TITLE 27 - THE NORTH CAROLINA STATE BAR

CHAPTER 1 - RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR

SUBCHAPTER 1A - ORGANIZATION OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - FUNCTIONS

27 NCAC 01A .0101 PURPOSE

The North Carolina State Bar shall foster the following purposes, namely:

(1) to cultivate and advance the science of jurisprudence;
(2) to promote reform in the law and in judicial procedure;
(3) to facilitate the administration of justice;
(4) to uphold and elevate the standards of honor, integrity and courtesy in the legal profession;
(5) to encourage higher and better education for membership in the profession;
(6) to promote a spirit of cordiality and unity among the members of the Bar;
(7) to perform all duties imposed by law.

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

27 NCAC 01A .0102 DIVISION OF WORK

(a) To facilitate the work for the accomplishment of the above enumerated purposes, the council may, from time to time, classify such work under appropriate sections and committees, either standing or special, of the North Carolina State Bar.
(b) The council shall determine the number of members, composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to each committee.
(c) Any committee may, at the discretion of the appointing or electing authority, be composed of council members or members of the North Carolina State Bar who are not members of the council or of lay persons or of any combination.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994.

27 NCAC 01A .0103 COOPERATION WITH LOCAL BAR ASSOCIATION COMMITTEES

The sections and committees so appointed may secure the cooperation of like sections and committees of the North Carolina Bar Association and all local bar associations of the state.

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

27 NCAC 01A .0104 ORGANIZATION OF LOCAL BAR ASSOCIATIONS

The council shall encourage and foster the organization of local bar associations.

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

27 NCAC 01A .0105 ANNUAL PROGRAM

The council shall provide a suitable program for each annual meeting of the North Carolina State Bar.

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

27 NCAC 01A .0106 REPORTS MADE TO ANNUAL MEETING

The annual reports of the several committees and boards shall be delivered to the secretary of the North Carolina State Bar before the annual meeting.

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

SECTION .0200 - MEMBERSHIP - ANNUAL MEMBERSHIP FEES

27 NCAC 01A .0201 CLASSES OF MEMBERSHIP

(a) Two Classes of Membership. Members of the North Carolina State Bar shall be divided into two classes: active members and inactive members.

(b) Active Member. The active members shall be all persons who have obtained licenses entitling them to practice law in North Carolina, including persons serving as justices or judges of any state or federal court in this state, unless classified as inactive members by the council. All active members must pay the annual membership fee.

(c) Inactive Members

(1) The inactive members shall include:

(A) all persons who have been admitted to the practice of law in North Carolina but who the council has found are not engaged in the practice of law or holding themselves out as practicing attorneys and who do not occupy any public or private position in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law, and

(B) those persons granted emeritus pro bono status by the council and allowed to represent indigent clients on a pro bono basis under the supervision of active members working for nonprofit corporations organized pursuant to Chapter 55A of the General Statutes of North Carolina for the sole purpose of rendering legal services to indigents.

(2) Inactive members of the North Carolina State Bar may not practice law, except as provided in this rule for persons granted emeritus pro bono status, and are exempt from payment of membership dues during the period in which they are inactive members. For purposes of the State Bar's membership records, the category of inactive members shall be further divided into the following subcategories:

(A) Nonpracticing. This subcategory includes those members who are not engaged in the practice of law or holding themselves out as practicing attorneys and who hold positions unrelated to the practice of law, or practice law in other jurisdictions.

(B) Retired. This subcategory includes those members who are retired from the practice of law and who no longer hold themselves out as practicing attorneys. A retired member must hold himself or herself out as a "Retired Member of the North Carolina State Bar" or by some similar designation, provided such designation clearly indicates that the attorney is "retired."

(C) Disability inactive status. This subcategory includes members who suffer from a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney, as determined by the courts, the council, or the Disciplinary Hearing Commission.

(D) Disciplinary suspensions/disbarments. This subcategory includes those members who have been suspended from the practice of law or who have been disbarred by the courts, the council, or the Disciplinary Hearing Commission for one or more violations of the Rules of Professional Conduct.

(E) Administrative suspensions. This subcategory includes those members who have been suspended from the practice of law, pursuant to the procedure set forth in Rule .0903 of subchapter 01D, for failure to fulfill the obligations of membership.

(F) Emeritus pro bono status. This subcategory includes those members who are permitted by the council to represent indigent persons under the supervision of active members who are employed by nonprofit corporations duly authorized to provide legal services to such persons. This status may be withdrawn by the council for good cause shown pursuant to the procedure set forth in Rule .0903 of subchapter 01D.

History Note: *Authority G.S. 84-16; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 2014; March 6, 2008.

27 NCAC 01A .0202 REGISTER OF MEMBERS

(a) Initial Registration with State Bar. Every member shall register by completing and returning to the North Carolina State Bar a signed registration card containing the following information:

(1) name and address;
(2) date;
(3) date passed examination to practice in North Carolina;
(4) date and place sworn in as an attorney in North Carolina;
(5) date and place of birth;
(6) list of all other jurisdictions where the member has been admitted to the practice of law and date of admission;
(7) whether suspended or disbarred from the practice of law in any jurisdiction or court, and if so, when and where, and when readmitted.

(b) Membership Records of State Bar. The secretary shall keep a permanent register for the enrollment of members of the North Carolina State Bar. In appropriate places therein entries shall be made showing the address of each member, date of registration and class of membership, date of transfer from one class to another, if any, date and period of suspension, if any, and such other useful data which the council may from time to time require.

(c) Updating Membership Information. Each year before July 1, every member shall provide or verify the member's current name, mailing address, and e-mail address.

History Note: *Authority G.S. 84-23; 84-34;*
Readopted Eff. December 8, 1994;
Amended Eff. October 7, 2010; December 7, 1995;

27 NCAC 01A .0203 ANNUAL MEMBERSHIP FEES; WHEN DUE

(a) Amount and Due Date

The annual membership fee shall be in the amount determined by the council as provided by law and shall be due and payable to the secretary of the North Carolina State Bar on January 1 of each year. The annual membership fee shall be delinquent if not paid by the last day of June of each year. For calendar year 2020 only, the annual membership fee shall be delinquent if not paid by August 31, 2020.

(b) Late Fee

Any attorney who fails to pay the entire annual membership fee in the amount determined by the council as provided by law and the annual Client Security Fund assessment approved by the North Carolina Supreme Court by the last day of June of each year shall also pay a late fee of $30. For calendar year 2020 only, any attorney who fails to pay the entire annual membership fee in the amount determined by the council as provided by law and the annual Client Security Fund assessment approved by the North Carolina Supreme Court by August, 31, 2020, shall also pay a late fee of $30.

(c) Waiver of All or Part of Dues

No part of the annual membership fee or Client Security Fund assessment shall be prorated or apportioned to fractional parts of the year, and no part of the membership fee or Client Security Fund assessment shall be waived or rebated for any reason with the following exceptions:

(1) A person licensed to practice law in North Carolina for the first time by examination shall not be liable for dues or the Client Security Fund assessment during the year in which the person is admitted;
(2) A person licensed to practice law in North Carolina serving in the armed forces, whether in a legal or nonlegal capacity, will be exempt from payment of dues and Client Security Fund assessment for any year in which the member is on active duty in the military service;
(3) A person licensed to practice law in North Carolina who files a petition for inactive status on or before December 31 of a given year shall not be liable for the membership fee or the Client Security Fund assessment for the following year if the petition is granted. A petition shall be deemed timely if it is postmarked on or before December 31.

History Note: *Authority G.S. 84-23; 84-34;*
Readopted Eff. December 8, 1994;
Amended Eff. March 7, 1996; December 7, 1995; September 7, 1995; September 25, 2020.

27 NCAC 01A .0204 GOOD STANDING DEFINITION AND CERTIFICATES

(a) Definition. A lawyer who is an active member of the North Carolina State Bar and who is not subject to a pending administrative or disciplinary suspension or disbarment order or an order of suspension that has been stayed is in good standing with the North Carolina State Bar. An administrative or disciplinary suspension or disbarment order is "pending" if the order has been announced in open court by a state court of competent jurisdiction or by the Disciplinary Hearing Commission, or if the order has been entered by a state court of competent jurisdiction, by the Council or by the Disciplinary Hearing Commission but has not taken effect. "Good standing" makes no reference to delinquent membership obligations, prior discipline, or any disciplinary charges or grievances that may be pending.
(b) Certificate of Good Standing for Active Member. Upon application and payment of the prescribed fee, the Secretary of the North Carolina State Bar shall issue a certificate of good standing to any active member of the State Bar who is in good standing and who is current on all payments owed to the North Carolina State Bar. A certificate of good standing will not be issued unless the member pays any delinquency shown on the financial records of the North Carolina State Bar including outstanding judicial district bar dues. If the member contends that there is good cause for non-payment of some or all of the amount owed, the member may subsequently demonstrate good cause to the Administrative Committee pursuant to the procedure set forth in Rule .0903(e)(1) of Subchapter 01D of these rules. If the member shows good cause, the contested amount shall be refunded to the member.
(c) Certificate of Good Standing for Inactive Member. Upon application, the Secretary of the North Carolina State Bar shall issue a certificate of good standing to any inactive member of the State Bar who was in good standing at the time that the member was granted inactive status and who is not subject to any disciplinary order or pending disciplinary order. The certificate shall state that the member is inactive and is ineligible to practice law in North Carolina.

History Note: *Authority G.S. 84-23;*
Eff. March 8, 2012.

Codifier's Note; The content of Section .0300 Election and Succession of Officers was moved to Section .0400 September 24, 2015.

SECTION .0300 - PERMANENT RELINQUISHMENT OF MEMBERSHIP IN THE STATE BAR

27 NCAC 01A .0301 EFFECT OF RELINQUISHMENT

(a) Order of Relinquishment. Pursuant to the authority of the council to resolve questions pertaining to membership status as specified in N.C. Gen. Stat. 84-23, the council may allow a member of the State Bar to relinquish his or her membership in the State Bar subject to the conditions set forth in this section. Upon the satisfaction of those conditions, the council may enter an order declaring that the individual is no longer a member of the State Bar and no longer has the privileges of membership set forth in N.C. Gen. Stat. 84-16 and in the rules of the State Bar.
(b) Requirements to Return to Practice of Law. If an individual who has been granted relinquishment of membership desires to return to the practice of law in the state of North Carolina, he or she must apply to the North Carolina Board of Law Examiners and satisfy all of the requirements to obtain a license to practice law in the state of North Carolina as if for the first time.
(c) Prohibition on Representations. Effective upon the date of the order of relinquishment, the former licensee is prohibited from representing that he or she is

(1) a lawyer in North Carolina,
(2) licensed to practice law in North Carolina,
(3) able to provide legal services in North Carolina, or
(4) a member of the North Carolina State Bar.

History Note: *Authority G.S. 84-23;*
Adopted Eff. September 24, 2015.

27 NCAC 01A .0302 CONDITIONS FOR RELINQUISHMENT

A member of the State Bar may petition the council to enter an order of relinquishment. An order of relinquishment shall be granted if the petition demonstrates that the following conditions have been satisfied:
(a) Unresolved Complaints. No open, unresolved allegations of professional misconduct are pending against the petitioner in any jurisdiction.

(b) No Financial Obligation to State Bar. The petitioner 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, and all fees, fines, and penalties owed to the Board of Continuing Legal Education.
(c) Wind Down of Law Practice. The petitioner has completed the wind down of his or her law practice in compliance with the procedure for winding down the law practice of a suspended or disbarred lawyer set forth in paragraphs (a), (b), and (e) of Rule .0128 of Subchapter 1B and with any other condition on the wind down of a law practice imposed by state, federal, and administrative law. The petition must describe the wind down of the law practice with specificity.
(d) Acknowledgment. The petitioner acknowledges the following: the State Bar's authority to take the actions described in Rule .0303 of this section; that the sole mechanism for regaining active membership status with the State Bar is to apply to the North Carolina Board of Law Examiners for admission and to satisfy all of the requirements to obtain a license to practice law in the state of North Carolina as if for the first time; and that he or she is not entitled to confidentiality under Rule .0133 of Subchapter 1B of any information relating to professional misconduct received by the State Bar after the date of the entry of the order of relinquishment.
(e) Address. The petition includes a physical address at which the State Bar can communicate with the petitioner.
(f) Notarized Petition. The petition is signed in the presence of a notary and notarized.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court September 24, 2015.

27 NCAC 01A .0303 ALLEGATIONS OF MISCONDUCT RECEIVED BY THE STATE BAR ON OR AFTER THE DATE OF RELINQUISHMENT
(a) Post Relinquishment Action by State Bar. Relinquishment is not a bar to the initiation or investigation of allegations of professional misconduct and shall not prevent the State Bar from prosecuting a disciplinary action against the former licensee for any violation of the Rules of Professional Conduct that occurred prior to the date of the order of relinquishment.
(b) Procedure for Investigation. Allegations of misconduct shall be investigated pursuant to the procedures set forth in Section .0100 of Subchapter 1B.
(c) Release of Information from Investigation. Information from the investigation of allegations of misconduct shall be retained in the State Bar's records and may be released by the State Bar as required by law or as necessary to protect the interests of the public. Release may be made to, but is not limited to, the North Carolina Board of Law Examiners, any professional licensing authority, or any law enforcement or regulatory body investigating the former licensee.

History Note: *Authority G.S. 84-23;*
Adopted Eff. September 24, 2015.

27 NCAC 01A .0304 ELECTIONS
(a) A president-elect, vice-president and secretary shall be elected annually by the council at an election to take place at the council meeting held during the annual meeting of the North Carolina State Bar. All elections will be conducted by secret ballot.
(b) If there are more than two candidates for an office, then any candidate receiving a majority of the votes shall be elected. If no candidate receives a majority, then a run-off shall be held between the two candidates receiving the highest number of votes.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994.

27 NCAC 01A .0305 NOMINATING COMMITTEE
(a) There shall be a Nominating Committee appointed to nominate one or more candidates for each of the offices. The Nominating Committee shall be composed of the immediate past president and the five most recent living past presidents who are in good standing with the North Carolina State Bar. The Nominating Committee shall meet prior to the council meeting at which the election of officers will be held. The Nominating Committee shall submit its nominations in writing to the secretary at least 45 days prior to the election, and the secretary shall transmit the report by mail to the members of the council at least 30 days prior to the election.
(b) At the council meeting at which elections are held, the floor shall be open for additional nominations for each office at the time of the election.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994.

