SHOWING BY APPLICANTS

Every applicant will list each type of CLE activity under each of the following categories:

- (1) attendance at CLE instruction offered by an accredited sponsor. The course name, sponsor, and number of hours of CLE shall be listed by the applicant;
- (2) attendance at CLE instruction offered by a sponsor not on the accredited sponsor list or not given advanced approval by the board under Rule .1906 of this Section. A fee of five dollars (\$5.00) per course will be charged for accrediting each course listed by the applicant offered by a sponsor not on the accredited sponsor list or not given advanced approval under Rule .1906(d) of this Section. The course name, sponsor, and number of hours of CLE shall be listed by the applicant;
- (3) participation as an instructor at a CLE course. The course name, sponsor, and number of hours of instruction or preparation shall be stated by the applicant;
- (4) publication of a scholarly article. A copy of the publication shall accompany the application;
- (5) self-study. A description of the materials used, the dates of use, the number of hours claimed, and the source from which they were obtained shall accompany the application.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

SECTION .2000 - RULES OF THE BOARD OF LEGAL SPECIALIZATION FOR APPROVAL OF INDEPENDENT CERTIFYING ORGANIZATIONS

27 NCAC 01D .2001 POLICY STATEMENT

These guidelines for reviewing independent organizations which certify lawyers as specialists are designed to thoroughly evaluate the purpose and function of such certifying organizations and the procedures they use in their certification processes. These guidelines are not meant to be exclusive, but to provide a framework in which certifying organizations can be evaluated. The aim of this evaluation is to provide consumers of legal services a means of access to lawyers who are qualified in particular fields of law.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2002 GENERAL PROCEDURE

As contemplated in Rule 2.5 of the North Carolina Rules of Professional Conduct, the North Carolina State Bar, through its Board of Legal Specialization (the board), shall, upon the filing of a completed application and the payment of any required fee, review the standards and procedures of any organization which certifies lawyers as specialists and desires the approval of the North Carolina State Bar. The board shall prepare an application form to be used by certifying organizations and shall administer the application process.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2003 FACTORS TO BE CONSIDERED IN REVIEWING CERTIFYING ORGANIZATIONS

- (a) Purpose of the Organization - The stated purposes for the original formation of the organization and any subsequent changes in those purposes shall be examined to determine whether the organization is dedicated to the maintenance of professional competence.
- (b) Background of the Organization - The length of time the organization has been in existence, whether the organization is a successor of another, the requirements for membership in the organization, the number of members which the organization has, the business structure under which the organization operates, and the professional

qualifications of the individuals who direct the policies and operations of the organization shall be examined to determine whether the organization is a bona fide certifying organization.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2004 STANDARDS FOR APPROVAL OF CERTIFYING ORGANIZATIONS

The following standards are to be considered by the board in evaluating an application for approval of a certifying organization.

- (1) Uniform Applicability of Certification Standards - In general, the standards for certification in any specialty field must be understandable and easily applied to individual applicants. Certification by the organization must be available to any attorney who meets the standards, and the organization must not certify an attorney who has not demonstrably met each standard. The organization must agree to promptly inform the board of any material changes in its standards, definitions of specialty fields or certifying procedures and must further agree to respond promptly to any reasonable requests for information from the board.
- (2) Definitions of Specialty Fields - Every field of law in which certification is offered must be susceptible of meaningful definition and be an area in which North Carolina lawyers regularly practice.
- (3) Decision Making by Recognized Experts - The persons in a certifying organization making decisions regarding applicants shall include lawyers who, in the judgment of the board, are experts in the subject areas of practice and who each have extensive practice or involvement in those areas of practice.
- (4) Certification Standards - A certifying organization's standards for certification of specialists must include, as a minimum, the standards required for certification set out in the North Carolina Plan of Legal Specialization (Section .1700 of this subchapter) and in the rules, regulations and standards adopted by the board from time to time. Such standards shall not unlawfully discriminate against any lawyer properly qualified for certification as a specialist, but shall provide a reasonable basis for a determination that an applicant possesses special competence in a particular field of law, as demonstrated by the following means:
 - (a) Substantial Involvement - Substantial involvement in the area of specialty during the five-year period immediately preceding application to the certifying agency. Substantial involvement is generally measured by the amount of time spent practicing in the area of specialty. In no event may the time spent in practicing the specialty be less than 25 percent of the total practice of a lawyer engaged in a normal full-time practice;
 - (b) Peer Review - Peer recommendations from attorneys or judges who are familiar with the competence of the applicant in the area of specialty, none of whom are related to, engaged in legal practice with, or involved in continuing commercial relationships with the lawyer;
 - (c) Written Examination - Objective evaluation of the applicant's knowledge of the substantive and procedural law in the area of specialty as determined by written examination;
 - (d) Continuing Legal Education - At least 36 hours of approved continuing legal education credit in the area of specialty during the three years immediately preceding application to the certifying organization.
- (5) Applications and Procedures - Application forms used by the certifying organization must be submitted to the board for review to determine that the requirements specified above are being met by applicants. Additionally, the certifying organization must submit a description of the process it uses to review applications.
- (6) Requirements for Recertification - The standards used by a certifying organization must provide for certification for a limited period of time, which shall not exceed five years, after which time persons who have been certified must apply for recertification. Requirements for recertification must include continued substantial involvement in the area of specialty, continuing legal education, and appropriate peer review.
- (7) Revocation of Certification - The standards used by a certifying organization shall include a procedure for revocation of certification. A certification shall be revoked upon a finding that the

certificate holder has been disbarred or suspended from the practice of law. The standards shall require a certificate holder to report his or her disbarment or suspension from the practice of law to the certifying organization.

- (8) Waiver - The standards used by a certifying organization may provide for waiver of the peer review and written examination requirements set forth in Rules .2004(4)(b) and (c) above for an applicant who was responsible for formulating and grading the organization's initial written examination in his or her area of specialty.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2005 APPLICATION PROCEDURE

(a) The organization may file an application seeking approval of the organization by the board. Applications shall be on forms available from and approved by the board. The application fee shall be one thousand dollars (\$1,000.00).

(b) The organization which has been approved shall provide its standards, definitions and/or certifying procedures to the board in January of each year and must pay an annual administrative fee of one hundred dollars (\$100.00) to maintain its approved status.

(c) When the board determines that an approved certifying organization has ceased to exist, has ceased to operate its certification program in the manner described in its application, or has failed to comply with the requirements of Rule .2005(b) above, its approved status shall be revoked. After such a revocation, no North Carolina lawyer may publicize a certification from the organization in question.

(d) The appeal procedures of the board shall apply to any application by an organization for approval as a certifying organization and any decision to revoke a certifying organization's approved status.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2006 EFFECT OF APPROVAL OF A CERTIFYING ORGANIZATION BY THE BOARD OF LEGAL SPECIALIZATION

When an organization is approved as a certifying organization by the board, any North Carolina lawyer certified as a specialist by that organization may publicize that certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

SECTION .2100 - CERTIFICATION STANDARDS FOR THE REAL PROPERTY LAW SPECIALTY

27 NCAC 01D .2101 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates real property law, including the subspecialties of real property-residential transactions and real property-business, commercial, and industrial transactions as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2102 DEFINITION OF SPECIALTY

The specialty of real property law is the practice of law dealing with real property transactions, including title examination, property transfers, financing, leases, and determination of property rights. Subspecialties in the field are identified and defined as follows:

- (1) Real Property Law-Residential Transactions - The practice of law dealing with the acquisition, ownership, leasing, financing, use, transfer and disposition, of residential real property by individuals;

- (2) Real Property Law-Business, Commercial, and Industrial Transactions - The practice of law dealing with the acquisition, ownership, leasing, management, financing, development, use, transfer, and disposition of residential, business, commercial, and industrial real property.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2103 RECOGNITION AS A SPECIALIST IN REAL PROPERTY LAW

A lawyer may qualify as a specialist by meeting the standards set for one or both of the subspecialties. If a lawyer qualifies as a specialist in real property law by meeting the standards set for the real property law-residential transactions subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Residential Transactions." If a lawyer qualifies as a specialist in real property law by meeting the standards set for the real property law-business, commercial, and industrial transactions, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Business, Commercial, and Industrial Transactions." If a lawyer qualifies as a specialist in real property law by meeting the standards set for both the real property law-residential transactions subspecialty and the real property law-business, commercial, and industrial transactions subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Real Property Law-Residential, Business, Commercial and Industrial Transactions."

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2104 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in real property law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2105 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN REAL PROPERTY LAW

Each applicant for certification as a specialist in real property law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in real property law:

- (1) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.
- (2) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of real property law.
 - (a) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of real property law, but not less than 400 hours in any one year.
 - (b) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.
 - (c) Practice equivalent means service as a law professor concentrating in the teaching of real property law. Teaching may be substituted for one year of experience to meet the five-year requirement.
- (3) Continuing Legal Education - An applicant must have earned no less than 36 hours of accredited continuing legal education (CLE) credits in real property law during the three years preceding application with not less than 6 credits in any one year. Of the 36 hours of CLE, at least 30 hours shall be in real property law and the balance may be in the related areas of environmental law, taxation, business organizations, estate planning and probate law, and elder law.
- (4) Peer review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the

competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (a) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
 - (b) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.
- (5) Examinations - The applicant must pass a written examination designed to test the applicant's knowledge and ability in real property law.
- (a) Terms - The examination(s) shall be in written form and shall be given annually. The examination(s) shall be administered and graded uniformly by the specialty committee.
 - (b) Subject Matter - The examination shall cover the applicant's knowledge in the following topics in real property law or in the subspecialty or subspecialties that the applicant has elected:
 - (i) title examinations, property transfers, financing, leases, and determination of property rights;
 - (ii) the acquisition, ownership, leasing, financing, use, transfer, and disposition of residential real property by individuals;
 - (iii) the acquisition, ownership, leasing, management, financing, development, use, transfer, and disposition of residential, business, commercial, and industrial real property.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 9, 2008.*

27 NCAC 01D .2106 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2106(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2105(b) of this subchapter.
- (b) Continuing Legal Education - The specialist must have earned no less than 60 hours of accredited continuing legal education credits in real property law as accredited by the board with not less than 6 credits earned in any one year. Of the 60 hours of CLE, at least 50 hours shall be in real property law and the balance may be in the related areas of environmental law, taxation, business organizations, estate planning and probate law, and elder law.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2105(d) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than one hundred eighty (180) days nor less than ninety days prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2105 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2105 of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: October 9, 2008; March 27, 2019.