27 NCAC 01A .0306 VACANCIES AND SUCCESSION

(a) If the office of president becomes vacant for any reason, including resignation, death, disqualification, or permanent inability, the president-elect shall become president for the unexpired term and the next term. If the office of the president-elect becomes vacant because the president-elect must assume the presidency under the foregoing provision of this section, then the vice-president shall become the president-elect for the unexpired term and at the end of the unexpired term to which the vice-president ascended the office will become vacant and an election held in accordance with Rule .0304 of this Section; if the office of president-elect becomes vacant for any other reason, the vice-president shall become the president-elect for the unexpired term following which said officer shall assume the presidency as if elected president-elect. If the office of vice-president or secretary becomes vacant for any reason, including resignation, death, disqualification, or permanent inability, or if the office of president or president-elect becomes vacant without an available successor under these provisions then the office will be filled by election by the council at a special meeting of the council with such notice as required by Rule .0602 of this Subchapter or at the next regularly scheduled meeting of the council.

(b) If the president is absent or unable to preside at any meeting of the North Carolina State Bar or the council, the president-elect shall preside, or if the president-elect is unavailable, then the vice-president shall preside. If none are available, then the council shall elect a member to preside during the meeting.

(c) If the president is absent from the state or for any reason is temporarily unable to perform the duties of office, the president-elect shall assume those duties until the president returns or becomes able to resume the duties. If the president-elect is unable to perform the duties, then the council may select one of its members to assume the duties for the period of inability.

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

27 NCAC 01A .0307 REMOVAL FROM OFFICE

The council may, upon giving due notice and an opportunity to be heard, remove from office any officer found by the council to have a disability or to have engaged in misconduct including misconduct not related to the office.

History Note: *Authority G.S. 84-21; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. February 3, 2000.

SECTION .0400 - ELECTION, SUCCESSION, AND DUTIES OF OFFICERS

27 NCAC 01A .0401 OFFICERS

(a) The officers of the North Carolina State Bar and the council shall consist of a president, a president-elect, a vice-president, and an immediate past president. These officers shall be deemed members of the council in a respects.

(b) There shall be a secretary who shall also have the title of executive director. The secretary shall not be a member of the council.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0402 ELIGIBILITY FOR OFFICE

The president, president-elect, and vice-president need not be members of the council at the time of their election.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0403 TERM OF OFFICE

(a) The term of each office shall be one year beginning at the conclusion of the annual meeting. Each officer will hold office until a successor is elected and qualified.
(b) The president shall assume the office of immediate past president at the conclusion of the term as president. The president-elect shall assume the office of president at the conclusion of the annual meeting following the term as president-elect.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0404 ELECTIONS
(a) A president-elect, vice-president and secretary shall be elected annually by the council at an election to take place at the council meeting held during the annual meeting of the North Carolina State Bar. All elections will be conducted by secret ballot.
(b) If there are more than two candidates for an office, then any candidate receiving a majority of the votes shall be elected. If no candidate receives a majority, then a run-off shall be held between the two candidates receiving the highest number of votes.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0405 NOMINATING COMMITTEE
(a) There shall be a Nominating Committee appointed to nominate one or more candidates for each of the offices. The Nominating Committee shall be composed of the immediate past president and the five most recent living past presidents who are in good standing with the North Carolina State Bar. The Nominating Committee shall meet prior to the council meeting at which the election of officers will be held. The Nominating Committee shall submit its nominations in writing to the secretary at least 45 days prior to the election, and the secretary shall transmit the report by mail to the members of the council at least 30 days prior to the election.
(b) At the council meeting at which elections are held, the floor shall be open for additional nominations for each office at the time of the election.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0406 VACANCIES AND SUCCESSION
(a) Succession Upon Mid-term Vacancy in Office. Officer vacancies shall be filled as follows:
(1) A vacancy in the office of president shall be filled by the president-elect, who shall serve as president for the unexpired term and for the next term.
(2) A vacancy in the office of president-elect shall be filled by the vice-president, who shall serve as president-elect for the unexpired term. At the end of the unexpired term, the office of president-elect will become vacant and the council shall elect a president-elect in accordance with Rule .0404 of this subchapter. A former vice-president who served an unexpired term as president-elect pursuant to this subsection will be eligible to stand for election as president-elect.
(3) The council shall elect a person to fill the unexpired term created by any vacancy in the office of vice-president or secretary. The election shall occur at a special meeting of the council or at the next regularly scheduled meeting of the council.
(4) If there is a vacancy in the office of president or president-elect and there is no available successor under these provisions, the council shall elect a person to fill the unexpired term created by such vacancy. The election shall occur at a special meeting of the council or at the next regularly scheduled meeting of the council.
(b) Temporary Inability to Preside at Meetings. If the president is absent or is otherwise unable to preside at any meeting of the North Carolina State Bar or the council, the president-elect shall preside. If the president-elect is absent or is otherwise

unable to preside, then the vice-president shall preside. If none of the president, president-elect, or vice-president are present and able to preside, then the council shall elect a member to preside during the meeting.
(c) Temporary Inability to Perform Duties. If the president is absent or is otherwise temporarily unable to perform the duties of office, the president-elect shall perform those duties until the president returns or becomes able to resume the duties. If the president-elect is absent or is otherwise temporarily unable to perform the duties of the president, then the council shall select one of its members to perform those duties for the period of the president's absence or inability.
(d) Temporary Inability of Secretary to Perform Duties. If the secretary is absent or is otherwise temporarily unable to perform the duties of office, the assistant director and director for management, finance, and communications shall perform those duties until the secretary returns or becomes able to resume the duties. If the assistant director and director for management, finance, and communications is absent or is otherwise unable to perform those duties, the counsel of the State Bar shall perform those duties until the secretary returns or becomes able to resume the duties. If neither the assistant director and director for management, finance, and communications nor the counsel are able to perform those duties, then the president may select a member of the State Bar staff to perform those duties for the period of the secretary's absence or inability.

History Note: *Authority G.S. 84-23;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: September 24, 2015; September 20, 2018.

27 NCAC 01A .0407 REMOVAL FROM OFFICE
The council may, upon giving due notice and an opportunity to be heard, remove from office any officer found by the council to have a disability or to have engaged in misconduct including misconduct not related to the office.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0408 COMPENSATION OF OFFICERS
The secretary shall receive a salary fixed by the council. All other officers shall serve without compensation except the per diem allowances fixed by stature for members of the council.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

27 NCAC 01A .0409 PRESIDENT
The president shall preside over meetings of the North Carolina State Bar and the council. The president shall sign all resolutions and orders of the council in the capacity of president. The president shall execute, along with the secretary, all contracts ordered by the council. Pursuant to Rule .0412, the president is authorized to act in the name of the State Bar under emergent circumstances. The president will perform all other duties prescribed for the office by the council.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 24, 2015; September 25, 2019.

27 NCAC 01A .0410 PRESIDENT-ELECT, VICE-PRESIDENT, AND IMMEDIATE PAST PRESIDENT
The president-elect, vice-president, and immediate past president will perform all duties prescribed for the office by the council.

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

27 NCAC 01A .0411 SECRETARY
The secretary shall attend all meetings of the council and of the North Carolina State Bar, and shall record the proceedings of all such meetings. The secretary shall, with the president, president-elect or vice-president, execute all contracts ordered by

the council. He or she shall have custody of the seal of the North Carolina State Bar, and shall affix it to all documents executed on behalf of the council or certified as emanating from the council. The secretary shall take charge of all funds paid into the North Carolina State Bar and deposit them in some bank selected by the council; he or she shall cause books of accounts to be kept, which shall be the property of the North Carolina State Bar and which shall be open to the inspection of any officer, committee or member of the North Carolina State Bar during usual business hours. At each January meeting of the council, the secretary shall make a full report of receipts and disbursements since the previous annual report, together with a list of all outstanding obligations of the North Carolina State Bar. The books of accounts shall be audited as of December 31 of each year and the secretary shall publish same in the annual reports as referred to above. He or she shall perform such other duties as may be imposed upon him or her, and shall give bond for the faithful performance of his or her duties in an amount to be fixed by the council with surety to be approved by the council.

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

27 NCAC 01A .0412 EMERGENCY AUTHORITY

When prompt action is required due to emergent circumstances and it is not practicable or reasonable to assemble a quorum of the council, the president, in consultation with the officers and counsel, is authorized to act in the name of the State Bar to the extent necessary to carry out the functions of the State Bar until the next meeting of the council. Action taken pursuant to this rule shall be presented to the council for ratification at the next council meeting.

History Note: *Authority G.S. 84-23;*
Adopted Eff. September 25, 2019.

SECTION .0500 – MEETINGS OF THE NORTH CAROLINA STATE BAR

27 NCAC 01A .0501 ANNUAL MEETINGS

The annual meeting of the North Carolina State Bar shall be held at such time and place within the state of North Carolina as the council may determine.

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

27 NCAC 01A .0502 SPECIAL MEETINGS

(a) A special meeting of the North Carolina State Bar may be called to address specific subjects as follows:
- (1) upon direction of the council; or
- (2) upon delivery to the secretary of a written request by no fewer than 25% of the active members of the North Carolina State Bar setting forth the subject(s) to be addressed.

(b) At a special meeting , only subjects specified in the notice shall be addressed.
(c) Any special meeting of the North Carolina State Bar will be held at such time and place within the state of North Carolina as the council or president may determine.

History Note: *Authority G.S. 84-23; 84-33;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: April 5, 2018.

27 NCAC 01A .0503 NOTICE OF MEETINGS

(a) Notice of any meeting of the North Carolina State Bar shall be given by the secretary by posting a notice at the State Bar headquarters and on the State Bar website or as otherwise directed by the council. Notice shall also be provided as required by N.C. Gen. Stat. § 143-318.12 and by any other statutory provision regulating notice of public meetings of agencies of the state.
(b) Notice of the annual meeting will be given at least 30 days before the meeting. Notice of any special meeting will be given at least 48 hours before the meeting or as otherwise required by law.

History Note: *Authority G.S. 84-23; 84-33;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: April 5, 2018.

27 NCAC 01A .0504 QUORUM

At any annual or special meetings of the North Carolina State Bar those active members of the North Carolina State Bar present shall constitute a quorum. There shall be no voting by proxy or by absentee ballot.

History Note: *Authority G.S. 84-23; 84-33;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: April 5, 2018.

27 NCAC 01A .0505 PARLIAMENTARY RULES

Proceedings at any meeting of the North Carolina State Bar shall be governed by Roberts' Rules of Order.

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

SECTION .0600 – MEETINGS OF THE COUNCIL

27 NCAC 01A .0601 REGULAR MEETINGS

Regular meetings of the council shall be held each year in January, April, and July, at such times and places as the council may determine. A regular meeting of the council shall also be held each year in conjunction with the annual meeting of the North Carolina State Bar at the location of the annual meeting. Any regular meeting may be adjourned from time to time as a majority of members of the council present may determine.

History Note: *Authority G.S. 84-23;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: June 1, 1995; April 5, 2018.

27 NCAC 01A .0602 SPECIAL AND EMERGENCY MEETINGS

(a) A special meeting of the council may be called to address specified subjects as follows:
- (1) by the president in his or her discretion; or
- (2) by a written request, delivered to the secretary, by eight councilors setting forth the subject(s) to be addressed at the meeting. The secretary will schedule a special meeting to be held no more than 30 days after receipt of the request.

(b) An emergency meeting of the council may be called by the president to address circumstances that require immediate consideration by the council.

(c) In the event of incapacity or recusal of the president, the president elect or the vice president may call a special or emergency meeting. In the event of incapacity or recusal of the president elect or the vice president, the immediate past president or secretary may call a special or emergency meeting. In the event of incapacity or recusal of all officers, any member of the council who has served at least two terms may call a special or emergency meeting.

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

27 NCAC 01A .0603 NOTICE OF MEETINGS

(a) Notice of any regular meeting of the council will be given by the secretary by posting a notice at the State Bar headquarters and on the State Bar website or as otherwise directed by the council. Notice of any regular meeting will also be provided as required by N.C. Gen. Stat. § 143-318.12 and any other statutory provision regulating notice of public meetings of agencies of the state. Unless otherwise required by law, the secretary will issue notice of any regular meeting of the council at least 30 days before the meeting.

(b) The secretary will issue notice of any special meeting of the council at least 48 hours before the meeting, or as otherwise required by law. Notices of any special meeting will be sent to each councilor by email, or other electronic means intended to

be individually received by each councilor, to the most recent address of record provided to the State Bar by each councilor for such communications. Notice will be given to any councilor who has not provided an email address, or other electronic means to receive notices, by regular mail. Notice may be sent, but is not required to be sent, by any means authorized for service under the Rules of Civil Procedure.

(c) The secretary will issue reasonable notice of any emergency meeting in a manner consistent with the purpose of the meeting. Such notice may be given through any appropriate means by which each councilor may receive notice on an expedited basis, including telephone, email, or other electronic means.

(d) The notice for any council meeting shall set forth the day, hour, and location of the meeting.

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

27 NCAC 01A .0604 QUORUM

At a meeting of the council the presence of 10 councilors shall constitute a quorum. There shall be no voting by proxy or by absentee ballot.

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

27 NCAC 01A .0605 MANNER OF MEETING OF COUNCIL

The council will assemble at the time and place provided in the meeting notice. Attendance at a special or emergency council meeting may be by electronic means such as audio or video conferencing. Attendance at a regular council meeting by electronic means may be authorized for an individual councilor in the discretion of the president.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court April 5, 2018.

27 NCAC 01A .0606 PARLIAMENTARY RULES

Proceedings at any meeting of the council shall be governed by Roberts' Rules of Order.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court April 5, 2018.

SECTION .0700 – STANDING COMMITTEES OF THE COUNCIL

27 NCAC 01A .0701 STANDING COMMITTEES AND BOARDS

(a) Standing Committees. Promptly after his or her election, the president shall appoint members to the standing committees identified below to serve for one year beginning January 1 of the year succeeding his or her election. Members of the committees need not be councilors, except to the extent expressly required by these rules, and may include non-lawyers. Unless otherwise directed by resolution of the council, all members of a standing committee, whether councilors or non-councilors, shall be entitled to vote as members of the standing committee or any subcommittee or panel thereof.

(1) Executive Committee. It shall be the duty of the Executive Committee to receive reports and recommendations from standing committees, boards, and special committees; to nominate individuals for appointments made by the council; to make long range plans for the State Bar; and to perform such other duties and consider such other matters as the council or the president may designate.

(2) Ethics Committee. It shall be the duty of the Ethics Committee to study the rules of professional responsibility currently in effect; to make recommendations to the council for such amendments to the rules as the committee deems necessary or appropriate; to study and respond to questions that arise concerning the meaning and application of the rules of professional conduct; to issue opinions in response to questions of legal ethics in accordance with the provisions of Section .0100 of Subchapter 1D of these rules; to consider issues concerning the regulation of lawyers' trust accounts; and to perform such other duties and consider such other matters as the council or the president may designate.

(3) Grievance Committee. It shall be the duty of the Grievance Committee to exercise the disciplinary and disability functions and responsibilities set forth in Section .0100 of Subchapter 1B of these rules and to make recommendations to the council for such amendments to that section as the committee deems necessary or appropriate. The Grievance Committee shall sit in subcommittees as assigned by the president. Each subcommittee shall have at least ten members. Two members of each subcommittee shall be nonlawyers, one member may be a lawyer who is not a member of the council, and the remaining members of each subcommittee shall be councilors of the North Carolina State Bar. A quorum of a subcommittee shall be five members serving at a particular time. One subcommittee shall oversee the Attorney Client Assistance Program. It shall be the duty of the Attorney Client Assistance subcommittee to develop and oversee policies and programs to help clients and lawyers resolve difficulties or disputes, including fee disputes, using means other than the formal grievance or civil litigation processes; and to perform such other duties and consider such other matters as the council or the president may designate. Each subcommittee shall exercise the powers and discharge the duties of the Grievance Committee with respect to the grievances, fee disputes, and other matters referred to it by the chairperson of the Grievance Committee. Each subcommittee member shall be furnished a brief description of all matters referred to other subcommittees (and such other available information as he or she may request) and be given a reasonable opportunity to provide comments to such other subcommittees. Each subcommittee's decision respecting the grievances, fee disputes, and other matters assigned to it will be deemed final action of the Grievance Committee, unless the full committee at its next meeting, by a majority vote of those present, elects to review a subcommittee decision and upon further consideration decides to reverse or modify that decision. There will be no other right of appeal to the committee as a whole or to another subcommittee. The president shall designate a vice-chairperson to preside over, and oversee the functions of each subcommittee. The vice-chairpersons shall have such other powers as may be delegated to them by the chairperson of the Grievance Committee. The Grievance Committee shall perform such other duties and consider such other matters as the council or the president may designate.

(4) Authorized Practice Committee. It shall be the duty of the Authorized Practice Committee to respond to or investigate inquiries and complaints about conduct that may constitute the unauthorized practice of law in accordance with the provisions of Section .0200 of Subchapter 1D of these rules; to study and advise the council on the appropriate and lawful use and regulation of legal assistants, paralegals and other lay persons in connection with the provision of law-related services; to study and advise the council on the regulation of professional organizations; and to perform such other duties and consider such other matters as the council or the president may designate.

(5) Administrative Committee. It shall be the duty of the Administrative Committee to study and make recommendations on policies concerning the administration of the State Bar, including the administration of the State Bar's facilities, automation, personnel, retirement plan, and district bars; to oversee the membership functions of the State Bar, including the collection of dues, the suspension of members for failure to pay dues and other fees, and the transfer of members to active or inactive status in accordance with the provisions of Sections .0900 and .1000 of Subchapter 1D of these rules; and to perform such other duties and consider such other matters as the council or the president may designate.

(6) Legal Assistance for Military Personnel (LAMP) Committee. It shall be the duty of the LAMP Committee to serve as liaison for lawyers in the military service in this State; to improve legal services to military personnel and dependents stationed in this State; and to perform such other duties and consider such other matters as the council or the president may designate.

(7) Finance and Audit Committee. It shall be the duty of the Finance and Audit Committee to superintend annually the preparation of the State Bar's operational budget and to make recommendations to the Executive Committee concerning that budget and the budgets for the boards listed in subsection (b) below; to make recommendations to the Executive Committee regarding the State Bar's financial policies; to examine the financial records of the State Bar at each regular meeting of the council and report its findings to the Executive Committee; to recommend to the Executive Committee annually the retention of an independent auditor; to direct the work of the independent auditor in accordance with the policies and procedures adopted by the council and the state auditor; and to review the results of the annual audit and make recommendations concerning the audit to the Executive Committee.

(8) Communications Committee. It shall be the duty of the Communications Committee to develop and coordinate official North Carolina State Bar communications to its membership and to third parties, including the use of printed publications, emerging technology, and social media.

(b) Boards. The council of the State Bar shall make appointments to the following boards upon the recommendation of the Executive Committee. The boards are constituents of the North Carolina State Bar and, as standing committees of the State Bar, are subject to the authority of the council.

(1) Interest on Lawyers' Trust Accounts (IOLTA) Board of Trustees. The IOLTA Board shall be constituted in accordance with and shall carry out the provisions of the Plan for Disposition of Funds Received by the North Carolina State Bar from Interest on Trust Accounts set forth in Section .1300 of Subchapter 1D of these rules.

(2) Board of Legal Specialization. The Board of Legal Specialization shall be constituted in accordance with and shall carry out the provisions of the Plan of Legal Specialization set forth in Section .1700 of Subchapter 1D of these rules.

(3) Client Security Fund Board of Trustees. The Client Security Fund Board of Trustees shall be constituted in accordance with and shall carry out the provisions of the Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar set forth in Section .1400 of Subchapter 1D of these rules.

(4) Board of Continuing Legal Education (CLE). The Board of Continuing Legal Education shall be constituted in accordance with and shall carry out the provisions of the Continuing Legal Education Rules and Regulations of the North Carolina State Bar set forth in Sections .1500 and .1600 of Subchapter 1D of these rules.

(5) Lawyer Assistance Program Board. The Lawyer Assistance Program Board shall be constituted in accordance with and shall carry out the provisions of the Rules Governing the Lawyer Assistance Program of the North Carolina State Bar set forth in Section .0600 of Subchapter 1D of these rules.

History Note: *Authority G.S. 84-22; G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 12, 1996; February 3, 2000; October 6, 2004; November 16, 2006; March 8, 2007; March 11, 2010; October 7, 2010; September 22, 2016; April 5, 2018; September 25, 2019.

SECTION .0800 - ELECTION AND APPOINTMENT OF STATE BAR COUNCILORS

27 NCAC 01A .0801 PURPOSE

The purpose of these Rules is to promulgate fair, open, and uniform procedures to elect and appoint North Carolina State Bar councilors in all judicial district bars. These Rules should encourage a broader and more diverse participation and representation of all attorneys in the election and appointment of councilors.

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

27 NCAC 01A .0802 ELECTION - WHEN HELD; NOTICE; NOMINATIONS

(a) Every judicial district bar, in any calendar year at the end of which the term of one or more of its councilors will expire, shall fill said vacancy or vacancies at an election to be held during that year.

(b) The officers of the district bar shall fix the time and place of such election and shall give to each active member (as defined in G.S. 84-16) of the district bar a written notice thereof. Notice may be sent by email or United States Mail to the email or mailing address on file with the North Carolina State Bar. Such notice shall be sent at least 30 days prior to the date of the election.

(c) The district bar shall submit its written notice by regular mail or email of the election to the North Carolina State Bar, at least six weeks before the date of the election.

(d) The North Carolina State Bar will, at its expense, email these notices to the lawyers in the district bar holding the election using the lawyers' email address on record with the North Carolina State Bar. If a lawyer does not have an email address on record, the notice shall be sent by regular mail to the lawyer's mailing address on record with the North Carolina State Bar.

(e) The notice shall state the date, time and place of the election, give the number of vacancies to be filled, identify how and to whom nominations may be made before the election, and advise that all elections must be by a majority of the votes cast. If the election will be held at a meeting of the bar, the notice will also advise that additional nominations may be made from the floor at the meeting itself. In judicial districts that permit elections by mail or early voting, the notice to members shall advise that nominations may be made in writing directed to the president of the district bar and received prior to a date set out in the

notice. Sufficient notice shall be provided to permit nominations received from district bar members to be included on the printed ballots.

History Note: *Authority G.S. 84-18; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: November 5, 1999; August 27, 2013; December 14, 2021.

27 NCAC 01A .0803 ELECTION - VOTING PROCEDURES

(a) All nominations made either before or at the meeting shall be voted on by secret ballot.
(b) Cumulative voting shall not be permitted.
(c) Nominees receiving a majority of the votes cast shall be declared elected.

History Note: *Authority G.S. 84-18; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. November 5, 1999.

27 NCAC 01A .0804 PROCEDURES GOVERNING ELECTIONS BY MAIL

(a) Judicial district bars may adopt bylaws permitting elections by mail, in accordance with procedures approved by the N.C. State Bar Council and as set out in this Section.
(b) Only active members of the judicial district bar may participate in elections conducted by mail.
(c) In districts which permit elections by mail, the notice sent to members referred to in Rule .0802(e) of this Subchapter shall advise that the election will be held by mail.
(d) The judicial district bar shall mail a ballot to each active member of the judicial district bar at the member's address of record on file with the North Carolina State Bar. The ballot shall be accompanied by written instructions and shall state when and where the ballot should be returned.
(e) Each ballot shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. The judicial district bar shall maintain appropriate records respecting how many ballots were mailed to prospective voters in each election, as well as how many ballots are returned.
(f) Only original ballots will be accepted. No photocopied or faxed ballots will be accepted.

History Note: *Authority G.S. 84-18; 84-23;*
Eff. November 5, 1999;
Amended Eff. August 23, 2012.

27 NCAC 01A .0805 PROCEDURES GOVERNING ELECTIONS BY ELECTRONIC VOTE

(a) Judicial district bars may adopt bylaws permitting elections by electronic vote in accordance with procedures approved by the N.C. State Bar Council and as set out in this Section.
(b) Only active members of the judicial district bar may participate in elections conducted by electronic vote.
(c) In districts which permit elections by electronic vote, the notice sent to members referred to in Rule .0802(e) of this Subchapter shall advise that the election will be held by electronic vote and shall identify how and to whom nominations may be made before the election. The notice shall explain when the ballot will be available, how to access the ballot, and the method for voting online. The notice shall also list locations where computers will be available for active members to access the online ballot in the event they do not have personal online access.
(d) Write-in candidates shall be permitted and the instructions shall so state.
(e) Online balloting procedures must ensure that only one vote is cast per active member of the judicial district bar and that all members have access to a ballot.

History Note: *Authority G.S. 84-18;*
Eff. August 23, 2012.

27 NCAC 01A .0806 PROCEDURES GOVERNING EARLY VOTING

(a) Judicial district bars may adopt bylaws permitting early voting for up to 10 business days prior to a councilor election, in accordance with procedures approved by the NC State Bar Council and as set out in this subchapter.
(b) Only active members of the judicial district bar may participate in early voting.

(c) In districts that permit early voting, the notice sent to members referred to in Rule .0802(e) of this subchapter shall advise that early voting will be permitted, and shall identify the locations, dates, and hours for early voting. The notice shall also advise that nominations may be made in writing directed to the president of the district bar and received prior to a date set out in the notice. Sufficient notice shall be provided to permit nominations received from district bar members to be included on the printed ballots.
(d) The notice sent to members referred to in Rule .0802(e) of this subchapter shall be placed in the United States Mail, postage prepaid, at least 30 days prior to the first day of the early voting period.
(e) Write-in candidates shall be permitted during the early voting period and at the election, and the instructions shall so state.
(f) Early voting locations and hours must be reasonably accessible to all active members of the judicial district.

History Note: *Authority G.S. 84-18;*
Adopted Eff. August 27, 2013.

27 NCAC 01A .0807 VACANCIES
The unexpired term of any councilor whose office has become vacant because of resignation, death, or any cause other than the expiration of a term, shall be filled within 90 days of the occurrence of the vacancy by an election conducted in the same manner as above provided.

History Note: *Authority G.S. 84-18; 84-23.*
Readopted Eff. December 8, 1994;
Amended Eff. August 27, 2013; August 23, 2012; November 5, 1999.

SECTION .0900 - ORGANIZATION OF THE JUDICIAL DISTRICT BARS

27 NCAC 01A .0901 BYLAWS
(a) Each judicial district bar shall adopt bylaws for its governance subject to the approval of the council.
(b) Each judicial district bar shall submit its current bylaws to the secretary of the North Carolina State Bar for review by the council on or before June 1, 1996.
(c) Pending review by the council, any bylaws submitted to the secretary on behalf of a judicial district bar or which already exist in the files of the secretary shall be deemed official and authoritative.
(d) All amendments to the bylaws of any judicial district bar must be filed with the secretary within 30 days of adoption and shall have no force and effect until approved by the council.
(e) The secretary shall maintain an official record for each judicial district bar containing bylaws which have been approved by the council or for which approval is pending.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .0902 ANNUAL MEMBERSHIP FEE
If a judicial district bar elects to assess an annual membership fee from its active members pursuant to N.C.G.S. §84-18.1(b), the following procedures shall apply:
(a) Notice to State Bar. The judicial district bar shall notify the North Carolina State Bar of its election to assess an annual membership fee each year at least thirty days prior to mailing to its members the first invoice therefore, specifying the amount of the annual membership fee, the date after which payment will be delinquent, and the amount of any late fee for delinquent payment.
(b) Accounting to State Bar. No later than thirty days after the end of the judicial district bar's fiscal year, the judicial district bar shall provide the North Carolina State Bar with an accounting of the annual membership fees it collected during such judicial district bar's fiscal year.
(c) Delinquency Date. The date upon which the annual membership fee shall be delinquent if not paid shall be not later than ninety days after, and not sooner than thirty days after, the date of the first invoice for the annual membership fee. The delinquency date shall be stated on the invoice and the invoice shall advise each member that failure to pay the annual membership fee must be reported to the North Carolina State Bar and may result in suspension of the member's license to practice law.
(d) Late Fee. Each judicial district bar may impose, but shall not be required, to impose a late fee of any amount not to exceed fifteen dollars ($15.00) for non-payment of the annual membership fee on or before the stated delinquency date.

(e) Members Subject to Assessment. Only those lawyers who are active members of a judicial district bar may be assessed an annual membership fee.

(f) Members Exempt from Assessment.

(1) A person licensed to practice law in North Carolina for the first time by examination is not liable for judicial district bar membership fees during the year in which the person is admitted;

(2) A person licensed to practice law in North Carolina serving in the United States Armed Forces, whether in a legal or nonlegal capacity, is exempt from judicial district bar membership fees for any year in which the member serves some portion thereof on full-time active duty in military service;

(3) A lawyer who joins a judicial district bar after the beginning of its fiscal year is exempt from the obligation to pay the annual membership fee for that fiscal year only if the lawyer can demonstrate that he or she previously paid an annual membership fee to another judicial district bar with a fiscal year that runs conterminously, for a period of three (3) months or more, with the fiscal year of the lawyer's new judicial district bar.

(g) Hardship Waivers. A judicial district bar may not grant any waiver from the obligation to pay the judicial district bar's annual membership fee. A judicial district bar may waive the late fee upon a showing of good cause.

(h) Reporting Delinquent Members to State Bar. Three to six months after the delinquency date for the annual membership fee, the judicial district bar shall report to the North Carolina State Bar all of its members who have not paid the annual membership fee or any late fee.

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted by the Supreme Court December 20, 2000;
Amendments Approved by the Supreme Court: March 6, 2008; April 10, 2014; March 16, 2017.