27 NCAC 01D .2107 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in real property law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

SECTION .2200 - CERTIFICATION STANDARDS FOR THE BANKRUPTCY LAW SPECIALTY

27 NCAC 01D .2201 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates bankruptcy law, including the specialties of consumer bankruptcy law and business bankruptcy law, as a field of law for which certification of specialists under the Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2202 DEFINITION OF SPECIALTY

The specialty of bankruptcy law is the practice of law dealing with all laws and procedures involving the rights, obligations, and remedies between debtors and creditors in potential or pending federal bankruptcy cases and state insolvency actions. Subspecialties in the field are identified and defined as follows:

- (1) Consumer Bankruptcy Law - The practice of law dealing with consumer bankruptcy and the representation of interested parties in contested matters or adversary proceedings in individual filings of Chapter 7, Chapter 12, or Chapter 13;
- (2) Business Bankruptcy Law - The practice of law dealing with business bankruptcy and the representation of interested parties in contested matters or adversary proceedings in bankruptcy cases filed on behalf of debtors who are or have been engaged in business prior to an entity filing Chapter 7, Chapter 9, Chapter 11, or Chapter 12.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2203 RECOGNITION AS A SPECIALIST IN BANKRUPTCY LAW

A lawyer may qualify as a specialist by meeting the standards set for one or both of the subspecialties. If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for the consumer bankruptcy law subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Consumer Bankruptcy Law." If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for the business bankruptcy law subspecialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Business Bankruptcy Law." If a lawyer qualifies as a specialist in bankruptcy law by meeting the standards set for both the consumer bankruptcy law and the business bankruptcy law subspecialties, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Business and Consumer Bankruptcy Law."

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2204 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in bankruptcy law shall be governed by the provisions of the Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

**27 NCAC 01D .2205 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN BANKRUPTCY
LAW**

Each applicant for certification as a specialist in bankruptcy law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in bankruptcy law:

- (1) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.
- (2) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of bankruptcy law.
 - (a) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of bankruptcy law, but not less than 400 hours in any one year.
 - (b) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.
 - (c) Practice equivalent shall mean, after admission to the bar of any state, District of Columbia, or a U.S. territorial possession
 - (i) service as a judge of any bankruptcy court, service as a clerk of any bankruptcy court, or service as a standing trustee;
 - (ii) corporate or government service, including military service, after admission to the bar of any state, the District of Columbia, or any U.S. territorial possession, but only if the bankruptcy work done was legal advice or representation of the corporation, governmental unit, or individuals connected therewith;
 - (iii) service as a deputy or assistant clerk of any bankruptcy court, as a research assistant to a bankruptcy judge, or as a law professor teaching bankruptcy and/or debtor-creditor related courses may be substituted for one year of experience to meet the five-year requirement.
- (3) Continuing Legal Education - An applicant must have earned no less than 36 hours of accredited continuing legal education (CLE) credits in bankruptcy law, during the three years preceding application with not less than 6 credits in any one year.
- (4) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.
 - (a) A reference may not be a judge of any bankruptcy court.
 - (b) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
 - (c) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.
- (5) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in bankruptcy law.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. November 16, 2006.*

27 NCAC 01D .2206 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2206(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2205(b) of this subchapter.
- (b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 60 hours of accredited continued legal education credits in bankruptcy law with not less than 6 credits earned in any one year.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2205(d) of this subchapter apply to this standard.
- (d) Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2205 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2205 of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: March 27, 2019.

27 NCAC 01D .2207 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in bankruptcy law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

SECTION .2300 - CERTIFICATION STANDARDS FOR THE ESTATE PLANNING AND PROBATE LAW SPECIALTY

27 NCAC 01D .2301 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates estate planning and probate law as a field of law for which certification of specialists under the Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2302 DEFINITION OF SPECIALTY

The specialty of estate planning and probate law is the practice of law dealing with planning for conservation and disposition of estates, including consideration of federal and state tax consequences; preparation of legal instruments to effectuate estate plans; and probate of wills and administration of estates, including federal and state tax matters.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2303 RECOGNITION AS A SPECIALIST IN ESTATE PLANNING AND PROBATE LAW

If a lawyer qualifies as a specialist in estate planning and probate law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Estate Planning and Probate Law."

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2304 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in estate planning and probate law shall be governed by the provisions of the Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2305 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN ESTATE PLANNING AND PROBATE LAW

Each applicant for certification as a specialist in estate planning and probate law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in estate planning and probate law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - The applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of estate planning and probate law.

(1) Substantial involvement shall be measured as follows:

(A) Time Spent - During the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of estate planning and probate law, but not less than 400 hours in any one year;

(B) Experience Gained - During the five years immediately preceding application, the applicant shall have had continuing involvement in a substantial portion of the activities described in each of the following paragraphs:

(i) counseled persons in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters;

(ii) prepared or supervised the preparation of (1) estate planning instruments, such as simple and complex wills (including provisions for testamentary trusts, marital deductions and elections), revocable and irrevocable inter vivos trusts (including short-term and minor's trusts), business planning agreements (including buy-sell agreements and employment contracts), powers of attorney and other estate planning instruments; and (2) federal and state gift tax returns, including representation before the Internal Revenue Service and the North Carolina Department of Revenue in connection with gift tax returns;

(iii) handled or advised with respect to the probate of wills and the administration of decedents' estates, including representation of the personal representative before the clerk of superior court, guardianship, will contest, and declaratory judgment actions;

(iv) prepared, reviewed or supervised the preparation of federal estate tax returns, North Carolina inheritance tax returns, and federal and state fiduciary income tax returns, including representation before the Internal Revenue Service and the North Carolina Department of Revenue in connection with such tax returns and related controversies.

(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.

(3) Practice equivalent shall mean

- (A) receipt of an LL.M. degree in taxation or estate planning and probate law (or such other related fields approved by the specialty committee and the board from an approved law school) may be substituted for one year of experience to meet the five-year requirement;
- (B) service as a trust officer with a corporate fiduciary having duties primarily in the area of estate and trust administration, may be substituted for one year of experience to meet the five-year requirement;
- (C) service as a law professor concentrating in the teaching of taxation or estate planning and probate law (or such other related fields approved by the specialty committee and the board). Such service may be substituted for one year of experience to meet the five-year requirement.

(c) Continuing Legal Education - An applicant must have earned no less than 72 hours of accredited continuing legal education (CLE) credits in estate planning and probate law during the three years preceding application. Of the 72 hours of CLE, at least 45 hours shall be in estate planning and probate law (provided, however, that eight of the 45 hours may be in the related areas of elder law, Medicaid planning, and guardianship), and the balance may be in designated related fields. A list of the topics that qualify as related-field CLE shall be maintained by the board on its official website.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges, all of whom are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in estate planning and probate law.

- (1) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.
- (2) Subject Matter - The examination shall cover test the applicant's knowledge and application of the law of estate planning and probate. A list of the topics covered on the exam shall be maintained by the board on its official website.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. June 9, 2016; October 9, 2008.*

27 NCAC 01D .2306 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2306(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2305(b) of this subchapter; however, for the purpose of continued certification as a specialist, service outside private practice, during which the specialist had duties primarily in the areas of estate planning, estate administration, and/or trust administration, may be substituted for the equivalent years of experience toward the five-year requirement, as determined by the board in its discretion.

(b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 120 hours of accredited continuing legal education credits in estate planning and probate law. Of the 120 hours of CLE at least 75 hours shall be in estate planning and probate law (provided, however, that 15 of the 75 hours may be in the related

areas of elder law, Medicaid planning, and guardianship), and the balance may be in the related areas of taxation, business organizations, real property, family law, elder law, Medicaid planning, and guardianship.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2305(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2305 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2305 of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: October 9, 2008; April 5, 2018; March 27, 2019.

27 NCAC 01D .2307 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in estate planning and probate law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

SECTION .2400 - CERTIFICATION STANDARDS FOR THE FAMILY LAW SPECIALTY

27 NCAC 01D .2401 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates family law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2402 DEFINITION OF SPECIALTY

The specialty of family law is the practice of law relating to marriage, divorce, alimony, child custody and support, equitable distribution, enforcement of support, domestic violence, bastardy, and adoption.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2403 RECOGNITION AS A SPECIALIST IN FAMILY LAW

If a lawyer qualifies as a specialist in family law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Family Law."

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

27 NCAC 01D .2404 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in family law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.*

27 NCAC 01D .2405 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN FAMILY LAW

Each applicant for certification as a specialist in family law shall meet the minimum standards set forth in Rule .1720 of this Subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in family law:

- (1) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.
- (2) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of family law.
 - (a) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 600 hours a year to the practice of family law, and not less than 400 hours during any one year.
 - (b) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.
 - (c) Practice equivalent shall mean
 - (i) service as a law professor concentrating in the teaching of family law. Such service may be substituted for one year of experience to meet the five-year requirement.
 - (ii) service as a district court judge in North Carolina, hearing a substantial number of family law cases. Such service may be substituted for one year of experience to meet the five-year requirement.
- (3) Continuing Legal Education - During the three calendar years prior to the year of application and the portion of the calendar year immediately prior to application, an applicant must have earned no less than 45 hours of accredited continuing legal education (CLE) credits in family law, nine of which may be in related fields. Related fields shall include taxation, trial advocacy, evidence, negotiation (including training in mediation, arbitration and collaborative law), juvenile law, real property, estate planning and probate law, business organizations, employee benefits, bankruptcy, elder law, and immigration law. Only nine hours of CLE credit will be recognized for attendance at an extended negotiation or mediation training course. Parenting coordinator training will not qualify for family law or related field hours. At least nine hours of CLE in family law or related fields must be taken during each of the three calendar years preceding application.
- (4) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.
 - (a) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
 - (b) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.
- (5) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in family law.
 - (a) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

- (b) Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to marriage, divorce, alimony, child custody and support, equitable distribution, enforcement of support, domestic violence, bastardy, and adoption including, but not limited to, the following:
- (i) contempt (Chapter 05A of the North Carolina General Statutes);
 - (ii) adoptions (Chapter 48);
 - (iii) bastardy (Chapter 49);
 - (iv) divorce and alimony (Chapter 50);
 - (v) Uniform Child Custody Jurisdiction and Enforcement Act (Chapter 50A);
 - (vi) domestic violence (Chapter 50B);
 - (vii) marriage (Chapter 51);
 - (viii) powers and liabilities of married persons (Chapter 52);
 - (ix) Uniform Interstate Family Support Act (Chapter 52C);
 - (x) Uniform Premarital Agreement Act (Chapter 52B);
 - (xi) termination of parental rights, as relating to adoption and termination for failure to provide support (Chapter 07B, Article 11);
 - (xii) garnishment and enforcement of child support obligations (Chapter 110, Article 9);
 - (xiii) Parental Kidnapping Prevention Act (28 U.S.C. 1738A);
 - (xiv) Internal Revenue Code 71 (Alimony), 215 (Alimony Deduction), 121 (Exclusion of Gain from the Sale of Principal Residence), 151 and 152 (Dependency Exemptions), 1041 (Transfer of Property Incidental to Divorce), 2043 and 2516 (Gift Tax Exception), 414(p) (Defining QDRO Requirements), 408 (d)(6) (IRA Transfer Requirements for Non-Taxable Event), and regulations interpretive of these Code sections; and
 - (xv) Federal Wiretap Law.