27 NCAC 01A .0903 FISCAL PERIOD

To avoid conflict with the assessment of the membership fees for the North Carolina State Bar, each judicial district bar that assesses a membership fee shall adopt a fiscal year that is not a calendar year. Any judicial district bar that assesses a mandatory membership fee for the first time after December 31, 2013, must adopt a fiscal year that begins July 1 and ends June 30.

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted Eff. December 20, 2000;
Amended Eff. April 10, 2014.

SECTION .1000 - MODEL BYLAWS FOR USE BY JUDICIAL DISTRICT BARS

27 NCAC 01A .1001 NAME

The name of this District Bar shall be THE DISTRICT BAR OF THE _____JUDICIAL DISTRICT, and shall be hereinafter referred to as the "District Bar".

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1002 AUTHORITY AND PURPOSE

The District Bar is formed pursuant to the provisions of G.S. 84 to promote the purposes therein set forth and to comply with the duties and obligations therein or thereunder imposed upon the Bar of this judicial district.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1003 MEMBERSHIP

The members of the District Bar shall consist of two classes: active and inactive.

(1) Active members: The active members shall be all persons who, at the time of the adoption of these bylaws or any time thereafter:

(a) are active members in good standing with the North Carolina State Bar; and

(b) reside in the judicial district; or

(c) practice in the judicial district and elect to belong to the District Bar as provided in G.S. 84-16.

(2) Inactive members: The inactive members shall be all persons, who, at the time of the adoption of these bylaws or at any time thereafter:

(a) have been granted voluntary inactive status by the North Carolina State Bar; and

(b) reside in the judicial district; and

(c) elect to participate, but not vote or hold office, in the District Bar by giving written notice to the Secretary of the District Bar.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1004 OFFICERS

The officers of the District Bar shall be a President, a Vice President, and Secretary and/or Treasurer who shall be selected and shall serve for the terms set out herein.

(1) President: The President serving at the time these bylaws are effective shall continue to serve for a term ending at the next annual meeting following the adoption or effective date of these bylaws. The President for the following term shall be the then current Vice President. Thereafter, the duly elected Vice President shall automatically succeed to the office of the President for a term of one, two, or three years.

(2) Vice President: The Vice President serving at the time these bylaws are effective shall continue to serve for a term ending at the next annual meeting following the adoption or effective date of these bylaws, at which time said Vice President shall succeed to the office of the President. Thereafter, the Vice President shall be elected at the annual meeting as hereinafter provided for a term of one, two, or three years.

(3) Secretary and/or Treasurer: The Secretary and/or the Treasurer serving at the time these bylaws are effective shall each continue to serve in their respective offices until the expiration of the term of that office or until successors are appointed by the President (or be elected by the active members of the District Bar), whichever occurs later. In all other years, the Secretary and/or Treasurer shall be appointed by the President (or be elected by the active members of the District Bar) to serve for a term of one, two, or three years.

(4) Election: Before (or at) the annual meeting at which officers are to be elected, the Nominating Committee shall submit the names of its nominees for the office of Vice President to the Secretary. Nominations from the floor shall be permitted. If no candidate receives a majority of the votes cast, the candidate with the lowest number of votes shall be eliminated and a run-off election shall immediately be held among the remaining candidates. This procedure shall be repeated until a candidate receives a majority of the votes.

(5) Duties: The duties of the officers shall be those usual and customary for such officers, including such duties as may from time to time designated by resolutions of the District Bar, the North Carolina State Bar Council or the laws of the State of North Carolina.

(6) Vacancies: If a vacancy in the office of the Vice President, Secretary-Treasurer occurs, the vacancy will be filled by the Board of Directors, if any, and if there is no Board of Directors, then by the vote of the active members at a special meeting of such members. The successor shall serve until the next annual meeting of the District Bar. If the office of the President becomes vacant, the Vice President shall succeed to the office of the President and the Board of Directors, if any, and if there is no Board of Directors, then by the vote of the active members at a special meeting of such members, will select a new Vice President, who shall serve until the next annual meeting.

(7) Notification: Within 10 days following the annual meeting, or the filling of a vacancy in any office, the President shall notify the Executive Director of the North Carolina State Bar of the names, addresses and telephone numbers of all officers of the District Bar.

(8) Record of Bylaws: The President shall ensure that a current copy of these bylaws is filed with the office of the Senior Resident Superior Court Judge with the _____ Judicial District and with the Executive Director of the North Carolina State Bar.

(9) Removal from Office: The District Bar, by a two-thirds vote of its active members present at a duly called meeting, may, after due notice and an opportunity to be heard, remove from office any officer who has engaged in conduct which renders the officer unfit to serve, or who has become disabled, or for other good cause. The office of any officer who, during his or her term of office ceases to be an active member of the North Carolina State Bar shall immediately be deemed vacant and shall be filled as provided in Item (6) of this Rule.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1005 COUNCILOR

The district bar shall be represented in the State Bar council by one or more duly elected councilors, the number of councilors being determined pursuant to G.S. 84-17. Any councilor serving at the time of the adoption of these bylaws shall complete the term of office to which he or she was previously elected. Thereafter, elections shall be held as necessary. Nominations shall be made and the election held as provided in G.S. 84-18 and in Section .0800 et seq. of Subchapter 01A of the Rules of the North Carolina State Bar (27 NCAC 01A .0800 et seq.). If more than one council seat is to be filled, separate elections shall be held for each vacant seat. A vacancy in the office of councilor shall be filled as provided by 27 NCAC 01A .0804 of Subchapter 01A of the Rules of the North Carolina State Bar (27 NCAC 01A .0804).

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted Eff. March 7, 1996;
Amended Eff. November 5, 1999.

27 NCAC 01A .1006 ANNUAL MEMBERSHIP FEE

(a) Each active member of the District Bar shall:

(1) Pay such annual membership fee, if any, as is prescribed by a majority vote of the active members of the District Bar present and voting at a duly called meeting of the District Bar, provided, however, that such fee may never exceed the amount of the annual membership fee currently imposed by the North Carolina State Bar. Each member shall pay the annual District Bar membership fee at the time and place set forth in the notice thereof mailed to the member by the Secretary-Treasurer; and

(2) Keep the Secretary-Treasurer notified of the member's current mailing address and telephone number.

(b) The annual membership fee shall be used to promote and maintain the administration, activities and programs of the District Bar.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1007 MEETINGS

(a) Annual meetings: The district bar shall meet each _____ at a time and place designated by the president. The president, secretary or other officer shall mail or deliver written notice of the annual meeting to each active member of the district bar at the member's last known mailing address on file with the district bar at least ten days before the date of the annual meeting and shall so certify in the official minutes of the meeting. Notice of the meeting mailed by the executive director of the North Carolina State Bar shall also satisfy the notice requirement. Failure to mail or deliver the notice as herein provided shall invalidate any action at the annual meeting.

(b) Special meetings: Special meetings, if any, may be called at any time by the president or the vice-president. The president, secretary or other officer shall mail or deliver written notice of the special meeting to each active member of the district bar at the member's last known mailing address on file with the district bar at least ten days before the date of any special meeting. Such notice shall set forth the time and place for the special meeting and the purpose(s) thereof. Failure to mail or deliver the notice shall invalidate any action taken at a special meeting.

(c) Notice for meeting to vote on annual membership fee: Notwithstanding the notice periods set forth in paragraphs (a) and (b) of this Rule, the written notice for any meeting at which the active members will vote on whether to impose or increase an annual membership fee shall be mailed or delivered to each active member of the district bar at the member's last known mailing address on file with the North Carolina State Bar at least 30 days before the date of the meeting.

(d) Quorum: Twenty percent of the active members of the district bar shall constitute a quorum, and a quorum shall be required to take official action on behalf of the district bar.

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted Eff. March 7, 1996;
Amended Eff. October 7, 2010.

27 NCAC 01A .1008 DISTRICT BAR FINANCES

(a) Fiscal Year: The district bar's fiscal year shall begin on_____ and shall end on _____.
(b) Duties of treasurer: The treasurer shall maintain the funds of the district bar on deposit, initiate any necessary disbursements and keep appropriate financial records.
(c) Annual financial report: Each _____ before the annual meeting, the treasurer shall prepare the district bar's annual financial report for review by the board of directors, if any, and submission to the district bar's annual meeting and the North Carolina State Bar.
(d) District bar checks: All checks written on district bar accounts (arising from the collection of mandatory dues) that exceed five hundred dollars ($500.00) must be signed by two of the following: (1) the treasurer, (2) any other officer, (3) another member of the board of directors, or (4) the executive secretary/director, if any.
(e) Fidelity bond: If it is anticipated that receipts from membership fees will exceed twenty thousand dollars ($20,000.00) for any fiscal year, the district bar shall purchase a fidelity bond at least equal in amount to the anticipated annual receipts to indemnify the district bar for losses attributable to the malfeasance of the treasurer or any other member having access to district bar funds.
(f) Taxpayer identification number: The treasurer shall be responsible for obtaining a federal taxpayer identification number for the district bar.

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted Eff. March 7, 1996;
Amended Eff. July 22, 1999.

27 NCAC 01A .1009 PROHIBITED ACTIVITIES
(a) Prohibited Expenditures: Mandatory District Bar dues, if any, shall not be used for the purchase of alcoholic beverages, gifts to public officials, including judges, charitable contributions, recreational activities or expenses of spouses of District Bar members or officers. However, such expenditures may be made from funds derived entirely from the voluntary contributions of District Bar members.
(b) Political Expenditures: The District Bar shall not make any expenditures to fund political and ideological activities.
(c) Political Activities: The District Bar shall not engage in any political or ideological conduct or activity, including the endorsement of candidates and the taking or advocation of positions on political issues, referendums, bond elections, and the like, however, the District Bar, and persons speaking on its behalf, may take positions on, or comment upon, issues relating to the regulation of the legal profession and issues or matters relating to the improvement of the quality and availability of legal services to the general public.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1010 COMMITTEES
(a) Standing committee(s): The standing committees shall be the Nominating Committee, Pro Bono Committee, Grievance Committee, and Professionalism Committee provided that, with respect to the Grievance Committee, the district meets the State Bar guidelines relating thereto.
(b) Grievance Committee:
(1) The Grievance Committee shall consist of at least five but not more than thirteen persons appointed by the president to staggered three year terms as provided by the Rules and Regulations of the North Carolina State Bar governing Judicial District Grievance Committees.
(2) The Grievance Committee shall assist the Grievance Committee of the North Carolina State Bar by receiving grievances, investigating grievances, evaluating grievances, informally mediating disputes, facilitating communication between lawyers and clients and referring members of the public to other appropriate committees or agencies for assistance.
(3) The Grievance Committee shall operate in strict accordance with the rules and policies of the North Carolina State Bar with respect to district bar grievance committees.
(c) Special Committees: Special committees may be created and appointed by the president.
(d) Nominating Committee:
(1) The Nominating Committee shall be appointed by the officers (or the board of directors) of the district bar and shall consist of at least three active members of the district bar who are not officers or directors of the district bar.

(2) The Nominating Committee shall meet as necessary for the purpose of nominating active members of the district bar as candidates for officers and councilor(s) and the board of directors, if any.

(3) The Nominating Committee members shall serve one-year terms beginning on _____ and ending on _____.

(4) Any active member whose name is submitted for consideration for nomination to any office or as a councilor must have indicated his or her willingness to serve if selected.

(e) Pro Bono Committee:

(1) The Pro Bono Committee shall consist of at least five active members of the district bar appointed by the president.

(2) The Pro Bono Committee shall meet at least once each quarter and shall have the duty of encouraging members of the district bar to provide pro bono legal services. The committee shall also develop programs whereby attorneys not involved in other volunteer legal service programs may provide pro bono legal service in their areas of concentration and practice.

(3) The members of the Pro Bono Committee shall serve one-year terms commencing on _____.

(f) Professionalism Committee:

(1) The Professionalism Committee shall consist of the three immediate past presidents of the district bar or such other members of the district bar as shall be appointed by the president.

(2) The purpose of the Professionalism Committee shall be the promotion of professionalism and thereby the bolstering of public confidence in the legal profession. The committee may further enhance professionalism through CLE programs and, when appropriate, through confidential peer intervention in association with the Professionalism Support Initiative (PSI) which is sponsored and supported by the Chief Justice's Commission on Professionalism. The PSI effort is to investigate and informally assist with client-lawyer, lawyer-lawyer, and lawyer-judge relationships to ameliorate disputes, improve communications, and repair relationships. The Professionalism Committee shall have no authority to discipline any lawyer or judge, or to force any lawyer or judge to take any action. The committee shall not investigate or attempt to resolve complaints of professional misconduct cognizable under the Rules of Professional Conduct and shall act in accordance with Rules 1.6(c) and 8.3 of the Rules of Professional Conduct. The committee shall consult and work with the Chief Justice's Commission on Professionalism when appropriate.

History Note: *Authority G.S. 84-18.1; 84-23;*
Adopted Eff. March 7, 1996;
Amendments Approved by the Supreme Court: March 6, 2002; March 6, 2008; September 25, 2019.

27 NCAC 01A .1011 BOARD OF DIRECTORS OR EXECUTIVE COMMITTEE

(a) Membership of Board: A Board of Directors consisting of at least _____ active members of the District Bar shall be elected. At all times, the Board of Directors shall include at least one director from each county in the Judicial District. The Board of Directors serving when these bylaws become effective shall continue to serve until the following annual meeting. Beginning on _____ immediately after the effective date of these bylaws, the President shall appoint an initial Board of Directors who shall serve three-year terms commencing on _____, except that the terms of the initial members of the Board shall be staggered at one-year intervals to ensure continuity and experience. To effect the staggered initial terms, the President will determine which of the initial members shall serve terms of less than three years. The State Bar Councilor (or Councilors) from the judicial district shall be an ex officio member (or members) of the District Bar Board of Directors or Executive Committee.

(b) Terms of Directors: After the initial staggered terms of the Board of Directors expire, successors shall be elected by the active members at the annual District Bar meeting, as set out in Rule .1004 (d) of this Section, and Paragraphs (c) and (d) of this Rule. Following the completion of the initial staggered terms, the directors shall serve three-year terms beginning on _____ following their election.

(c) Designated and At-Large Seats in Multi-County Districts: In multi-county districts, one seat on the Board of Directors shall be set aside and designated for each county in the district. Only active members of the District Bar who reside or work in the designated county may be elected to a designated county seat. All other seats on the Board of Directors shall be at-large seats which may be filled by any active member of the District Bar.

(d) Elections: When one or more seats on the Board of Directors become vacant, an election shall be held at the annual meeting of the District Bar. Except as otherwise provided herein, the election shall be conducted as provided for in Rule .1004(d) of this Section. The candidates receiving the highest number of votes cast will be elected, regardless of whether any

of the candidates received a majority of the votes cast, provided that designated seats will be filled by the candidates receiving the highest number of votes who live or work in the designated county, regardless of whether any of the candidates received a majority of the votes cast.
(e) Vacancies: If a vacancy occurs on the Board of Directors, the President (or the Board of Directors) shall appoint a successor who shall serve until the next annual meeting of the District Bar. If the vacancy occurs in a designated seat for a particular county within the district, the successor will be selected from among the active members of the District Bar who live or work in the designated county.
(f) Duties of Board of Directors: The Board of Directors shall have the responsibilities described Rules .1004(f) and .1007(c) of this Section. The Board of Directors shall also consult with the officers regarding any matters of District Bar business or policy arising between meetings and may act for the District Bar on an emergency basis if necessary, provided that any such action shall be provisional pending its consideration by the District Bar at its next duly called meeting. The Board of Directors may not impose on its own authority any sort of fee upon the membership.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1012 AMENDMENT OF THE BYLAWS
The membership of the District Bar, by a _____ (majority, two-thirds, etc.) vote of the active members present at any duly called meeting at which there is a quorum present and voting throughout, may amend these bylaws in ways not inconsistent with the constitution of the United States, the policies and rules of the North Carolina State Bar and the laws of the United States and North Carolina.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01A .1013 SELECTION OF NOMINEES FOR DISTRICT COURT JUDGE
Unless otherwise required by law, the following procedures shall be used to determine the nominees to be recommended to the Governor pursuant to G.S. 7A-142 for vacant district court judgeships in the judicial district.
(a) Meeting for Nominations: The nominees shall be selected by secret, written ballot of those members present at a meeting of the district bar called for this purpose. Fifteen (15) days notice of the meeting shall be given, by mail, to the last known address of each district bar member. Alternatively, if a bylaw permitting elections by mail is adopted by the district bar, the procedures set forth in the bylaw and in Rule .0804 of Subchapter 01A of the Rules of the North Carolina State Bar (27 NCAC 01A .0804), shall be followed.
(b) Candidates: Persons who want to be considered for the vacancy shall notify the President in writing five (5) days prior to the meeting at which the election will be conducted or, if the election is by mail, five days prior to the mailing of the ballots.
(c) Voting: Each district bar member eligible to vote pursuant to G.S. 7A-142 may vote for up to five (5) candidates. Cumulative voting is prohibited. Proxy voting is prohibited.
(d) Submission to Governor: The five candidates receiving the highest number of votes shall be the nominees to fill the vacancy on the district court and their names, and vote totals, shall be transmitted to the governor. In the event of a tie for fifth place, the names of those candidates involved in the tie shall be transmitted to the governor together with the names of the four candidates receiving the highest number of votes.

History Note: *Authority G.S. 7A-142; 84-18.1; 84-23;*
Adopted Eff. February 27, 2003;
Amended Eff. March 6, 2014.

SECTION .1100 - OFFICE OF THE NORTH CAROLINA STATE BAR

27 NCAC 01A .1101 OFFICE
Until otherwise ordered by the council, the office of the North Carolina State Bar shall be maintained in the city of Raleigh at such place as may be designated by the council.

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

SECTION .1200 - FILING PAPERS WITH AND SERVING THE NORTH CAROLINA STATE BAR

27 NCAC 01A .1201 WHEN PAPERS ARE FILED UNDER THESE RULES AND REGULATIONS

Whenever in these rules and regulation there is a requirement that petitions, notices or other documents be filed with or served on the North Carolina State Bar, or the council, the same shall be filed with or served on the secretary of the North Carolina State Bar.

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

SECTION .1300 - SEAL

27 NCAC 01A .1301 FORM AND CUSTODY OF SEAL

The North Carolina State Bar shall have a seal round in shape and having the words and figures, "The North Carolina State Bar July 1, 1933," with the word "Seal" in the center. The seal shall remain in the custody of the secretary at the office of the North Carolina State Bar, unless otherwise ordered by the council.

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

SECTION .1400 – RULE SECTION NOT FOUND

27 NCAC 01A .1401 PUBLICATION FOR COMMENT

(a) As a condition precedent to adoption, a proposed rule or amendment to a rule must be published for comment as provided in subsection (c).
(b) A proposed rule or amendment to a rule must be presented to the Executive Committee and the council prior to publication for comment, and specifically approved for publication by both.
(c) A proposed rule or amendment to a rule must be published for comment in an official printed or digital publication of the North Carolina State Bar that is mailed or emailed to the membership at least 30 days in advance of its final consideration by the council. The publication of any such proposal must be accompanied by a prominent statement inviting all interested parties to submit comment to the North Carolina State Bar at a specified postal or e-mail address prior to the next meeting of the Executive Committee, the date of which shall be set forth.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court August 23, 2007;
Amendments Approved by the Supreme Court: September 20, 2018.

27 NCAC 01A .1402 REVIEW BY THE EXECUTIVE COMMITTEE

At its next meeting following the publication or republication of any proposed rule or amendment to a rule, the Executive Committee shall review the proposal and any comment that has been received concerning the proposal. The Executive Committee shall then:

(1) recommend the proposal's adoption by the council;
(2) recommend the proposal's adoption by the council with nonsubstantive modification;
(3) recommend to the council that the proposal be republished with substantive modification;
(4) defer consideration of the matter to its next regular business meeting;
(5) table the matter; or
(6) reject the proposal.

History Note: *Authority G.S. 84-23;*
Eff. August 23, 2007.

27 NCAC 01A .1403 ACTION BY THE COUNCIL AND REVIEW BY THE NORTH CAROLINA SUPREME COURT

(a) Whenever the Executive Committee recommends adoption of any proposed rule or amendment to a rule in accordance with the procedure set forth in Rule .1402 above, the council at its next regular business meeting shall consider the proposal, the Executive Committee's recommendation, and any comment received from interested parties, and:

(1) decide whether to adopt the proposed rule or amendment, subject to the approval of the North Carolina Supreme Court as described in G.S. 84-21;
(2) reject the proposed rule or amendment; or
(3) refer the matter back to the Executive Committee for reconsideration.

(b) Any proposed rule or amendment to a rule adopted by the council shall be transmitted by the secretary to the North Carolina Supreme Court for its review on a schedule approved by the Court, but in no event later than 120 days following the council's adoption of the proposed rule or amendment.

(c) A proposed rule or amendment to a rule adopted by the council shall take effect when it is entered upon the minutes of the North Carolina Supreme Court.

(d) The secretary shall promptly transmit the official text of any proposed rule or amendment to a rule adopted by the council and approved by the North Carolina Supreme Court to the Office of Administrative Hearings for publication in the North Carolina Administrative Code.

(e) Any action taken by the council or the North Carolina Supreme Court in regard to any proposed rule or amendment to a rule shall be reported in the next issue of the printed publication referenced in Rule .1401 above.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court August 23, 2007;
Amendments Approved by the Supreme Court: September 20, 2018.

SUBCHAPTER 1B - DISCIPLINE AND DISABILITY RULES

SECTION .0100 - DISCIPLINE AND DISABILITY OF ATTORNEYS

27 NCAC 01B .0101 GENERAL PROVISIONS

Discipline for misconduct is not intended as punishment for wrongdoing but is for the protection of the public, the courts, and the legal profession. The fact that certain misconduct has remained unchallenged when done by others, or when done at other times, or that it has not been made the subject of earlier disciplinary proceedings, will not be a defense to any charge of misconduct by a member.

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

27 NCAC 01B .0102 PROCEDURE FOR DISCIPLINE

(a) The procedure to discipline members of the bar of this state will be in accordance with the provisions hereinafter set forth.

(b) District bars will not conduct separate proceedings to discipline members of the bar but will assist and cooperate with the North Carolina State Bar in reporting and investigating matters of alleged misconduct on the part of its members.

(c) Concurrent Jurisdiction of State Bar and Courts:

(1) The Council of the North Carolina State Bar is vested, as an agency of the state, with the control of the discipline, disbarment, and restoration of attorneys practicing law in this state.
(2) The courts of this state have inherent authority to take disciplinary action against attorneys practicing therein, even in relation to matters not pending in the court exercising disciplinary authority.
(3) The authority of the North Carolina State Bar and the courts to discipline attorneys is separate and distinct, the North Carolina State Bar having derived its jurisdiction by legislative act and the courts from the inherent power of the courts themselves.
(4) Neither the North Carolina State Bar nor the courts are authorized or empowered to act for or in the name of the other, and the disciplinary action taken by either entity should be clearly delineated as to the source or basis for the action being taken.
(5) It is the position of the North Carolina State Bar that no trial court has the authority to preempt a North Carolina State Bar disciplinary proceeding with a pending civil or criminal court proceeding involving attorney conduct, or to dismiss a disciplinary proceeding pending before the North Carolina State Bar.

(6) Whenever the North Carolina State Bar learns that a court has initiated an inquiry or proceeding regarding alleged improper or unethical conduct of an attorney, the North Carolina State Bar may defer to the court and stay its own proceeding pending completion of the court's inquiry or proceeding. Upon request, the North Carolina State Bar will assist in the court's inquiry or proceeding.

(7) If the North Carolina State Bar finds probable cause and institutes disciplinary proceedings against an attorney for conduct which subsequently becomes an issue in a criminal or civil proceeding, the court may, in its discretion, defer its inquiry pending the completion of the North Carolina State Bar's proceedings.

(8) Upon the filing of a complaint by the North Carolina State Bar, the North Carolina State Bar will send a copy of the complaint to the chief resident superior court judge and to all superior court judges regularly assigned to the district in which the attorney maintains his or her law office. The North Carolina State Bar will send a copy of the complaint to the district attorney in the district in which the attorney maintains a law office if the complaint alleges criminal activity by the attorney.

(9) The North Carolina State Bar will encourage judges to contact the North Carolina State Bar to determine the status of any relevant complaints filed against an attorney before the court takes disciplinary action against the attorney.

History Note: *Authority G.S. 84-23; 84-36;*
Readopted Eff. December 8, 1994.

27 NCAC 01B .0103 DEFINITIONS

Subject to additional definitions contained in other provisions of this subchapter, the following words and phrases, when used in this subchapter, will have, unless the context clearly indicates otherwise, the meanings given to them in this rule.

(1) Admonition - a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

(2) Appellate division - the appellate division of the general court of justice.

(3) Board - the Board of Continuing Legal Education.

(4) Board of Continuing Legal Education - a standing committee of the council responsible for the administration of a program of mandatory continuing legal education and law practice assistance.

(5) Censure - a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the attorney's license.

(6) Certificate of conviction - a certified copy of any judgment wherein a member of the North Carolina State Bar is convicted of a criminal offense.

(7) Chairperson of the Grievance Committee - councilor appointed to serve as chairperson of the Grievance Committee of the North Carolina State Bar.

(8) Commission - the Disciplinary Hearing Commission of the North Carolina State Bar.

(9) Commission chairperson - the chairperson of the Disciplinary Hearing Commission of the North Carolina State Bar.

(10) Complainant or complaining witness - any person who has complained of the conduct of any member of the North Carolina State Bar to the North Carolina State Bar.

(11) Complaint - a formal pleading filed in the name of the North Carolina State Bar with the commission against a member of the North Carolina State Bar after a finding of probable cause.

(12) Consolidation of cases - a hearing by a hearing panel of multiple charges, whether related or unrelated in substance, brought against one defendant.

(13) Council - the Council of the North Carolina State Bar.

(14) Councilor - a member of the Council of the North Carolina State Bar.

(15) Counsel - the counsel of the North Carolina State Bar appointed by the council.

(16) Court or courts of this state - a court authorized and established by the constitution or laws of the state of North Carolina.

(17) Criminal offense showing professional unfitness - the commission of, attempt to commit, conspiracy to commit, solicitation or subornation of any felony or any crime that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, interference with the judicial or political process, larceny, misappropriation of funds or property, overthrow of the

government, perjury, willful failure to file a tax return, or any other offense involving moral turpitude or showing professional unfitness.

(18) Defendant - a member of the North Carolina State Bar against whom a finding of probable cause has been made.

(19) Disabled or disability - a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney.

(20) Grievance - alleged misconduct.

(21) Grievance Committee - the Grievance Committee of the North Carolina State Bar or any of its panels acting as the Grievance Committee respecting the grievances and other matters referred to it by the chairperson of the Grievance Committee.

(22) Hearing panel - a hearing panel designated under Rule .0108(a)(2), .0114(d), .0114(x), .0118(b)(2), .0125(a)(6), .0125(b)(7) or .0125(c)(2) of this subchapter.

(23) Illicit drug - any controlled substance as defined in the North Carolina Controlled Substances Act, section 5, chapter 90, of the North Carolina General Statutes, or its successor, which is used or possessed without a prescription or in violation of the laws of this state or the United States.

(24) Incapacity or incapacitated - condition determined in a judicial proceeding under the laws of this or any other jurisdiction that an attorney is mentally defective, an inebriate, mentally disordered, or incompetent from want of understanding to manage his or her own affairs by reason of the excessive use of intoxicants, drugs, or other cause.

(25) Investigation - the gathering of information with respect to alleged misconduct, alleged disability, or a petition for reinstatement.

(26) Investigator - any person designated to assist in the investigation of alleged misconduct or facts pertinent to a petition for reinstatement.

(27) Lawyer Assistance Program Board – the Lawyer Assistance Program Board of the North Carolina State Bar.

(28) Letter of caution - communication from the Grievance Committee to an attorney stating that the past conduct of the attorney, while not the basis for discipline, is unprofessional or not in accord with accepted professional practice.

(29) Letter of notice - a communication to a respondent setting forth the substance of a grievance.

(30) Letter of warning - written communication from the Grievance Committee or the commission to an attorney stating that past conduct of the attorney, while not the basis for discipline, is an unintentional, minor, or technical violation of the Rules of Professional Conduct and may be the basis for discipline if continued or repeated.

(31) Member - a member of the North Carolina State Bar.

(32) Office of the Counsel - the office and staff maintained by the counsel of the North Carolina State Bar.

(33) Office of the secretary - the office and staff maintained by the secretary-treasurer of the North Carolina State Bar.

(34) Party - after a complaint has been filed, the North Carolina State Bar as plaintiff or the member as defendant.

(35) Plaintiff - after a complaint has been filed, the North Carolina State Bar.

(36) Preliminary hearing - hearing by the Grievance Committee to determine whether probable cause exists.

(37) Probable cause - a finding by the Grievance Committee that there is reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action.

(38) Reprimand - a written form of discipline more serious than an admonition issued in cases in which a defendant has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

(39) Respondent - a member of the North Carolina State Bar who has been accused of misconduct or whose conduct is under investigation, but as to which conduct there has not yet been a determination of whether probable cause exists.

(40) Revised Rules of Professional Conduct - the Rules of Professional Conduct adopted by the Council of the North Carolina State Bar and approved by the North Carolina Supreme Court effective July 24, 1997.

(41) Rules of Professional Conduct - the Rules of Professional Conduct adopted by the Council of the North Carolina State Bar and approved by the North Carolina Supreme Court and which were in effect from October 7, 1985 through July 23, 1997.