*History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. October 9, 2008; February 27, 2003; February 5, 2002.*

27 NCAC 01D .2406 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2406(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2405(b) of this subchapter; however, for the purpose of continued certification, service as a district court judge in North Carolina hearing a substantial number of family law cases may be substituted, year for year, for the experience required to meet the five-year requirement.
- (b) Continuing Legal Education - Since last certified, a specialist must have earned no less than 60 hours of accredited continuing legal education credits in family law or related fields. Not less than nine credits may be earned in any one year, and no more than twelve credits may be in related fields. Related fields shall include taxation, trial advocacy, evidence, negotiations (including training in mediation, arbitration, and collaborative law), juvenile law, real property, estate planning and probate law, business organizations, employee benefits, bankruptcy, elder law, and immigration law. Only nine hours of CLE credit will be recognized for attendance at an extended negotiation or mediation training course. Parenting coordinator training will not qualify for family law or related field hours.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2405(d) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2405 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2405 of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: February 27, 2003; October 9, 2008; September 22, 2016; March 27, 2019.

27 NCAC 01D .2407 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in family law are subject to any general requirement, standards, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994.

SECTION .2500 - CERTIFICATION STANDARDS FOR THE CRIMINAL LAW SPECIALTY

27 NCAC 01D .2501 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates criminal law(encompassing both federal and state criminal law), including the subspecialty of state criminal law and juvenile delinquency law, as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 25, 2011; March 10, 2011.

27 NCAC 01D .2502 DEFINITION OF SPECIALTY

The specialty of criminal law is the practice of law dealing with the defense or prosecution of those charged with misdemeanor and felony crimes in state and federal trial courts. The subspecialty in the field is identified and defined as follows:

(a) State Criminal Law. The practice of criminal law in state trial and appellate courts.

(b) Juvenile Delinquency Law. The practice of law in state juvenile delinquency courts. The standards for the subspecialty are set forth in Rules .2508-.2509.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 25, 2011; March 10, 2011.

27 NCAC 01D .2503 RECOGNITION AS A SPECIALIST IN CRIMINAL LAW

A lawyer may qualify as a specialist by meeting the standards for criminal law or the subspecialties of state criminal law or juvenile delinquency law. If a lawyer qualifies as a specialist by meeting the standards for the criminal law specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Law." If a lawyer qualifies as a specialist by meeting the standards set for the subspecialty of state criminal law, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in State Criminal Law." If a lawyer qualifies as a specialist by meeting the standards for the subspecialty of juvenile delinquency law, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Law – Juvenile Delinquency."

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 25, 2011; March 10, 2011.

27 NCAC 01D .2504 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in criminal law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994.*

27 NCAC 01D .2505 STANDARDS FOR CERTIFICATION AS A SPECIALIST

Each applicant for certification as a specialist in criminal law or the subspecialty of state criminal law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of the application. During the period of certification an applicant shall continue to be licensed and in good standing to practice law in North Carolina.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of criminal law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of criminal law, but not less than 400 hours in any one year. "Practice" shall mean substantive legal work, specifically including representation in criminal jury trials, done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) Service as a law professor concentrating in the teaching of criminal law for one year or more, which may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2505(b)(1) above;

(B) Service as a federal, state or tribal court judge for one year or more, which may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2505(b)(1) above;

(3) For the specialty of criminal law and the subspecialty of state criminal law, the board shall require an applicant to show substantial involvement by providing information that demonstrates the applicant's significant criminal trial experience such as:

(A) representation during the applicant's entire legal career in criminal trials concluded by jury verdict;

(B) representation as principal counsel of record in federal felony cases or state felony cases (Class G or higher);

(C) court appearances in other substantive criminal proceedings in criminal courts of any jurisdiction; and

(D) representation in appeals of decisions to the North Carolina Court of Appeals, the North Carolina Supreme Court, or any federal appellate court.

(c) Continuing Legal Education

In the specialty of criminal law and the state criminal law subspecialty, an applicant must have earned no less than 40 hours of accredited continuing legal education credits in criminal law during the three years preceding the application, which 40 hours must include the following:

(1) at least 34 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy and criminal trial tactics;

(2) at least 6 hours in the area of ethics and criminal law.

(d) Peer Review

(1) Each applicant for certification as a specialist in criminal law and the subspecialty of state criminal law must make a satisfactory showing of qualification through peer review.

(2) All references must be licensed and in good standing to practice in North Carolina and must be familiar with the competence and qualifications of the applicant in the specialty field. The applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualifications.

- (3) Written peer reference forms will be sent by the board or the specialty committee to the references. Completed peer reference forms must be received from at least five of the references. The board or the specialty committee may contact in person or by telephone any reference listed by an applicant.
 - (4) Each applicant must provide for reference and independent inquiry the names and addresses of the following: (i) ten lawyers and judges who practice in the field of criminal law and who are familiar with the applicant's practice, and (ii) opposing counsel and the judge in eight recent cases tried by the applicant to verdict or entry of order.
 - (5) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability.
- (1) Terms - The examination(s) shall be in written form and shall be given at such times as the board deems appropriate. The examination(s) shall be administered and graded uniformly by the specialty committee.
 - (2) Subject Matter - The examination shall cover the applicant's knowledge in the following topics in criminal law, and/or in the subspecialty of state criminal law, as the applicant has elected:
 - (A) the North Carolina and Federal Rules of Evidence;
 - (B) state and federal criminal procedure and state and federal laws affecting criminal procedure;
 - (C) constitutional law;
 - (D) appellate procedure and tactics;
 - (E) trial procedure and trial tactics;
 - (F) criminal substantive law;
 - (3) Required Examination Components.
 - (A) Criminal Law Specialty.
An applicant for certification in the specialty of criminal law must pass part I of the examination on general topics in criminal law and part II of the examination (federal and state criminal law).
 - (B) State Criminal Law Subspecialty.
An applicant for certification in the subspecialty of state criminal law must pass part I of the examination on general topics in criminal law and part III of the examination on state criminal law.

*History Note: Authority G.S. 84-23;
 Readopted Eff. December 8, 1994;
 Amendments Approved by the Supreme Court: March 16, 2017; October 2, 2014; March 8, 2013;
 August 23, 2007; October 6, 2004; February 5, 2004.*

27 NCAC 01D .2506 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. A certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2506(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that for the five years preceding reapplication he or she has had substantial involvement in the specialty or subspecialty as defined in Rule .2505(b).
- (b) Continuing Legal Education - The specialist must have earned no less than 65 hours of accredited continuing legal education credits in criminal law with not less than 6 credits earned in any one year.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. Each applicant also must provide the names and addresses of the following: (i) five lawyers and judges who practice in the field of criminal law and who are familiar with the applicant's practice, and (ii) opposing counsel and the judge in four recent cases tried by the applicant to verdict or

entry of order. All other requirements relative to peer review set forth in Rule .2505(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continuing certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2505 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2505 of this subchapter.

History Note: Authority G.S. 84-23;
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: February 5, 2004; October 6, 2004; March 27, 2019.

27 NCAC 01D .2507 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in criminal law, the subspecialty of state criminal law, and the subspecialty of juvenile delinquency law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Readopted Eff. December 8, 1994;
Amended Eff. August 25, 2011; March 10, 2011;

27 NCAC 01D .2508 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN JUVENILE DELINQUENCY LAW

Each applicant for certification as a specialist in juvenile delinquency law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of the application. During the period of certification an applicant shall continue to be licensed and in good standing to practice law in North Carolina.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of juvenile delinquency law.

- (1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 400 hours a year to the practice of juvenile delinquency law, but not less than 100 hours in any one year. "Practice" shall mean substantive legal work, specifically including representation of juveniles or the state in juvenile delinquency court, done primarily for the purpose of providing legal advice or representation, or a practice equivalent.
- (2) "Practice equivalent" shall mean:
 - (A) Service for one year or more as a state district court judge responsible for presiding over juvenile delinquency court for 250 hours each year may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2508(b)(1) above;
 - (B) Service on or participation in the activities of local, state, or national civic, professional or government organizations that promote juvenile justice may be used to meet the requirement set forth in Rule .2508(b)(1) but not to exceed 100 hours for any year during the five years.
 - (C) Service as a law professor in a juvenile delinquency legal clinic at an accredited law school may be used to meet the requirement set forth in Rule .2508(b)(1).
 - (D) The practice of state criminal law may be used to meet the requirement set forth in Rule .2508(b)(1) but not to exceed 100 hours for any year during the five years. "Practice of state criminal law" shall mean substantive legal work representing adults or the state in the state's criminal district and superior courts.