(42) Secretary - the secretary-treasurer of the North Carolina State Bar.
(43) Supreme Court - the Supreme Court of North Carolina.
(44) Will - when used in these rules, means a direction or order which is mandatory or obligatory.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; February 3, 2000; December 30, 1998.

27 NCAC 01B .0104 STATE BAR COUNCIL: POWERS AND DUTIES IN DISCIPLINE AND DISABILITY MATTERS

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

(1) to supervise and conduct disciplinary proceedings in accordance with the provisions hereinafter set forth;
(2) to appoint members of the commission as provided by statute;
(3) to appoint a counsel. The counsel will serve at the pleasure of the council. The counsel will be a member of the North Carolina State Bar but will not be permitted to engage in the private practice of law;
(4) to order the transfer of a member to disability inactive status when such member has been judicially declared incompetent or has been involuntarily committed to institutional care because of incompetence or disability;
(5) to accept or reject the surrender of the license to practice law of any member of the North Carolina State Bar;
(6) to order the disbarment of any member whose resignation is accepted;
(7) to review the report of any hearing panel upon a petition for reinstatement of a disbarred attorney and to make final determination as to whether the license will be restored.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; September 7, 1995.

27 NCAC 01B .0105 CHAIRPERSON OF THE GRIEVANCE COMMITTEE: POWERS AND DUTIES

(a) The chairperson of the Grievance Committee will have the power and duty

(1) to supervise the activities of the counsel;
(2) to recommend to the Grievance Committee that an investigation be initiated;
(3) to recommend to the Grievance Committee that a grievance be dismissed;
(4) to direct a letter of notice to a respondent or direct the counsel to issue letters of notice in such cases or under such circumstances as the chairperson deems appropriate;
(5) to issue, at the direction and in the name of the Grievance Committee, a letter of caution, letter of warning, an admonition, a reprimand, or a censure to a member;
(6) to notify a respondent that a grievance has been dismissed, and to notify the complainant in accordance with Rule .0121 of this Subchapter;
(7) to call meetings of the Grievance Committee;
(8) to issue subpoenas in the name of the North Carolina State Bar or direct the secretary to issue such subpoenas;
(9) to administer or direct the administration of oaths or affirmations to witnesses;
(10) to sign complaints and petitions in the name of the North Carolina State Bar;
(11) to determine whether proceedings should be instituted to activate a suspension which has been stayed;
(12) to enter orders of reciprocal discipline in the name of the Grievance Committee;
(13) to direct the counsel to institute proceedings in the appropriate forum to determine if an attorney is in violation of an order of the Grievance Committee, the commission, or the council;
(14) to rule on requests for reconsideration of decisions of the Grievance Committee regarding grievances;
(15) to tax costs of the disciplinary procedures against any defendant against whom the Grievance Committee imposes discipline, including a minimum administrative cost of fifty dollars ($50.00);
(16) to dismiss a grievance upon request of the complainant, where it appears that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct and where counsel consents to the dismissal;

(17) to dismiss a grievance where it appears that the grievance has not been filed within the time period set out in Rule .0111(e);

(18) to dismiss a grievance where it appears that the complaint, even if true, fails to state a violation of the Revised Rules of Professional Conduct and where counsel consents to the dismissal;

(19) to dismiss a grievance where it appears that there is no probable cause to believe that the respondent has violated the Revised Rules of Professional Conduct and where counsel and a member of the Grievance Committee designated by the committee consent to the dismissal;

(20) to appoint a subcommittee to make recommendations to the council for such amendments to the Discipline and Disability Rules as the subcommittee deems necessary or appropriate.

(b) Absence of Chairperson and Delegation of Duties. The president, vice-chairperson, or a member of the Grievance Committee designated by the president or the chairperson or vice-chairperson of the committee may perform the functions, exercise the power, and discharge the duties of the chairperson or any vice-chairperson when the chairperson or a vice-chairperson is absent or disqualified.

(c) Delegation of Authority. The chairperson may delegate his or her authority to the president, the vice-chairperson of the committee, or a member of the Grievance Committee.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. August 23, 2012; March 10, 2011; February 3, 2000; March 3, 1999; December 30, 1998; October 2, 1997; March 6, 1997; February 20, 1995.

27 NCAC 01B .0106 GRIEVANCE COMMITTEE: POWERS AND DUTIES

The Grievance Committee will have the power and duty

(1) to direct the counsel to investigate any alleged misconduct or disability of a member of the North Carolina State Bar coming to its attention;

(2) to hold preliminary hearings, find probable cause and direct that complaints be filed;

(3) to dismiss grievances upon a finding of no probable cause;

(4) to issue a letter of caution to a respondent in cases wherein misconduct is not established but the activities of the respondent are unprofessional or not in accord with accepted professional practice. The letter of caution will recommend that the respondent be more professional in his or her practice in one or more ways which are to be specifically identified;

(5) to issue a letter of warning to a respondent in cases wherein no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct. The letter of warning will advise the attorney that he or she may be subject to discipline if such conduct is continued or repeated. The warning will specify in one or more ways the conduct or practice for which the respondent is being warned. A copy of the letter of warning will be maintained in the office of the counsel for three years subject to the confidentiality provisions of Rule .0129 of this subchapter;

(6) to issue an admonition in cases wherein the defendant has committed a minor violation of the Rules of Professional Conduct;

(7) to issue a reprimand wherein the defendant has violated one or more provisions of the Rules of Professional Conduct, and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure;

(8) to issue a censure in cases wherein the defendant has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the defendant's license;

(9) to direct that a petition be filed seeking a determination whether a member of the North Carolina State Bar is disabled;

(10) to include in any order of admonition, reprimand, or censure a provision requiring the defendant to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court;

(11) in its discretion, to refer grievances primarily attributable to unsound law office management to a program of law office management training approved by the State Bar in accordance with Rule .0112(i) of this subchapter.

(12) in its discretion, to refer grievances primarily attributable to the respondent's substance abuse or mental health problem to the Lawyer Assistance Program in accordance with Rule .0112(j) of this subchapter.

(13) in its discretion to refer grievances primarily attributable to the respondent's failure to employ sound trust accounting techniques to the trust account supervisory program in accordance with Rule .0112(k) of this subchapter.

(14) to operate the Attorney Client Assistance Program (ACAP). Functions of ACAP can include without limitation:

(a) assisting clients and attorneys in resolving issues arising in the client/attorney relationship that might be resolved without the need to open grievance files; and

(b) operating the Fee Dispute Resolution Program.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 1999; December 20, 2000; August 23, 2012; September 25, 2019.

27 NCAC 01B .0107 COUNSEL: POWERS AND DUTIES

The counsel will have the power and duty:

(1) to initiate an investigation concerning alleged misconduct of a member;

(2) to direct a letter of notice to a respondent when authorized by the chairperson of the Grievance Committee;

(3) to investigate all matters involving alleged misconduct whether initiated by the filing of a grievance or otherwise;

(4) to recommend to the chairperson of the Grievance Committee that a matter be dismissed, that a letter of caution, or a letter of warning be issued, or that the Grievance Committee hold a preliminary hearing;

(5) to prosecute all disciplinary proceedings before the Grievance Committee, hearing panels, and the courts;

(6) to represent the North Carolina State Bar in any trial, hearing, or other proceeding concerning the alleged disability of a member;

(7) to appear on behalf of the North Carolina State Bar at hearings conducted by the Grievance Committee, hearing panels, or any other agency or court concerning any motion or other matter arising out of a disciplinary or disability proceeding;

(8) to appear at hearings conducted with respect to petitions for reinstatement of license by suspended or disbarred attorneys or by attorneys transferred to disability inactive status, to cross-examine witnesses testifying in support of such petitions, and to present evidence, if any, in opposition to such petitions;

(9) to employ such deputy counsel, investigators, and other administrative personnel in such numbers as the council may authorize;

(10) to maintain permanent records of all matters processed and of the disposition of such matters;

(11) to perform such other duties as the council may direct;

(12) after a finding of probable cause by the Grievance Committee, to designate the particular violations of the Rules of Professional Conduct to be alleged in a formal complaint filed with the commission;

(13) to file amendments to complaints and petitions arising out of the same transactions or occurrences as the allegations in the original complaints or petitions, in the name of the North Carolina State Bar, with the prior approval of the chairperson of the Grievance Committee;

(14) after a complaint is filed with the commission, to dismiss any or all claims in the complaint or to negotiate and recommend consent orders of discipline to the hearing panel.

History Note: *Authority G.S. 84-23; 84-31;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; March 3, 1999.

27 NCAC 01B .0108 CHAIRPERSON OF THE HEARING COMMISSION: POWERS AND DUTIES

(a) The chairperson of the Disciplinary Hearing Commission of the North Carolina State Bar will have the power and duty:

(1) to receive complaints alleging misconduct and petitions alleging the disability of a member filed by the counsel; petitions requesting reinstatement of license by members who have been involuntarily transferred to disability inactive status, suspended, or disbarred; motions seeking the activation of suspensions which have been stayed; and proposed consent orders of disbarment;

(2) to assign three members of the commission, consisting of two members of the North Carolina State Bar and one nonlawyer to hear complaints, petitions, motions, and post-hearing motions pursuant to Rule .0114(z)(2) of this subchapter. The chairperson will designate one of the attorney members as chairperson of the hearing panel. No panel member who hears a disciplinary matter may serve on the panel which hears the attorney's reinstatement petition. The chairperson of the commission may designate himself or herself to serve as one of the attorney members of any hearing panel and will be chairperson of any hearing panel on which he or she serves. Post-hearing motions filed pursuant to Rule .0114(z)(2) of this subchapter will be considered by the same hearing panel assigned to the original trial proceeding. Hearing panel members who are ineligible or unable to serve for any reason will be replaced with members selected by the commission chairperson;

(3) to set the time and place for the hearing on each complaint or petition;

(4) to subpoena witnesses and compel their attendance and to compel the production of books, papers, and other documents deemed necessary or material to any hearing. The chairperson may designate the secretary to issue such subpoenas;

(5) to consolidate, in his or her discretion for hearing, two or more cases in which a subsequent complaint or complaints have been served upon a defendant within ninety days of the date of service of the first or a preceding complaint;

(6) to enter orders disbarring members by consent;

(7) to enter an order suspending a member pending disposition of a disciplinary proceeding when the member has been convicted of a serious crime or has pled no contest to a serious crime and the court has accepted the plea.

(b) The vice-chairperson of the Disciplinary Hearing Commission may perform the function of the chairperson in any matter when the chairperson is absent or disqualified.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; September 7, 1995.

27 NCAC 01B .0109 HEARING PANEL: POWERS AND DUTIES

Hearing panels of the Disciplinary Hearing Commission of the North Carolina State Bar will have the following powers and duties:

(1) to hold hearings on complaints alleging misconduct, or petitions seeking a determination of disability or reinstatement, or motions seeking the activation of suspensions which have been stayed, and to conduct proceedings to determine if persons or corporations should be held in contempt pursuant to G.S. 84-28.1(b1);

(2) to enter orders regarding discovery and other procedures in connection with such hearings, including, in disability matters, the examination of a member by such qualified medical experts as the panel will designate;

(3) to subpoena witnesses and compel their attendance, and to compel the production of books, papers, and other documents deemed necessary or material to any hearing. Subpoenas will be issued by the chairperson of the hearing panel in the name of the commission. The chairperson may direct the secretary to issue such subpoenas;

(4) to administer or direct the administration of oaths or affirmations to witnesses at hearings;

(5) to make findings of fact and conclusions of law;

(6) to enter orders dismissing complaints in matters before the panel;

(7) to enter orders of discipline against or letters of warning to defendants in matters before the panel;

(8) to tax costs of the disciplinary proceedings against any defendant against whom discipline is imposed, provided, however, that such costs will not include the compensation of any member of the council, panels, or agencies of the North Carolina State Bar;

(9) to enter orders transferring a member to disability inactive status;

(10) to report to the council its findings of fact and recommendations after hearings on petitions for reinstatement of disbarred attorneys;

(11) to grant or deny petitions of attorneys seeking transfer from disability inactive status to active status;

(12) to enter orders reinstating suspended attorneys or denying reinstatement. An order denying reinstatement may include additional sanctions in the event violations of the petitioner's order of suspension are found;

(13) to enter orders activating suspensions which have been stayed or continuing the stays of such suspensions.
(14) to enter orders holding persons and corporations in contempt pursuant to G.S. 84-28.1(b1) and imposing such sanctions allowed by law.

History Note: *Authority G.S. 84-23; 84-28; 84-28.1;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; March 3, 1999.

27 NCAC 01B .0110 SECRETARY: POWERS AND DUTIES IN DISCIPLINE AND DISABILITY MATTERS

The secretary will have the following powers and duties in regard to discipline and disability procedures:

(1) to receive grievances for transmittal to the counsel, to receive complaints and petitions for transmittal to the commission chairperson, and to receive affidavits of surrender of license for transmittal to the council;
(2) to issue summonses and subpoenas when so directed by the president, the chairperson of the Grievance Committee, the chairperson of the commission, or the chairperson of any hearing panel;
(3) to maintain a record and file of all grievances not dismissed by the Grievance Committee;
(4) to perform all necessary ministerial acts normally performed by the clerk of the superior court in complaints filed before the commission;
(5) to enter orders of reinstatement where petitions for reinstatement of suspended attorneys are unopposed by the counsel;
(6) to dismiss reinstatement petitions based on the petitioner's failure to comply with the rules governing the provision and transmittal of the record of reinstatement proceedings;
(7) to determine the amount of costs assessed in disciplinary proceedings by the commission.

History Note: *Authority G.S. 84-22; 84-23; 84-32(c);*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009.

27 NCAC 01B .0111 GRIEVANCES: FORM AND FILING

(a) A grievance may be filed by any person against a member of the North Carolina State Bar. Such grievance may be written or oral, verified or unverified, and may be made initially to the counsel. The counsel may require that a grievance be reduced to writing in affidavit form and may prepare and distribute standard forms for this purpose.

(b) Upon the direction of the council or the Grievance Committee, the counsel will investigate such conduct of any member as may be specified by the council or Grievance Committee.

(c) The counsel may investigate any matter coming to the attention of the counsel involving alleged misconduct of a member upon receiving authorization from the chairperson of the Grievance Committee. If the counsel receives information that a member has used or is using illicit drugs, the counsel will follow the provisions of Rule .0130 of this Subchapter.

(d) The North Carolina State Bar may keep confidential the identity of an attorney or judge who reports alleged misconduct of another attorney pursuant to Rule 8.3 of the Revised Rules of Professional Conduct and who requests to remain anonymous. Notwithstanding the foregoing, the North Carolina State Bar will reveal the identity of a reporting attorney or judge to the respondent attorney where such disclosure is required by law, or by considerations of due process or where identification of the reporting attorney or judge is essential to preparation of the attorney's defense to the grievance and/or a formal disciplinary complaint.

(e) The counsel may decline to investigate the following allegations:

(1) that a member provided ineffective assistance of counsel in a criminal case, unless a court has granted a motion for appropriate relief based upon the member's conduct;
(2) that a plea entered in a criminal case was not made voluntarily and knowingly, unless a court granted a motion for appropriate relief based upon the member's conduct;
(3) that a member's advice or strategy in a civil or criminal matter was inadequate or ineffective.

(f) Limitation of Grievances.

(1) There is no time limitation for initiation of any grievance based upon a plea of guilty to a felony or upon conviction of a felony.
(2) There is no time limitation for initiation of any grievance based upon allegations of conduct that constitutes a felony, without regard to whether the lawyer is charged, prosecuted, or convicted of a crime for the conduct.

(3) There is no time limitation for initiation of any grievance based upon conduct that violates the Rules of Professional Conduct and has been found by a court to be intentional conduct by the lawyer. As used in this Rule, "court" means a state court of general jurisdiction of any state or of the District of Columbia or a federal court.

(4) All other grievances must be initiated within six years after the last act giving rise to the grievance.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. October 8, 2009; October 1, 2003; December 30, 1998; February 20, 1995.

SECTION .0100 - DISCIPLINE AND DISABILITY OF ATTORNEYS

27 NCAC 01B .0112 INVESTIGATIONS: INITIAL DETERMINATION; NOTICE AND RESPONSE; COMMITTEE REFERRALS

(a) Investigation Authority - Subject to the policy supervision of the council and the control of the chair of the Grievance Committee, the counsel, or other personnel under the authority of the counsel, will investigate the grievance and submit to the chair a report detailing the findings of the investigation.

(b) Grievance Committee Action on Initial or Interim Reports - As soon as practicable after the receipt of the initial or any interim report of the counsel concerning any grievance, the chair of the Grievance Committee may

(1) treat the report as a final report;

(2) direct the counsel to conduct further investigation, including contacting the respondent in writing or otherwise; or

(3) direct the counsel to send a letter of notice to the respondent.

(c) Letter of Notice, Respondent's Response, and Request for Copy of Grievance - If the counsel serves a letter of notice upon the respondent, it will be served by certified mail and will direct that a response be provided within 15 days of service of the letter of notice upon the respondent. The response to the letter of notice shall include a full and fair disclosure of all facts and circumstances pertaining to the alleged misconduct. The response must be in writing and signed by the respondent. If the respondent requests it, the counsel will provide the respondent with a copy of the written grievance unless the complainant requests anonymity pursuant to Rule .0111(d) of this subchapter.

(d) Request for Copy of Respondent's Response - The counsel may provide to the complainant a copy of the respondent's response to the letter of notice unless the respondent objects thereto in writing.

(e) Termination of Further Investigation - After the Grievance Committee receives the response to a letter of notice, the counsel may conduct further investigation or terminate the investigation, subject to the control of the chair of the Grievance Committee.

(f) Subpoenas - For reasonable cause, the chair of the Grievance Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, for examination concerning the grievance and may compel the production of books, papers, and other documents or writings which the chair deems necessary or material to the inquiry. Each subpoena will be issued by the chair or by the secretary at the direction of the chair. The counsel, deputy counsel, investigator, or any members of the Grievance Committee designated by the chair may examine any such witness under oath or otherwise.

(g) Grievance Committee Action on Final Reports – The Grievance Committee will consider the grievance as soon as practicable after it receives the final report of the counsel, except as otherwise provided in these rules.

(h) Failure of Complainant to Sign and Dismissal Upon Request of Complainant - The investigation into alleged misconduct of the respondent will not be abated by failure of the complainant to sign a grievance, by settlement or compromise of a dispute between the complainant and the respondent, or by the respondent's payment of restitution. The chair of the Grievance Committee may dismiss a grievance upon request of the complainant and with consent of the counsel where it appears that there is no probable cause to believe that the respondent violated the Rules of Professional Conduct.

(i) Referral to Law Office Management Training

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound law office management techniques and procedures, the committee may offer the respondent an opportunity to voluntarily participate in a law office management training program approved by the State Bar before the committee considers discipline.

If the respondent accepts the committee's offer to participate in the program, the respondent will then be required to complete a course of training in law office management prescribed by the chair which may include a comprehensive site audit of the respondent's records and procedures as well as attendance at

continuing legal education seminars. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Law Office Management Training Program – If the respondent successfully completes the law office management training program, the committee may consider the respondent's successful completion of the law office management training program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to successfully complete the law office management training program as agreed, the grievance will be returned to the committee's agenda for consideration of imposition of discipline. The requirement that a respondent complete law office management training pursuant to this rule shall be in addition to the respondent's obligation to satisfy the minimum continuing legal education requirements contained in 27 NCAC 01D .1517.

(j) Referral to Lawyer Assistance Program

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's substance abuse or mental health problem, the committee may offer the respondent an opportunity to voluntarily participate in a rehabilitation program under the supervision of the Lawyer Assistance Program Board before the committee considers discipline. If the respondent accepts the committee's offer to participate in a rehabilitation program, the respondent must provide the committee with a written acknowledgement of the referral on a form approved by the chair. The acknowledgement of the referral must include the respondent's waiver of any right of confidentiality that might otherwise exist to permit the Lawyer Assistance Program to provide the committee with the information necessary for the committee to determine whether the respondent is in compliance with the rehabilitation program. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Rehabilitation Program – If the respondent successfully completes the rehabilitation program, the committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to complete the rehabilitation program or fails to cooperate with the Lawyer Assistance Program Board, the Lawyer Assistance Program will report that failure to the counsel and the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(k) Referral to Trust Accounting Compliance Program

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound trust accounting techniques, the committee may offer the respondent an opportunity to voluntarily participate in the State Bar's Trust Account Compliance Program for up to two years before the committee considers discipline. If the respondent accepts the committee's offer to participate in the compliance program, the respondent must fully cooperate with the Trust Account Compliance Counsel and must provide to the Office of Counsel quarterly proof of compliance with all provisions of Rule 1.15 of the Rules of Professional Conduct. Such proof shall be in a form satisfactory to the Office of Counsel. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Trust Account Compliance Program - If the respondent successfully completes the program, the committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent does not fully cooperate with the Trust Account Compliance Counsel and/or does not successfully complete the program, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(3) The committee will not refer to the program any case involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or any other case the committee deems inappropriate for referral. The committee will not refer to the program any respondent who has not cooperated fully and timely with the committee's investigation. If the Office of Counsel or the committee discovers evidence that a respondent who is participating in the program may have misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, the chair will terminate the respondent's participation in the program and the disciplinary process will proceed. Referral to the Trust Accounting Compliance Program is not a defense to allegations that a lawyer misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, and it does not immunize a lawyer from the disciplinary consequences of such conduct.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. March 5, 2015; August 23, 2012; August 25, 2011; March 10, 2011; March 6, 2002; December 20, 2000; December 30, 1998; March 6, 1997; February 20, 1995.

27 NCAC 01B .0113 PROCEEDINGS BEFORE THE GRIEVANCE COMMITTEE

(a) Probable Cause - The Grievance Committee or any of its panels acting as the Grievance Committee with respect to grievances referred to it by the chairperson of the Grievance Committee will determine whether there is probable cause to believe that a respondent is guilty of misconduct justifying disciplinary action. In its discretion, the Grievance Committee or a panel thereof may find probable cause regardless of whether the respondent has been served with a written letter of notice. The respondent may waive the necessity of a finding of probable cause with the consent of the counsel and the chairperson of the Grievance Committee. A decision of a panel of the committee may not be appealed to the Grievance Committee as a whole or to another panel (except as provided in 27 N.C.A.C. 1A, .0701(a)(3)).

(b) Oaths and Affirmations - The chairperson of the Grievance Committee will have the power to administer oaths and affirmations.

(c) Record of Grievance Committee's Determination - The chairperson will keep a record of the Grievance Committee's determination concerning each grievance and file the record with the secretary.

(d) Subpoenas - The chairperson will have the power to subpoena witnesses, to compel their attendance, and compel the production of books, papers, and other documents deemed necessary or material to any preliminary hearing. The chairperson may designate the secretary to issue such subpoenas.

(e) Closed Meetings - The counsel and deputy counsel, the witness under examination, interpreters when needed, and, if deemed necessary, a stenographer or operator of a recording device may be present while the committee is in session and deliberating, but no persons other than members may be present while the committee is voting.

(f) Disclosure of Matters Before the Grievance Committee - The results of any deliberation by the Grievance Committee will be disclosed to the counsel and the secretary for use in the performance of their duties. Otherwise, a member of the committee, the staff of the North Carolina State Bar, any interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the committee only when so directed by the committee or a court of record.

(g) Quorum Requirement - At any preliminary hearing held by the Grievance Committee, a quorum of one-half of the members will be required to conduct any business. Affirmative vote of a majority of members present will be necessary to find that probable cause exists. The chairperson will not be counted for quorum purposes and will be eligible to vote regarding the disposition of any grievance only in case of a tie among the regular voting members.

(h) Results of Grievance Committee Deliberations - If probable cause is found and the committee determines that a hearing is necessary, the chairperson will direct the counsel to prepare and file a complaint against the respondent. If the committee finds probable cause but determines that no hearing is necessary, it will direct the counsel to prepare for the chairperson's signature an admonition, reprimand, or censure. If no probable cause is found, the grievance will be dismissed or dismissed with a letter of warning or a letter of caution.

(i) Letters of Caution - If no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is unprofessional or not in accord with accepted professional practice, the committee may issue a letter of caution to the respondent recommending that the respondent be more professional in his or her practice in one or more ways which are to be specifically identified.

(j) Letters of Warning

(1) If no probable cause is found but it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct, the committee may issue a letter of warning to the respondent. The letter of warning will advise the respondent that he or she may be subject to discipline if such conduct is continued or repeated. The letter will specify in one or more ways the conduct or practice for which the respondent is being warned. The letter of warning will not constitute discipline of the respondent.

(2) A copy of the letter of warning will be maintained in the office of the counsel for three years. If relevant, a copy of the letter of warning may be offered into evidence in any proceeding filed against the respondent before the commission within three years after the letter of warning is issued to the respondent. In every case filed against the respondent before the commission within three years after the letter of warning is issued to the respondent, the letter of warning may be introduced into evidence as an aggravating factor concerning the issue of what disciplinary sanction should be imposed. A copy of the letter of warning may

be disclosed to the Grievance Committee if another grievance is filed against the respondent within three years after the letter of warning is issued to the respondent.

(3) Service of Process:

(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning may be served upon the respondent by mailing a copy of the letter of warning to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the letter of warning in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning shall be served upon the respondent by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the letter of warning shall be served by mailing a copy of the letter of warning to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the letter of warning in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Within 15 days after service, the respondent may refuse the letter of warning and request a hearing before the commission to determine whether the respondent violated the Rules of Professional Conduct. Such refusal and request will be in writing, addressed to the Grievance Committee, and served on the secretary by certified mail, return receipt requested. The refusal will state that the letter of warning is refused. If the respondent does not serve a refusal and request within 15 days after service upon the respondent of the letter of warning, the letter of warning will be deemed accepted by the respondent. An extension of time may be granted by the chairperson of the Grievance Committee for good cause shown.

(4) In cases in which the respondent refuses the letter of warning, the counsel will prepare and file a complaint against the respondent at the commission.

(k) Admonitions, Reprimands, and Censures

(1) If probable cause is found but it is determined by the Grievance Committee that a complaint and hearing are not warranted, the committee shall issue an admonition in cases in which the respondent has committed a minor violation of the Rules of Professional Conduct, a reprimand in cases in which the respondent's conduct has violated one or more provisions of the Rules of Professional Conduct and caused harm or potential harm to a client, the administration of justice, the profession, or members of the public, or a censure in cases in which the respondent has violated one or more provisions of the Rules of Professional Conduct and the harm or potential harm caused by the respondent is significant and protection of the public requires more serious discipline. To determine whether more serious discipline is necessary to protect the public or whether the violation is minor and less serious discipline is sufficient to protect the public, the committee shall consider the factors delineated in subparagraphs (2) and (3) below.

(2) Factors that shall be considered in determining whether protection of the public requires a censure include, but are not limited to, the following:

(A) prior discipline for the same or similar conduct;
(B) prior notification by the North Carolina State Bar of the wrongfulness of the conduct;
(C) refusal to acknowledge wrongful nature of conduct;
(D) lack of indication of reformation;
(E) likelihood of repetition of misconduct;
(F) uncooperative attitude toward disciplinary process;
(G) pattern of similar conduct;
(H) violation of the Rules of Professional Conduct in more than one unrelated matter;
(I) lack of efforts to rectify consequences of conduct;
(J) imposition of lesser discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar;
(K) notification contemporaneous with the conduct at issue of the wrongful nature of the conduct and failure to take remedial action.

(3) Factors that shall be considered in determining whether the violation of the Rules is minor and warrants issuance of an admonition include, but are not limited to, the following:

(A) lack of prior discipline for same or similar conduct;
(B) recognition of wrongful nature of conduct;
(C) indication of reformation;
(D) indication that repetition of misconduct not likely;
(E) isolated incident;
(F) violation of the Rules of Professional Conduct in only one matter;
(G) lack of harm or potential harm to client, administration of justice, profession, or members of the public;
(H) efforts to rectify consequences of conduct;
(I) inexperience in the practice of law;
(J) imposition of admonition appropriately acknowledges the minor nature of the violation(s) of the Revised Rules of Professional Conduct;
(K) notification contemporaneous with the conduct at issue of the wrongful nature of the conduct resulting in efforts to take remedial action;
(L) personal or emotional problems contributing to the conduct at issue;
(M) successful participation in and completion of contract with Lawyer's Assistance Program where mental health or substance abuse issues contributed to the conduct at issue.

(l) Procedures for Admonitions, Reprimands, and Censures

(1) A record of any admonition, reprimand, or censure issued by the Grievance Committee will be maintained in the office of the secretary.

(2)(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the admonition, reprimand, or censure may be served upon the respondent by mailing a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the admonition, reprimand, or censure in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the admonition, reprimand, or censure shall be served upon the respondent by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the respondent shall be served by mailing a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the admonition, reprimand, or censure in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(3) Within 15 days after service the respondent may refuse the admonition, reprimand, or censure and request a hearing before the commission. Such refusal and request will be in writing, addressed to the Grievance Committee, and served upon the secretary by certified mail, return receipt requested. The refusal will state that the admonition, reprimand, or censure is refused.