- (3) An applicant shall also demonstrate substantial involvement during the five years prior to application unless otherwise noted by providing information that demonstrates the applicant's significant juvenile delinquency court experience such as:
- (A) Representation of juveniles or the state during the applicant's entire legal career in juvenile delinquency hearings concluded by disposition;
 - (B) Representation of juveniles or the state in juvenile delinquency felony cases;
 - (C) Court appearances in other substantive juvenile delinquency proceedings in juvenile court;
 - (D) Representation of juveniles or the state through transfer to adult court; and
 - (E) Representation of juveniles or the state in appeals of juvenile delinquency decisions.
- (c) Continuing Legal Education - An applicant must have earned no less than 40 hours of accredited continuing legal education (CLE) credits in criminal and juvenile delinquency law during the three years preceding application. Of the 40 hours of CLE, at least 12 hours shall be in juvenile delinquency law, and the balance may be in the following related fields: substantive criminal law, criminal procedure, trial advocacy, and evidence.
- (d) Peer Review –
- (1) Each applicant for certification as a specialist in juvenile delinquency law must make a satisfactory showing of qualification through peer review.
 - (2) All references must be licensed and in good standing to practice in North Carolina and must be familiar with the competence and qualifications of the applicant in the specialty field. The applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualifications.
 - (3) Written peer reference forms will be sent by the board or the specialty committee to the references. Completed peer reference forms must be received from at least five of the references. The board or the specialty committee may contact in person or by telephone any reference listed by an applicant.
 - (4) Each applicant must provide for reference and independent inquiry the names and addresses of ten lawyers and judges who practice in the field of juvenile delinquency law or criminal law or preside over juvenile delinquency or criminal law proceedings and who are familiar with the applicant's practice.
 - (5) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of juvenile delinquency law to justify the representation of special competence to the legal profession and the public.
- (1) Terms - The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.
 - (2) Subject Matter – The examination shall cover the applicant's knowledge in the following topics:
 - (A) North Carolina Rules of Evidence;
 - (B) State criminal substantive law;
 - (C) Constitutional law as it relates to criminal procedure and juvenile delinquency law;
 - (D) State criminal procedure;
 - (E) North Carolina Juvenile Code, Subchapters II and III, and related case law; and
 - (F) North Carolina caselaw as it relates to juvenile delinquency law.
 - (3) Examination Components - An applicant for certification in the subspecialty of juvenile delinquency law must pass part I of the criminal law examination on general topics in criminal law and part IV of the examination on juvenile delinquency law.

History Note: Authority G.S. 84-23;
Eff. August 25, 2011;
Amended Eff. March 5, 2015.

27 NCAC 01D .2509 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST IN JUVENILE DELINQUENCY LAW

The period of certification is five years. A certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2509(d) below. No examination will be required for

continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that for the five years preceding reapplication he or she has had substantial involvement in the specialty or subspecialty as defined in Rule .2508(b).

(b) Continuing Legal Education - The specialist must have earned no less than 65 hours of accredited continuing legal education credits in criminal law and juvenile delinquency law with not less than six credits earned in any one year. Of the 65 hours, at least 20 hours shall be in juvenile delinquency law, and the balance may be in the following related fields: substantive criminal law, criminal procedure, trial advocacy, and evidence.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state, practice in the field of juvenile delinquency law or criminal law or preside over juvenile delinquency or criminal law proceedings, and are familiar with the competence and qualification of the applicant as a specialist. An applicant must receive a minimum of three favorable peer reviews to be considered by the board for compliance with this standard. All other requirements relative to peer review set forth in Rule .2508(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continuing certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2508 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2508 of this subchapter.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court August 25, 2011;
Amendments Approved by the Supreme Court: March 27, 2019.

SECTION .2600 - CERTIFICATION STANDARDS FOR THE IMMIGRATION LAW SPECIALTY

27 NCAC 01D .2601 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates immigration law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-4;
Eff. March 6, 1997.

27 NCAC 01D .2602 DEFINITION OF SPECIALTY

The specialty of immigration law is the practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not limited to, such matters as visas, changes of status, deportation and exclusion, naturalization, appearances before courts and governmental agencies, and protection of constitutional rights.

History Note: Authority G.S. 84-4;
Eff. March 6, 1997.

27 NCAC 01D .2603 RECOGNITION AS A SPECIALIST IN IMMIGRATION LAW

If a lawyer qualifies as a specialist in immigration law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Immigration Law."

History Note: Authority G.S. 84-4;
Eff. March 6, 1997.

27 NCAC 01D .2604 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL

SPECIALIZATION

Certification and continued certification of specialists in immigration law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-4;
Eff. March 6, 1997.*

27 NCAC 01D .2605 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN IMMIGRATION LAW

Each applicant for certification as a specialist in immigration law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in immigration law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of immigration law.

- (1) An applicant shall affirm that during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of immigration law, but not less than 400 hours in any one year. Service as a law professor concentrating in the teaching of immigration law for two semesters may be substituted for one year of experience to meet the five-year requirement.
- (2) An applicant shall show substantial involvement in immigration law for the required period by providing such information as may be required by the board regarding the applicant's participation in at least four of the seven categories of activities listed below during the five years immediately preceding the date of application. For the purposes of this section, "representation" means the entry as the attorney of record and/or having primary responsibility of preparation of the case for presentation before the appropriate adjudicatory agency or tribunal.
 - (A) Family Immigration. Representation of clients before the United States Citizenship and Immigration Services (USCIS) or the State Department in family-based applications, including the Violence Against Women Act (VAWA).
 - (B) Employment- Related Immigration. Representation of employers or aliens before the U.S. Department of Labor (DOL), USCIS, Immigration and Customs Enforcement (ICE)(including I-9 reviews in anticipation of ICE audits), or the Department of State in employment-related immigration matters and filings.
 - (C) Naturalization and Citizenship. Representation of clients before USCIS in naturalization and citizenship matters.
 - (D) Administrative Hearings and Appeals. Representation of clients before immigration judges in removal, bond redetermination, and other administrative matters; and the representation of clients in appeals taken before the Board of Immigration Appeals and the Attorney General, the Administrative Appeals Office, the Board of Alien Labor Certification Appeals and DOL Commissioners, or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OCAHO).
 - (E) Federal Litigation. Representation of clients before Article III courts in habeas corpus petitions, mandamus or Administrative Procedures Act complaints, criminal prosecution of violations of immigration law, district court naturalization and denaturalization proceedings, or petitions for review or certiorari.
 - (F) Asylum and Refugee Status. Representation of clients before USCIS or immigration judges in applications for asylum, withholding of removal, protection under the Convention Against Torture, or adjustment of status for refugees or asylees.
 - (G) Applications for Temporary or Humanitarian Protection. Representation of clients before USCIS, ICE, immigration judges, or the Department of State in applications for Temporary Protected Status, Deferred Action for Childhood Arrivals (DACA), Nicaraguan Adjustment and Central American Relief Act (NACARA), parole in place,

humanitarian parole, deferred action, orders of supervision, U and T visas, or other similar protections and benefits.

(c) Continuing Legal Education - An applicant must earn no less than 48 hours of accredited continuing legal education (CLE) credits in topics relating to immigration law during the four years preceding application. At least 20 of the 48 CLE credit hours must be earned during the first and second year preceding application and at least 20 of the CLE hours must be earned during the third and fourth years preceding application. Of the 48 hours, at least 42 must be in immigration law; the balance may be in the related areas of federal administrative procedure, trial advocacy, evidence, taxation, family law, employment law, and criminal law and procedure.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. At least four of the completed peer reference forms received by the board must be from lawyers or judges who have substantial practice or judicial experience in immigration law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge, skills, and proficiency in immigration law. The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

*History Note: Authority G.S. 84-23;
Eff. March 6, 1997;
Amended Eff. October 2, 2014; September 25, 2020.*

27 NCAC 01D .2606 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2606(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2605(b) of this subchapter.

(b) Continuing Legal Education - The specialist must have earned no less than 60 hours of accredited continuing legal education credits in topics relating to immigration law as accredited by the board. At least 30 of the 60 CLE credit hours must be earned during the first three years after certification or recertification, as applicable. Of the 60 hours, at least 52 must be in immigration law; the balance may be in the related areas of federal administrative procedure, trial advocacy, evidence, taxation, family law, employment law, and criminal law and procedure.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2605(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than one hundred eighty (180) days nor less than ninety days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2605 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2605 of this subchapter.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court March 6, 1997;
Amendments Approved by the Supreme Court: October 2, 2014; March 27, 2019.

27 NCAC 01D .2607 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in immigration law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-4;
Eff. March 6, 1997.

SECTION .2700 – CERTIFICATION STANDARDS FOR THE WORKERS' COMPENSATION SPECIALTY

27 NCAC 01D .2701 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates workers' compensation as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000.

27 NCAC 01D .2702 DEFINITION OF SPECIALTY

The specialty of workers' compensation is the practice of law involving the analysis of problems or controversies arising under the North Carolina Workers' Compensation Act (Chapter 97, North Carolina General Statutes) and the litigation of those matters before the North Carolina Industrial Commission.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000.

27 NCAC 01D .2703 RECOGNITION AS A SPECIALIST IN WORKERS' COMPENSATION LAW

If a lawyer qualifies as a specialist in workers' compensation law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Workers' Compensation Law."

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000.

27 NCAC 01D .2704 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in workers' compensation law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000.

27 NCAC 01D .2705 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN WORKERS' COMPENSATION LAW

Each applicant for certification as a specialist in workers' compensation law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in workers' compensation law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of workers' compensation law.

- (1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of workers' compensation law, but not less than 400 hours in any one year. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.
- (2) "Practice equivalent" shall mean:
 - (A) Service as a law professor concentrating in the teaching of workers' compensation law for one year or more may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2705(b)(1) above;
 - (B) Service as a mediator of workers' compensation cases may be included in the hours necessary to satisfy the requirement set forth in Rule .2705(b)(1) above;
 - (C) Service as a deputy commissioner or commissioner of the North Carolina Industrial Commission may be substituted for the substantial involvement requirements in Rule .2705(b)(1) above provided
 - (i) the applicant was a full time deputy commissioner or commissioner throughout the five years prior to application, or
 - (ii) the applicant was engaged in the private representation of clients for at least one year during the five years immediately preceding the application; and, during this year, the applicant devoted not less than 400 hours to the practice of workers' compensation law. During the remaining four years, the applicant was either engaged in the private representation of clients and devoted an average of at least 500 hours a year to the practice of workers' compensation law, but not less than 400 hours in any one year, or served as a full time deputy commissioner or commissioner of the North Carolina Industrial Commission.
- (3) The board may require an applicant to show substantial involvement in workers' compensation law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in activities such as those listed below:
 - (A) representation as principal counsel of record in complex cases tried to an opinion and award of the North Carolina Industrial Commission;
 - (B) representation in occupational disease cases tried to an opinion and award of the North Carolina Industrial Commission; and
 - (C) representation in appeals of decisions to the North Carolina Court of Appeals or the North Carolina Supreme Court.

(c) Continuing Legal Education - An applicant must earn no less than 36 hours of accredited continuing legal education (CLE) credits in workers' compensation law and related fields during the three years preceding application, with not less than six credits earned in courses on workers' compensation law in any one year. The remaining 18 hours may be earned in courses on workers' compensation law or any of the following related fields: civil trial practice and procedure; evidence; insurance; mediation; medical injuries, medicine, or anatomy; labor and employment law; Social Security disability law; and the law relating to long-term disability or Medicaid/Medicare claims.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers, commissioners or deputy commissioners of the North Carolina Industrial Commission, or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina and have substantial practice or judicial experience in workers' compensation law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned directly to the specialty committee.

(e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of workers' compensation law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.

History Note: Authority G.S. 84-23;
Approved by the Supreme Court May 4, 2000;
Amendments Approved by the Supreme Court: March 10, 2011; March 5, 2015; December 14, 2021.

27 NCAC 01D .2706 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2706(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2705(b) of this subchapter, provided, however, that a specialist who served on the Industrial Commission as a full time commissioner or deputy commissioner during the five years preceding application may substitute each year of service on the Industrial Commission for one year of practice.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited continuing legal education (CLE) credits in workers' compensation law and related fields during the five years preceding application. Of the 60 hours of CLE, at least 30 hours shall be in workers' compensation law, and the balance may be in the following related fields: civil trial practice and procedure; evidence; insurance; mediation; medical injuries, medicine, or anatomy; labor and employment law; Social Security disability law; and the law relating to long-term disability or Medicaid/Medicare claims. The specialist must earn not less than six credits in courses on workers' compensation law each year and the balance of credits may be earned in courses on workers' compensation law or any of the related fields previously listed.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers, commissioners or deputy commissioners of the North Carolina Industrial Commission, or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2705(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than ninety days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2705 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2705 of this subchapter.

History Note: Statutory Authority G.S. 84-23;
Adopted by the Supreme Court May 4, 2000;
Amendments Approved by the Supreme Court: March 10, 2011; March 5, 2015; September 22, 2016; March 27, 2019.

27 NCAC 01D .2707 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in workers' compensation law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Adopted Eff. May 4, 2000.

**SECTION .2800 - CERTIFICATION STANDARDS FOR THE SOCIAL SECURITY DISABILITY LAW
SPECIALTY**

27 NCAC 01D .2801 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates Social Security disability law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Adopted Eff. March 2, 2006.

27 NCAC 01D .2802 DEFINITION OF SPECIALTY

The specialty of Social Security disability law is the practice of law relating to the analysis of claims and controversies arising under Title II and Title XVI of the Social Security Act and the representation of claimants in those matters before the Social Security Administration and/or the federal courts.

History Note: Authority G.S. 84-23;
Adopted Eff. March 2, 2006.

27 NCAC 01D .2803 RECOGNITION AS A SPECIALIST IN SOCIAL SECURITY DISABILITY LAW

If a lawyer qualifies as a specialist in Social Security disability law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Social Security Disability Law."

History Note: Authority G.S. 84-23;
Adopted Eff. March 2, 2006.

**27 NCAC 01D .2804 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF
LEGAL SPECIALIZATION**

Certification and continued certification of specialists in Social Security disability law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Adopted Eff. March 2, 2006.

**27 NCAC 01D .2805 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN SOCIAL
SECURITY DISABILITY LAW**

Each applicant for certification as a specialist in Social Security disability law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in Social Security disability law:

(a) Licensure and Practice. An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement. An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of Social Security disability law.

- (1) "Substantial involvement" shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 600 hours a year to the practice of Social Security disability law, but not less than 500 hours in any one year. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.
- (2) "Practice equivalent" shall mean:
 - (A) Service as a law professor concentrating in the teaching of Social Security disability law for one year or more may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2805(b)(1) above;

- (B) Service as a Social Security administrative law judge, Social Security staff lawyer, or assistant United States attorney involved in cases arising under Title II and Title XVI may be substituted for three of the five years necessary to satisfy the requirement set forth in Rule .2805(b)(1) above;
- (3) The board may require an applicant to show substantial involvement in Social Security disability law by providing information regarding the applicant's participation, during his or her legal career, as primary counsel of record in the following:
 - (A) Proceedings before an administrative law judge;
 - (B) Cases appealed to the appeals council of the Social Security Administration; and
 - (C) Cases appealed to federal district court.
- (c) Continuing Legal Education. An applicant must earn no less than 36 hours of accredited continuing legal education (CLE) credits in Social Security disability law and related fields during the three years preceding application, with not less than six credits earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine, or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; veterans' disability law; and the law relating to long term disability or Medicaid/Medicare claims.
- (d) Peer Review. An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law in a jurisdiction in the United States and have substantial practice or judicial experience in Social Security disability law. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.
 - (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
 - (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned directly to the specialty committee.
- (e) Examination. An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of Social Security disability law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.
 - (1) Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to the following:
 - (A) Title II and Title XVI of the Social Security Act;
 - (B) Federal practice and procedure in Social Security disability cases;
 - (C) Medical proof of disability;
 - (D) Vocational aspects of disability;
 - (E) Workers' compensation offset;
 - (F) Eligibility for Medicare and Medicaid;
 - (G) Eligibility for Social Security retirement and survivors benefits;
 - (H) Interaction of Social Security benefits with employee benefits (e.g., long term disability and back pay);
 - (I) Equal Access to Justice Act; and
 - (J) Fee collection and other ethical issues in Social Security practice.

*History Note: Authority G.S. 84-23;
 Approved by the Supreme Court March 2, 2006;
 Amendments Approved by the Supreme Court: March 10, 2011; December 14, 2021.*

27 NCAC 01D .2806 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2806(d) below. No examination will be required for continued certification. However, each applicant for continued

certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2805(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited continuing legal education credits in Social Security disability law and related fields during the five years preceding application. Not less than six of the credits may be earned in any one year. Of the 60 hours of CLE, at least 20 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine, or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; veterans' disability law; and the law relating to long term disability or Medicaid/Medicare claims.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in a jurisdiction in the United States and are familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2805(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 80 days prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2805 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2805 of this subchapter.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court March 2, 2006;
Amendments Approved by the Supreme Court: March 10, 2011; March 27, 2019.

27 NCAC 01D .2807 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in Social Security disability law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Adopted Eff. March 2, 2006.

SECTION .2900 - CERTIFICATION STANDARDS FOR THE ELDER LAW SPECIALTY

27 NCAC 01D .2901 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates elder law as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-23;
Eff. February 5, 2009.

27 NCAC 01D .2902 DEFINITION OF SPECIALTY

The specialty of elder law is the practice of law involving the counseling and representation of older persons and their representatives relative to the legal aspects of health and long term care planning; public benefits; surrogate decision-making, legal capacity; the conservation, disposition, and administration of the estates of older persons; and the implementation of decisions of older persons and their representatives relative to the foregoing with due consideration to the applicable tax consequences of an action, or the need for more sophisticated tax expertise.

Lawyers certified in elder law must be capable of recognizing issues that arise during counseling and representation of older persons, or their representatives, with respect to abuse, neglect, or exploitation of the older person, insurance, housing, long term care, employment, and retirement. The elder law specialist must also be familiar with

professional and non-legal resources and services publicly and privately available to meet the needs of the older persons, and be capable of recognizing the professional conduct and ethical issues that arise during representation.

History Note: Authority G.S. 84-23;
Eff. February 5, 2009.

27 NCAC 01D .2903 RECOGNITION AS A SPECIALIST IN ELDER LAW

If a lawyer qualifies as a specialist in elder law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Elder Law."

History Note: Authority G.S. 84-23;
Eff. February 5, 2009.

27 NCAC 01D .2904 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in elder law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Eff. February 5, 2009.

27 NCAC 01D .2905 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN ELDER LAW

Each applicant for certification as a specialist in elder law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in elder law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of elder law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of elder law, but not less than 400 hours in any one year. Practice shall mean substantive legal work done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) Practice equivalent shall mean service as a law professor concentrating in the teaching of elder law (or such other related fields as approved by the specialty committee and the board) for one year or more. Such service may be substituted for one year of experience to meet the five-year requirement set forth in Rule .2905(b)(1) above.

(c) Substantial Involvement Experience Requirements - In addition to the showing required by Rule .2905(b), an applicant shall show substantial involvement in elder law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in at least sixty (60) elder law matters in the categories set forth in Rule .2905(c)(3) below.

(1) As used in this section, an applicant will be considered to have participated in an elder law matter if the applicant:

(A) provided advice (written or oral, but if oral, supported by substantial documentation in the client's file) tailored to and based on facts and circumstances specific to a particular client;

(B) drafted legal documents such as, but not limited to, wills, trusts, or health care directives, provided that those legal documents were tailored to and based on facts and circumstances specific to the particular client;

(C) prepared legal documents and took other steps necessary for the administration of a previously prepared legal directive such as, but not limited to, a will or trust; or

(D) provided representation to a party in contested litigation or administrative matters concerning an elder law issue.

(2) Of the 60 elder law matters:

- (A) forty (40) must be in the experience categories listed in Rule .2905(c)(3)(A) through (E) with at least five matters in each category;
 - (B) ten (10) must be in experience categories listed in Rule .2905(c)(3)(F) through (N), with no more than five in any one category; and
 - (C) the remaining ten (10) may be in any category listed in Rule .2905(c)(3), and are not subject to the limitations set forth in Rule .2905(c)(2)(B) or (C).
- (3) Experience Categories:
- (A) health and personal care planning including giving advice regarding, and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, attorneys-in-fact, and families about medical and life-sustaining choices, and related personal life choices.
 - (B) pre-mortem legal planning including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and tax implications of any proposed action.
 - (C) fiduciary representation including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.
 - (D) legal capacity counseling including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.
 - (E) public benefits advice including planning for and assisting in obtaining Medicaid, supplemental security income, and veterans benefits.
 - (F) special needs counseling, including the planning, drafting, and administration of special/supplemental needs trusts, housing, employment, education, and related issues.
 - (G) advice on insurance matters including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, and burial/funeral policies.
 - (H) resident rights advocacy including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.
 - (I) housing counseling including reviewing the options available and the financing of those options such as: mortgage alternatives, renovation loan programs, life care contracts, and home equity conversion.
 - (J) employment and retirement advice including pensions, retiree health benefits, unemployment benefits, and other benefits.
 - (K) counseling with regard to age and/or disability discrimination in employment and housing.
 - (L) litigation and administrative advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

(d) Continuing Legal Education - An applicant must earn forty-five (45) hours of accredited continuing legal education (CLE) in elder law during the three full calendar years preceding application and the year of application, with not less than nine (9) credits earned in any of the three calendar years. Elder law CLE is any accredited program on a subject identified in the experience categories described in subparagraph (c)(3) of this rule.

(e) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina and have substantial practice or judicial experience in elder law or in a related field as set forth in Rule .2905(d). An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
 - (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned directly to the specialty committee.
- (f) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of elder law to justify the representation of special competence to the legal profession and the public. The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee or by any ABA accredited elder law certification organization with which the board contracts pursuant to Rule .1716(10) of this subchapter.

History Note: Authority G.S. 84-23;
Approved by the Supreme Court February 5, 2009;
Amendments Approved by the Supreme Court: March 11, 2010; March 10, 2011; March 8, 2012;
September 20, 2018; December 14, 2021.

27 NCAC 01D .2906 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2906(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application, he or she has had substantial involvement in the specialty as defined in Rule .2905(b) of this subchapter.
- (b) Continuing Legal Education - The specialist must earn seventy-five (75) hours of accredited continuing legal education (CLE) credits in elder law during the five calendar years preceding application, with not less than ten (10) credits earned in any calendar year. Elder law CLE is any accredited program on a subject identified in the experience categories described in Rule .2905(c)(3) of this subchapter.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in this state and familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .2905(e) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than 180 days nor less than 90 days prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such lapse, recertification will require compliance with all requirements of Rule .2905 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, then the application shall be treated as if it were for initial certification under Rule .2905 of this subchapter.

History Note: Statutory Authority G.S. 84-23;
Adopted by the Supreme Court February 5, 2009;
Amendments Approved by the Supreme Court: September 20, 2018; March 27, 2019.

27 NCAC 01D .2907 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in elder law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Eff. February 5, 2009.

SECTION .3000 - CERTIFICATION STANDARDS FOR THE APPELLATE PRACTICE SPECIALTY

27 NCAC 01D .3001 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates appellate practice as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-23;
Eff. March 10, 2011.

27 NCAC 01D .3002 DEFINITION OF SPECIALTY

The specialty of appellate practice is the practice of law relating to appeals to the Appellate Division of the North Carolina General Courts of Justice, as well as appeals to appellate-level courts of any state or territory of the United States, the Supreme Court of the United States, the United States Courts of Appeals, the United States Court of Appeals for the Armed Forces and the United States Courts of Criminal Appeals for the armed forces, and any tribal appellate court for a federally recognized Indian tribe (hereafter referred to as a "state or federal appellate court" or collectively as "state and federal appellate courts").

History Note: Authority G.S. 84-23;
Eff. March 10, 2011.

27 NCAC 01D .3003 RECOGNITION AS A SPECIALIST IN APPELLATE PRACTICE

If a lawyer qualifies as a specialist in appellate practice by meeting the standards for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Appellate Practice." Any lawyer who is entitled to represent that he or she is a "Board Certified Specialist in Criminal Appellate Practice" (having been certified as such under the standards set forth in Section .2500 of this Subchapter) at the time of the adoption of these standards shall also be entitled to represent that he or she is a "Board Certified Specialist in Appellate Practice" and shall thereafter meet the standards for continued certification under Rule .3006 of this Section in lieu of the standards for continued certification under Rule .2506 of Section .2500 of this Subchapter.

History Note: Authority G.S. 84-23;
Eff. March 10, 2011.

27 NCAC 01D .3004 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in appellate practice shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Eff. March 10, 2011.

27 NCAC 01D .3005 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN APPELLATE PRACTICE

Each applicant for certification as a specialist in appellate practice shall meet the minimum standards set forth in Rule .1720 of this Subchapter. In addition, each applicant shall meet the following standards for certification in appellate practice:

(a) **Licensure and Practice.** An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) **Substantial Involvement.** An applicant shall affirm to the board that the applicant has experience through substantial involvement in appellate practice.

(1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 400 hours a year, and not less than 100 hours in any one year, to appellate practice. "Practice" shall mean substantive legal work done primarily for the purpose of providing legal advice or representation including activities described in Paragraph (2) below, or a practice equivalent as described in Paragraph (3) below.

(2) Substantive legal work in appellate practice includes, but is not limited to, the following: preparation of a record on appeal or joint appendix for filing in any state or federal appellate court;

researching, drafting, or editing of a legal brief, motion, petition, or response for filing in any state or federal appellate court; participation in or preparation for oral argument before any state or federal appellate court; appellate mediation, either as the representative of a party or as a mediator, in any state or federal appellate court; consultation on issues of appellate practice including consultation with trial counsel for the purpose of preserving a record for appeal; service on a committee or commission whose principal focus is the study or revision of the rules of appellate procedure of the North Carolina or federal courts; authoring a treatise, text, law review article, or other scholarly work relating to appellate practice; teaching appellate advocacy at an ABA accredited law school; and coaching in appellate moot court programs.

- (3) "Practice equivalent" shall include the following activities:
- (A) Service as a trial judge for any North Carolina General Court of Justice, United States Bankruptcy Court, or United States District Court, including service as a magistrate judge, for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).
 - (B) Service as a full-time, compensated law clerk for any North Carolina or federal appellate court for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).
 - (C) Service as an appellate judge for any North Carolina or federal appellate court may be substituted for the equivalent years of experience toward the five-year requirement set forth in Rule .3005(b)(1) as long as the applicant's experience, before the applicant took the bench, included substantial involvement in appellate practice (as defined in Paragraph (b)(1)) for two years before the applicant's service as an appellate judge.
- (4) An applicant must also demonstrate substantial involvement in appellate practice by providing information regarding the applicant's participation during his or her legal career in the following:
- (A) Five oral arguments to any state or federal appellate court; and
 - (B) Principal authorship of 10 briefs submitted to any state or federal appellate court.

(c) Continuing Legal Education. An applicant must earn no fewer than 36 hours of accredited continuing legal education (CLE) credits in appellate practice and related fields during the three years preceding application, with no less than six credits to be earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in appellate practice, and the balance may be in the following related fields: trial advocacy; civil trial practice and procedure; criminal trial practice and procedure; evidence; legal writing; legal research; and mediation. An applicant may ask the specialty committee to recognize an additional field as related to appellate practice for the purpose of meeting the CLE standard. An applicant who uses authorship of a treatise, text, law review article, or other scholarly work relating to appellate practice or the teaching of appellate advocacy at an ABA-accredited law school to satisfy the substantial involvement requirement in Paragraph (b) of this Rule may not use the same experience to satisfy the CLE requirements of this Paragraph (c).

(d) Peer Review. An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of 10 lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in appellate practice. An applicant consents to confidential inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application.
- (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.

(e) Examination. An applicant must pass an examination designed to allow the applicant to demonstrate sufficient knowledge, skills, and proficiency in the field of appellate practice to justify the representation of special competence to the legal profession and the public. The examination shall be given annually and shall be administered and graded uniformly by the specialty committee. The exam shall include a written component which may be take-home and may include an oral argument before a moot court.

- (1) Subject Matter – The examination shall cover the applicant's knowledge and application of the following:
 - (A) The North Carolina Rules of Appellate Procedure;
 - (B) North Carolina General Statutes relating to appeals;

- (C) The Federal Rules of Appellate Procedure;
- (D) Federal statutes relating to appeals;
- (E) The Local Rules and Internal Operating Procedures of the United States Court of Appeals for the Fourth Circuit;
- (F) The Rules of the United States Supreme Court;
- (G) Brief writing;
- (H) Oral argument; and
- (I) Principles of appellate jurisdiction.

History Note: Authority G.S. 84-23;
 Approved by the Supreme Court March 10, 2011;
 Amendments Approved by the Supreme Court: December 14, 2021.

27 NCAC 01D .3006 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3006(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3005(b) of this subchapter.
- (b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in appellate practice and related fields during the five years preceding application for continuing certification. No less than six of the credits may be earned in any one year. Of the 60 hours of CLE, at least 20 hours shall be in appellate practice, and the balance may be in the related fields set forth in Rule .3005(c).
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law, have significant legal or judicial experience in appellate practice, and are familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3005(d) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3005 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, the application shall be treated as if it were for initial certification under Rule .3005 of this subchapter.

History Note: Authority G.S. 84-23;
 Adopted by the Supreme Court March 10, 2011;
 Amendments Approved by the Supreme Court: March 27, 2019.

27 NCAC 01D .3007 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in appellate practice are subject to any general requirement, standard, or procedure, adopted by the board, that applies to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
 Eff. March 10, 2011.

27 NCAC 01D .3008 ADVISORY MEMBERS OF THE APPELLATE PRACTICE SPECIALTY COMMITTEE

The board may appoint former chief justices of the North Carolina Supreme Court to serve as advisory members of the Appellate Practice Specialty Committee. Notwithstanding any other provision in The Plan of Legal

Specialization (Section .1700 of this Subchapter) or this Section .3000, the board may waive the requirements of Rule .3005(d) and (e) above if an advisory committee member has served at least one year on the North Carolina Supreme Court and may permit the advisory member to file an application to become a board certified specialist in appellate practice upon compliance with all other required standards for certification in the specialty. Advisory members shall hold office for an initial term of three years and shall thereafter serve at the discretion of the board.

History Note: Authority G.S. 84-23;
Eff. March 10, 2011.

SECTION .3100 - CERTIFICATION STANDARDS FOR THE TRADEMARK LAW SPECIALTY

27 NCAC 01D .3101 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates trademark law as a specialty for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) is permitted.

History Note: Authority G.S. 84-23;
Eff. March 8, 2013.

27 NCAC 01D .3102 DEFINITION OF SPECIALTY

The specialty of trademark law is the practice of law devoted to commercial symbols, and typically includes the following: advising clients regarding creating and selecting trademarks; conducting and/or analyzing trademark searches; prosecuting trademark applications; enforcing and protecting trademark rights; and counseling clients on matters involving trademarks. Practitioners regularly practice before the United States Patent and Trademark Office (USPTO), the Trademark Trial and Appeal Board (TTAB), the Trademark Division of the NC Secretary of State's Office, and the North Carolina and/or federal courts.

History Note: Authority G.S. 84-23;
Eff. March 8, 2013.

27 NCAC 01D .3103 RECOGNITION AS A SPECIALIST IN TRADEMARK LAW

If a lawyer qualifies as a specialist in trademark law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Trademark Law."

History Note: Authority G.S. 84-23;
Eff. March 8, 2013.

27 NCAC 01D .3104 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in trademark law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this Subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Eff. March 8, 2013.

27 NCAC 01D .3105 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN TRADEMARK LAW

Each applicant for certification as a specialist in trademark law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet following standards for certification in trademark law:

- (a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.
- (b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in trademark law.

- (1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of trademark law, but not less than 400 hours in any one year.
 - (2) Practice shall mean substantive legal work in trademark law done primarily for the purpose of legal advice or representation or a practice equivalent.
 - (3) "Practice equivalent" shall mean:
 - (A) Service as a law professor concentrating in the teaching of trademark law which may be substituted for up to two years of experience to meet the five-year requirement set forth in Rule .3105(b)(1).
 - (B) Service as a trademark examiner at the USPTO or a functionally equivalent trademark office for any state or foreign government which may be substituted for up to two years of experience to meet the five-year requirement set forth in Rule .3105(b)(1).
 - (C) Service as an administrative law judge for the TTAB which may be substituted for up to three years of experience to meet the five-year requirement set forth in Rule .3105(b)(1).
 - (4) The board may, in its discretion, require an applicant to provide additional information as evidence of substantial involvement in trademark law, including information regarding the applicant's participation, during his or her legal career, in the following: portfolio management, prosecution of trademark applications, search and clearance of trademarks, licensing, due diligence, domain name selection and dispute resolution, TTAB litigation, state court trademark litigation, federal court trademark litigation, trademark dispute resolution, and international trademark law.
- (c) Continuing Legal Education - To be certified as a specialist in trademark law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in trademark law during the three years preceding application. The 36 hours must include at least 20 hours in trademark law and the remaining 16 hours in related courses including: business transactions, copyright, franchise law, internet law, sports and entertainment law, trade secrets, and unfair competition.
- (d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in trademark law. An applicant consents to confidential inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant's competence and qualification.
- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application.
 - (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.
- (e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of trademark law to justify the representation of special competence to the legal profession and the public.
- (1) Terms - The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.
 - (2) Subject Matter - The examination shall cover the applicant's knowledge and application of trademark law and rules of practice, and may include the following statutes and related case law:
 - (A) The Lanham Act (15 U.S.C. § 1501 et seq.);
 - (B) Trademark Regulations (37 CFR Part 2);
 - (C) Trademark Manual of Examining Procedure (TMEP);
 - (D) Trademark Trial and Appeal Board Manual of Procedure (TBMP);
 - (E) The Trademark Counterfeiting Act of 1984 (18 U.S.C. § 2320 et seq.); and
 - (F) North Carolina Trademark Act (N.C. Gen. Stat. Chap. 80).

*History Note: Authority G.S. 84-23;
 Approved by the Supreme Court March 8, 2013;
 Amendments Approved by the Supreme Court: December 14, 2021.*

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3106(d). No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3105(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in trademark law and related fields during the five years preceding application for continuing certification. No less than six of the credits may be earned in any one year. Of the 60 hours of CLE, at least 34 hours shall be in trademark law, and the balance of 26 hours may be in the related fields set forth in Rule .3105(c) of this subchapter.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law, have significant legal or judicial experience in trademark law, and are familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3105(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3105 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, the application shall be treated as if it were for initial certification under Rule .3105 of this subchapter.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court March 8, 2013;
Amendments Approved by the Supreme Court: March 27, 2019.

27 NCAC 01D .3107 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in trademark law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Eff. March 8, 2013.

SECTION .3200 – CERIFICATION STANDARDS FOR THE UTILITIES LAW SPECIALITY

27 NCAC 01D .3201 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates utilities law as a specialty for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Eff. June 9, 2016.

27 NCAC 01D .3202 DEFINITION OF SPECIALTY

The specialty of utilities law is the practice of law focusing on the North Carolina Public Utilities Act (Chapter 62 of the North Carolina General Statutes) and practice before the North Carolina Utilities Commission (the Commission) and related state and federal regulatory bodies.

History Note: Authority G.S. 84-23;
Eff. June 9, 2016.

27 NCAC 01D .3203 RECOGNITION AS A SPECIALIST IN UTILITIES LAW

If a lawyer qualifies as a specialist in utilities law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Utilities Law."

*History Note: Authority G.S. 84-23;
Eff. June 9, 2016.*

27 NCAC 01D .3204 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in utilities law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
Eff. June 9, 2016.*

27 NCAC 01D .3205 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN UTILITIES LAW

Each applicant for certification as a specialist in utilities law shall meet the minimum standards set forth in Rule .1720 of this Subchapter. In addition, each applicant shall meet the following standards for certification in utilities law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in utilities law.

- (1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of utilities law but not less than 400 hours in any one year.
- (2) Practice shall mean substantive legal work in utilities law done primarily for the purpose of providing legal advice or representation, including the activities described in Paragraph (3), or a practice equivalent as described in Paragraph (4).
- (3) Substantive legal work in utilities law includes, but is not limited to, practice before or representation in matters relative to the Commission, Federal Energy Regulatory Commission (FERC), Federal Communications Commission (FCC), Nuclear Regulatory Commission (NRC), Pipeline and Hazardous Materials Safety Administration (PHMSA), North Carolina Department of Environment and Natural Resources (NCDENR), North American Electric Reliability Corporation, utilities commissions of other states, and related state and federal regulatory bodies as well as participation in committee work of organizations or continuing legal education programs that are focused on subject matter involved in practice before the Commission or related state and federal regulatory bodies.
- (4) "Practice equivalent" shall mean:
 - (A) Each year of service as a commissioner on the Commission during the five years prior to application may be substituted for a year of the experience necessary to meet the five-year requirement set forth in Rule .3205(b)(1).
 - (B) Each year of service on the legal staff of the Commission or of the Public Staff during the five years prior to application may be substituted for a year of the experience necessary to meet the five-year requirement set forth in Rule .3205(b)(1).

(c) Continuing Legal Education – To be certified as a specialist in utilities law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in utilities law and related fields during the three years preceding application. The 36 hours must include at least 18 hours in utilities law; the remaining 18 hours may be in related-field CLE. Utilities law CLE includes but is not limited to courses on the subjects identified in Rule .3202 and Rule .3205(b)(3) of this Subchapter. A list of the topics that qualify as related-field CLE shall be maintained by the board on its official website.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee

to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in utilities law. An applicant consents to confidential inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application.
 - (2) The references shall be given on standardized forms provided by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.
- (e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of utilities law to justify the representation of special competence to the legal profession and the public.
- (1) Terms - The examination shall be given annually in written form and shall be administered and graded uniformly by the specialty committee.
 - (2) Subject Matter - The examination shall test the applicant's knowledge and application of utilities law.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court June 9, 2016;
Amendments Approved by the Supreme Court: December 14, 2021.*

27 NCAC 01D .3206 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3206(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3205(b) of this subchapter.
- (b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in utilities law and related fields during the five years preceding application for continuing certification. Of the 60 hours of CLE, at least 30 hours shall be in utilities law, and the balance of 30 hours may be in the related fields set forth in Rule .3205(c).
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law, have significant legal or judicial experience in utilities law, and are familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3205(d) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3205 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, the application shall be treated as if it were for initial certification under Rule .3205 of this subchapter.

*History Note: Statutory Authority G.S. 84-23;
Adopted by the Supreme Court June 9, 2016;
Amendments Approved by the Supreme Court: March 27, 2019.*

27 NCAC 01D .3207 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in utilities law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

History Note: Authority G.S. 84-23;
Eff. June 9, 2016.

section .3300 - certification standards for the privacy and information security law

27 NCAC 01D .3301 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates privacy and information security law as a specialty for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.

27 NCAC 01D .3302 DEFINITION OF SPECIALTY

The specialty of privacy and information security law encompasses the laws that regulate the collection, storage, sharing, monetization, security, disposal, and permissible uses of personal or confidential information about individuals, businesses, and organizations, and the security of information regarding individuals and the information systems of businesses and organizations. The specialty also includes legal requirements and risks related to cyber incidents, such as external intrusions into computer systems, and cyber threats, such as governmental information sharing programs.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.

27 NCAC 01D .3303 RECOGNITION AS A SPECIALIST IN PRIVACY AND INFORMATION SECURITY LAW

If a lawyer qualifies as a specialist in privacy and information security law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Privacy and Information Security Law."

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.

27 NCAC 01D .3304 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in privacy and information security law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.

27 NCAC 01D .3305 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN PRIVACY AND INFORMATION SECURITY LAW

Each applicant for certification as a specialist in privacy and information security law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet following standards for certification in privacy and information security law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in privacy and information security law.

- (1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 400 hours a year to the practice of privacy and information security law but not less than 300 hours in any one year.

- (2) Practice shall mean substantive legal work in privacy and information security law done primarily for the purpose of providing legal advice or representation, including the activities described in paragraph (3), or a practice equivalent as described in paragraph (4).
- (3) Substantive legal work in privacy and information security law includes, but is not limited to, representation on compliance, transactions and litigation relative to the laws that regulate the collection, storage, sharing, monetization, security, disposal, and permissible uses of personal or confidential information about individuals, businesses, and organizations. Practice in this specialty requires the application of information technology principles including current data security concepts and best practices. Legal work in the specialty includes, but is not limited to, knowledge and application of the following: data breach response laws, data security laws, and data disposal laws; unauthorized access to information systems, such as password theft, hacking, and wiretapping, including the Stored Communications Act, the Wiretap Act, and other anti-interception laws; cyber security mandates; website privacy policies and practices, including the Children's Online Privacy Protection Act (COPPA); electronic signatures and records, including the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) and the Uniform Electronic Transactions Act (UETA); e-commerce laws and contractual legal frameworks related to privacy and data security such as Payment Card Industry Data Security Standards (PCI-DSS) and the NACHA rules; direct marketing, including the CAN-SPAM Act, Do-Not-Call, and Do-Not-Fax laws; international privacy compliance, including the European Union data protection requirements; social media policies and regulatory enforcement of privacy-related concerns pertaining to the same; financial privacy, including the Gramm-Leach-Bliley Act, the Financial Privacy Act, the Bank Secrecy Act, and other federal and state financial laws, and the regulations of the federal financial regulators including the SEC, CFPB, and FinCEN; unauthorized transaction and fraudulent funds transfer laws, including the Electronic Funds Transfer Act and Regulation E, as well as the Uniform Commercial Code; credit reporting laws and other "background check" laws, including the Fair Credit Reporting Act; identity theft laws, including the North Carolina Identity Theft Protection Act and the Federal Trade Commission's "Red Flags" regulations; health information privacy, including the Health Information Portability and Accountability Act (HIPAA); educational privacy, including the Family Educational Rights and Privacy Act (FERPA) and state laws governing student privacy and education technology; employment privacy law; and privacy torts.
- (4) "Practice equivalent" shall mean:
 - (A) Full-time employment as a compliance officer for a business or organization for one year or more during the five years prior to application may be substituted for an equivalent number of the years of experience necessary to meet the five-year requirement set forth in Rule .3305(b)(1) if at least 25% of the applicant's work was devoted to privacy and information security implementation.
 - (B) Service as a law professor concentrating in the teaching of privacy and information security law for one year or more during the five years prior to application may be substituted for an equivalent number of years of experience necessary to meet the five-year requirement set forth in Rule .3305(b)(1);

(c) Continuing Legal Education - To be certified as a specialist in privacy and information security law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in privacy and information security law and related fields during the three years preceding application. The 36 hours must include at least 18 hours in privacy and information security law; the remaining 18 hours may be in related-field CLE or technical (non-legal) continuing education (CE). At least six credits each year must be earned in privacy and information security law. Privacy and information security law CLE includes but is not limited to courses on the subjects identified in Rule .3302 and Rule .3305(b)(3) of this subchapter. A list of the topics that qualify as related-field CLE and technical CE shall be maintained by the board on its official website.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field to serve as references for the applicant. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law in North Carolina or another jurisdiction in the United States; however, no more than five references may be licensed in another jurisdiction. References with legal or judicial experience in privacy and information security law are

preferred. An applicant consents to confidential inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application. A lawyer who is in-house counsel for an entity that is the applicant's client may serve as a reference.
- (2) Peer review shall be given on standardized forms provided by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.

(e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of privacy and information security law to justify the representation of special competence to the legal profession and the public.

- (1) Terms - The examination shall be given at least once a year in written form and shall be administered and graded uniformly by the specialty committee or by an organization determined by the board to be qualified to test applicants in privacy and information security law.
- (2) Subject Matter - The examination shall test the applicant's knowledge and application of privacy and information security law.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court September 28, 2017;
Amendments Approved by the Supreme Court: December 14, 2021.*

27 NCAC 01D .3306 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3306(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3305(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in privacy and information security law and related fields during the five years preceding application for continuing certification. Of the 60 hours of CLE, at least 30 hours shall be in privacy and information security law, and the balance of 30 hours may be in related field CLE or technical (non-legal) CE. At least six credits each year must be earned in privacy and information security law. A list of the topics that qualify as related-field CLE and technical CE shall be maintained by the board on its official website.

(c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in North Carolina or another jurisdiction in the United States; however, no more than three reference may be licensed in another jurisdiction. References must be familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3305(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3305 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification was suspended or revoked during a period of certification, the application shall be treated as if it were for initial certification under Rule .3305 of this subchapter.

*History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017;
Amendments Approved by the Supreme Court: March 27, 2019.*

27 NCAC 01D .3307 APPLICABILITY OF OTHER REQUIREMENTS

The specific standards set forth herein for certification of specialists in privacy and information security law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

*History Note: Authority G.S. 84-23;
Adopted by the Supreme Court September 28, 2017.*

SECTION .3400 – CERTIFICATION STANDARDS FOR THE CHILD WELFARE LAW SPECIALTY

27 NCAC 01D .3401 ESTABLISHMENT OF SPECIALTY FIELD

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates child welfare law as a specialty for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court December 14, 2021.*

27 NCAC 01D .3402 DEFINITION OF SPECIALTY

Child welfare law is a unique area of law that requires knowledge of substantive and procedural rights provided for in the North Carolina General Statutes, Chapter 7B. The cases are complex and multi-faceted both in the issues they present and the number of type of court hearings required by federal and state law. The substantive area includes abuse, neglect, dependency, and termination of parental rights. Knowledge of additional substantive areas is also required; such as child custody, the Uniform Child Custody Jurisdiction Enforcement Act, the Interstate Compact on the Placement of Children, the Indian Child Welfare Act, adoptions, and education law. The cases revolve around children and families that are experiencing significant issues resulting in the government's intervention to protect children's safety while also protecting parents' constitutional rights to parent their children. Child welfare differs from family law/domestic relations in that different laws and procedures apply and the government through a county department of social services is involved.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court December 14, 2021.*

27 NCAC 01D .3403 RECOGNITION AS A SPECIALIST IN CHILD WELFARE LAW

If a lawyer qualifies as a specialist in child welfare law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Child Welfare Law."

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court December 14, 2021.*

27 NCAC 01D .3404 APPLICABILITY OF PROVISIONS OF THE NORTH CAROLINA PLAN OF LEGAL SPECIALIZATION

Certification and continued certification of specialists in child welfare law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these standards for certification.

*History Note: Authority G.S. 84-23;
Approved by the Supreme Court December 14, 2021.*

27 NCAC 01D .3405 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN CHILD WELFARE LAW

Each applicant for certification as a specialist in child welfare law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet following standards for certification in child welfare law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in child welfare law.

- (1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of child welfare law but not less than 350 hours in any one year.
- (2) Practice shall mean substantive legal work in child welfare law done primarily for the purpose of providing legal advice or representation, including the activities described in paragraph (3), or a practice equivalent as described in paragraph (4).
- (3) Substantive legal work in child welfare law focuses on a combination of abuse, neglect, dependency, and termination of parental rights proceedings as governed by N.C.G.S. Chapter 7B ("the Juvenile Code"). Types of work involve staffing cases; advising clients; participating in department of social services' team meeting involving the juvenile and family; preparing for trial; researching, drafting, or editing written pleadings (petitions, motions, responses to motions, written argument to the district court, appellate briefs); representing clients in district court juvenile proceedings, and family law court proceedings with substantial child protective services involvement; participating in oral arguments before the North Carolina appellate courts; consultation on child welfare issues with other counsel and child welfare professionals; authoring scholarly work related to child welfare; and teaching child welfare i) at an ABA accredited North Carolina law school, ii) for approved CLE credit at both a North Carolina or national program, iii) for North Carolina professional continuing education requirements, and iv) for prospective and current Guardian ad Litem staff and volunteers.
- (4) "Practice equivalent" shall mean:
 - (A) Service as a law professor concentrating in the teaching of child welfare law for up to two years during the five years prior to application may be substituted for an equivalent number of years of experience necessary to meet the five-year requirement set forth in Rule .3405(b)(1);
 - (B) Service as a district court judge who has attained juvenile court certification through the AOC in North Carolina. Such certification may count for one year of experience in meeting the five-year requirement.

(c) Continuing Legal Education - To be certified as a specialist in child welfare law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in child welfare law/juvenile law and related fields during the three years preceding application. The 36 hours must include at least 27 hours in child welfare/juvenile law; the remaining 9 hours may be in related-field CLE. Related fields include family law, adoption law, juvenile delinquency law, immigration law, public benefits law, ethics, education law, trial advocacy, evidence, appellate practice, and trainings on topics including implicit bias, cultural humility, disproportionality, and substance use and mental health disorders. The applicant may request recognition of an additional field as related to child welfare practice for the purpose of meeting the CLE standard.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in child welfare law.

- (1) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.
- (2) Subject Matter - The examination shall cover the applicant's knowledge and application of the law relating to abuse, neglect, dependency, and termination of parental rights, child custody, adoptions, and education law including, but not limited to, the following:

- (A) State and Federal Sources of Authority: Laws, Rules, and Policy
- (B) The Constitutional Rights of Parents and Children and Requirements of State Intervention
- (C) Jurisdiction, Venue, Overlapping Proceedings
- (D) Procedures Regarding the Petition, Summons and Service
- (E) How a Case Enters the Court System
- (F) Central Registry and Responsible Individuals List
- (G) Parties, Appointment of Counsel, and Guardians ad Litem
- (H) Purpose and Requirements of Temporary and Nonsecure Custody
- (I) Aspects of Adjudication and Its Consequences
- (J) Dispositional Hearings and Alternatives
- (K) Visitation
- (L) Permanency Outcomes
- (M) Voluntary Placements of Juveniles and Foster Care (ages 18-21)
- (N) Termination of Parental Rights (TPR) Procedure, Grounds Phase, Best Interests Phase and Legal Consequences
- (O) Post TPR/Relinquishment, Adoption, Reinstatement of Parental Rights
- (P) Applicability of Rules of Evidence and Evidentiary Standards
- (Q) Appealable Orders, Notices of Appeal and Expedited Appeals
- (R) Relevant Federal Laws Including, but not limited to, the Uniform Child Custody Jurisdiction Enforcement Act, the Interstate Compact on the Placement of Children and the Indian Child Welfare Act
- (S) Confidentiality and Information Sharing

History Note: Authority G.S. 84-23;
Approved by the Supreme Court December 14, 2021.

27 NCAC 01D .3406 STANDARDS FOR CONTINUED CERTIFICATION AS A SPECIALIST

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3406(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

- (a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3405(b) of this subchapter.
- (b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in child welfare law and related fields during the five years preceding application for continuing certification. Of the 60 hours of CLE, at least 42 hours shall be in child welfare/juvenile law, and the balance of 18 hours may be in related field CLE. A list of the topics that qualify as related-field CLE and technical CE shall be maintained by the board on its official website.
- (c) Peer Review - The applicant must provide, as references, the names of at least six lawyers or judges, all of whom are licensed and currently in good standing to practice law in North Carolina. References must be familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3405(d) of this subchapter apply to this standard.
- (d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.
- (e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3405 of this subchapter, including the examination.
- (f) Suspension or Revocation of Certification - If an applicant's certification was suspended or revoked during a period of certification, the application shall be treated as if it were for initial certification under Rule .3405 of this subchapter.

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

Approved by the Supreme Court December 14, 2021.