(4) If a refusal and request are not served upon the secretary within 15 days after service upon the respondent of the admonition, reprimand, or censure, the admonition, reprimand, or censure will be deemed accepted by the respondent. An extension of time may be granted by the chairperson of the Grievance Committee for good cause shown. A censure that is deemed accepted by the respondent must be filed as provided by Rule .0127(a)(3) of this subchapter.

(5) In cases in which the respondent refuses an admonition, reprimand, or censure, the counsel will prepare and file a complaint against the respondent at the commission.

(m) Disciplinary Hearing Commission Complaints - Formal complaints will be issued in the name of the North Carolina State Bar as plaintiff and signed by the chairperson of the Grievance Committee. Amendments to complaints may be signed by the counsel alone, with the approval of the chairperson of the Grievance Committee.

History Note: *Authority G.S. 84-23; 84-28;*
Readopted Eff. December 8, 1994;

Amendments Eff. March 3, 1999; February 3, 2000; October 8, 2009; March 27, 2019; September 25, 2020.

27 NCAC 01B .0114 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: GENERAL RULES APPLICABLE TO ALL PROCEEDINGS

(a) Applicable Procedure - Except where specific procedures are provided by these rules, pleadings and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of nonjury civil cases in the superior courts. Any specific procedure set out in these rules controls, and where specific procedures are set out in these rules, the Rules of Civil Procedure will be supplemental only.

(b) Continuances - The chairperson of the hearing panel may continue any hearing for good cause shown. After a hearing has commenced, continuances will only be granted pursuant to Rule .0116(b).

(c) Appearance By or For the Defendant - The defendant may appear pro se or may be represented by counsel. The defendant may not act pro se if he or she is represented by counsel.

(1) Pro Se Defendant's Address - When a defendant appears in his or her own behalf in a proceeding, the defendant will file with the clerk, with proof of delivery of a copy to the counsel, an address at which any notice or other written communication required to be served upon the defendant may be sent, if such address differs from the address on record with the State Bar's membership department.

(2) Notice of Appearance - When a defendant is represented by an attorney in a proceeding, the attorney will file with the clerk a written notice of such appearance which will state his or her name, address and telephone number, the name and address of the defendant on whose behalf he or she appears, and the caption and docket number of the proceeding. Any additional notice or other written communication required to be served on or furnished to a defendant during the pendency of the hearing will be sent to defendant's attorney of record in lieu of transmission to the defendant.

(d) Filing Time Limits - Pleadings or other documents in formal proceedings required or permitted to be filed under these rules must be received for filing by the clerk of the commission within the time limits, if any, for such filing. The date of the receipt by the clerk, and not the date of deposit in the mail, is determinative.

(e) Form of Papers - All papers presented to the commission for filing will be on letter size paper (8 1/2 x 11 inches) with the exception of exhibits. The clerk will require a party to refile any paper that does not conform to this size.

(f) Subpoenas - The hearing panel will have the power to subpoena witnesses and compel their attendance, and to compel the production of books, papers, and other documents deemed necessary or material to any hearing as permitted in civil cases under the North Carolina Rules of Civil Procedure. Such process will be issued in the name of the hearing panel by its chairperson, or the chairperson may designate the secretary of the North Carolina State Bar to issue such process. The plaintiff and the defendant have the right to invoke the powers of the panel with respect to compulsory process for witnesses and for the production of books, papers, and other writings and documents.

(g) Admissibility of Evidence - In any hearing, admissibility of evidence will be governed by the rules of evidence applicable in the superior court of North Carolina at the time of the hearing. The chairperson of the hearing panel will rule on the admissibility of evidence, subject to the right of any member of the panel to question the ruling. If a member of the panel challenges a ruling relating to admissibility of evidence, the question will be decided by a majority vote of the hearing panel.

(h) Defendant as Witness – The defendant will, except as otherwise provided by law, be competent and compellable to give evidence for either party.

History Note: *Authority G.S. 84-23; 84-28; 84-28.1; 84-29; 84-30; 84-32(a);*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009; March 2, 2006; December 30, 1998; October 2, 1997.

27 NCAC 01B .0115 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: PLEADINGS AND PREHEARING PROCEDURE

(a) Complaint and Service - The counsel will file the complaint with the clerk of the commission. The counsel will cause a summons and a copy of the complaint to be served upon the defendant and will inform the clerk of the date of service. The clerk will deliver a copy of the complaint to the chairperson of the commission and will inform the chairperson of the date that service on the defendant was effected. Service of complaints and summonses and other documents or papers will be accomplished as set forth in the North Carolina Rules of Civil Procedure.

(b) Notice Pleading - Complaints in disciplinary actions will allege the charges with sufficient precision to clearly apprise the defendant of the conduct which is the subject of the complaint.

(c) Answer - Within 20 days after the service of the complaint, unless further time is allowed by the chairperson of the commission or of the hearing panel upon good cause shown, the defendant will file an answer to the complaint with the clerk of the commission and will serve a copy on the counsel.
(d) Designation of Hearing Panel - Within 20 days after service of the complaint upon the defendant, the chairperson of the commission will designate a hearing panel from among the commission members. The chairperson will notify the counsel and the defendant of the composition of the hearing panel.
(e) Scheduling Conference - The chairperson of the hearing panel will hold a scheduling conference with the parties within 20 days after the filing of the answer by the defendant unless another time is set by the chairperson of the commission. The chairperson of the hearing panel will notify the counsel and the defendant of the date, time, and venue (e.g., in person, telephone, video conference) of the scheduling conference. At the scheduling conference, the parties will discuss anticipated issues, amendments, motions, any settlement conference, and discovery. The chairperson of the hearing panel will set dates for the completion of discovery and depositions, for the filing of motions, for the pre-hearing conference, for the filing of the stipulation on the pre-hearing conference, and for the hearing, and may order a settlement conference. The hearing date shall not be less than 60 days from the final date for discovery and depositions unless otherwise consented to by the parties. The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in the scheduling conference or willfully fails to comply with a scheduling order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the NC Rules of Civil Procedure.
(f) Failure to File an Answer - Failure to file an answer admitting or denying the allegations of the complaint or asserting the grounds for failing to do so within the time specified by this rule will be grounds for entry of the defendant's default. If the defendant fails to file an answer to the complaint, the allegations contained in the complaint will be deemed admitted.
(g) Default

(1) The clerk will enter the defendant's default when the fact of default is made to appear by motion of the counsel or otherwise.
(2) The counsel may thereupon apply to the hearing panel for default orders as follows:
    (A) For an order making findings of fact and conclusions of law. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. The hearing panel shall then set a date for hearing at which the sole issue shall be the discipline to be imposed.
    (B) For an order of discipline. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. If such facts provide sufficient basis, the hearing panel shall enter an order imposing the discipline deemed to be appropriate. The hearing panel may, in its discretion, set a hearing date and hear such additional evidence as it deems necessary to determine appropriate discipline prior to entering the order of discipline.
(3) For good cause shown, the hearing panel may set aside the entry of default.
(4) After an order imposing discipline has been entered by the hearing panel upon the defendant's default, the hearing panel may set aside the order in accordance with Rule 60(b) of the North Carolina Rules of Civil Procedure.

(h) Discovery - Discovery will be available to the parties in accordance with the North Carolina Rules of Civil Procedure. Any discovery undertaken must be completed by the date set in the scheduling order unless the time for discovery is extended by the chairperson of the hearing panel for good cause shown. Upon a showing of good cause, the chairperson of the hearing panel may reschedule the hearing to accommodate completion of reasonable discovery.
(i) Settlement - The parties may meet by mutual consent prior to the hearing to discuss the possibility of settlement of the case or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the case will be subject to the approval of the hearing panel. The hearing panel may reject a proposed settlement agreement but only after conducting a conference with the parties. The chairperson of the hearing panel will notify the counsel and the defendant of the date, time, and venue (e.g., in person, telephone, videoconference) of the conference. If, after the conference, the first hearing panel rejects a proposed settlement, another hearing panel must be empanelled to try the case, unless all parties consent to proceed with the original hearing panel. The parties may submit a proposed settlement to a second hearing panel and may, upon the agreement of both parties, request a conference with the panel, but the parties shall not have the right to request a third hearing panel if the proposed settlement is rejected by the second hearing panel. The second hearing panel shall either accept the settlement proposal or hold a hearing upon the allegations of the complaint.
(j) Settlement Conference - Either party may request, or the chair of the hearing panel may order, appointment of a commission member to conduct a settlement conference.

(1) Such request shall be filed with the clerk of the commission and must be made no later than 60 days prior to the date set for hearing.

(2) Upon such request, the chairperson of the commission shall select and assign a commission member not assigned to the hearing panel in the case to conduct a settlement conference and shall notify the parties of the commission member assigned and the date by which the settlement conference must be held. The settlement conference must be no later than 30 days prior to the date set for hearing.

(3) The commission member conducting the settlement conference will set the date, time, and manner.

(4) At the settlement conference, the parties will discuss their positions and desired resolution and the commission member will provide input regarding the case and resolution.

(5) The commission member's evaluation and input shall be advisory only and not binding.

(6) All statements and/or admissions made at the settlement conference shall be for settlement purposes only and shall not be admissible at any hearing in the case. Evidence that is otherwise discoverable, however, shall not be excluded from admission at hearing merely because it is presented in the course of the settlement conference.

(k) Prehearing Conference and Order

(1) Unless default has been entered by the clerk, the parties shall hold a prehearing conference. The prehearing conference shall be arranged and held by the dates established in the scheduling order.

(2) Prior to or during the prehearing conference, the parties shall: exchange witness and exhibit lists; discuss stipulations of undisputed facts; discuss the issues for determination by the hearing panel; and exchange contested issues if the parties identify differing contested issues.

(3) Within five days after the date of the prehearing conference, each party shall provide the other with any documents or items identified as exhibits but not previously provided to the other party.

(4) The parties shall memorialize the prehearing conference in a document titled "Stipulation on Prehearing Conference" that shall address the items and utilize the format in the sample provided to the parties by the clerk. By the date set in the scheduling order, the parties shall submit the Stipulation on Prehearing Conference to the clerk to provide to the hearing panel.

(5) Upon five days' notice to the parties, at the discretion of the chairperson of the hearing panel, the chairperson may order the parties to meet with the chairperson or any designated member of the hearing panel for the purpose of promoting the efficiency of the hearing. The participating member of the panel shall have the power to issue such orders as may be appropriate. The venue (e.g., telephone, videoconference, in person) shall be set by the hearing panel member.

(6) The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in a prehearing conference or hearing or who willfully fails to comply with a prehearing order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the NC Rules of Procedure.

(7) Evidence or witnesses not included in the Stipulation on Prehearing Conference may be excluded from admission or consideration at the hearing.

(l) Prehearing Motions - The chairperson of the hearing panel, without consulting the other panel members, may hear and dispose of all prehearing motions except motions the granting of which would result in dismissal of the charges or final judgment for either party. All motions which could result in dismissal of the charges or final judgment for either party will be decided by a majority of the members of the hearing panel. The following procedures shall apply to all prehearing motions, including motions which could result in dismissal of all or any of the allegations or could result in final judgment for either party on all or any claims:

(1) Parties shall file motions with the clerk of the commission. Parties may submit motions by regular mail, overnight mail, or in person. Motions transmitted by facsimile or by email will not be accepted for filing except with the advance written permission of the chairperson of the hearing panel. Parties shall not deliver motions or other communications directly to members of the hearing panel unless expressly directed in writing to do so by the chairperson of the hearing panel.

(2) Motions shall be served as provided in the NC Rules of Civil Procedure.

(3) The non-moving party shall have ten days from the filing of the motion to respond. If the motion is served upon the non-moving party by regular mail only, then the non-moving party shall have 13 days from the filing of the motion to respond. Upon good cause shown, the chairperson of the hearing panel may shorten or extend the time period for response.

(4) Any prehearing motion may be decided on the basis of the parties' written submissions. Oral argument may be allowed in the discretion of the chairperson of the hearing panel. The chairperson shall set the time, date,

and manner of oral argument. The chairperson may order that argument on any prehearing motion may be heard in person or by telephone or electronic means of communication.

(5) Any motion included in or with a defendant's answer will not be acted upon, and no response from the non-moving party will be due, unless and until a party files a notice requesting action by the deadline for filing motions set in the scheduling order. The due date for response by the non-moving party will run from the date of the filing of the notice.

History Note: *Authority G.S. 84-23;*
Adopted: September 22, 2016;
Amendments Approved by the Supreme Court: September 28, 2017.

27 NCAC 01B .0116 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: FORMAL HEARING

(a) Public Hearing

(1) The defendant will appear in person before the hearing panel at the time and place named by the chairperson. The hearing will be open to the public except that for good cause shown the chairperson of the hearing panel may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing will be closed to the public over the objection of the defendant.

(2) Media Coverage - Absent a showing of good cause, the chairperson of the hearing panel shall permit television, motion picture and still photography cameras, broadcast microphones and recorders (electronic media) to record and broadcast formal hearings. A media outlet shall file a motion with the clerk of the commission seeking permission to utilize electronic media to record or broadcast a hearing no less than 48 hours before the hearing is scheduled to begin. The chairperson will rule on the motion no less than 24 hours before the hearing is scheduled to begin. Any order denying a motion to permit the use of electronic media to record or broadcast a formal hearing shall contain written findings of fact setting forth the facts constituting good cause to support that decision. Except as otherwise provided in this paragraph, the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts (Electronic Media and Still Photography Coverage of Public Judicial Proceedings) shall apply to electronic media coverage of hearings before the commission.

(b) Continuance After a Hearing Has Commenced - After a hearing has commenced, no continuances other than an adjournment from day to day will be granted, except to await the filing of a controlling decision of an appellate court, by consent of all parties, or where extreme hardship would result in the absence of a continuance.

(c) Burden of Proof

(1) Unless otherwise provided in these rules, the State Bar shall have the burden of proving by clear, cogent, and convincing evidence that the defendant violated the Rules of Professional Conduct.

(2) In any complaint or other pleading or in any trial, hearing, or other proceeding, the State Bar is not required to prove the nonexistence of any exemption or exception contained in the Rules of Professional Conduct. The burden of proving any exemption or exception shall be upon the person claiming its benefit.

(d) Orders - At the conclusion of any disciplinary case, the hearing panel will file an order which will include the panel's findings of fact and conclusions of law. When one or more rule violations has been established by summary judgment, the order of discipline will set out the undisputed material facts and conclusions of law established by virtue of summary judgment, any additional facts and conclusions of law pertaining to discipline, and the disposition. All final orders will be signed by the members of the panel, or by the chairperson of the panel on behalf of the panel, and will be filed with the clerk.

(e) Preservation of the Record - The clerk will ensure that a complete record is made of the evidence received during the course of all hearings before the commission as provided by G.S. 7A-95 for trials in the superior court. The clerk will preserve the record and the pleadings, exhibits, and briefs of the parties.

(f) Discipline - If the charges of misconduct are established, the hearing panel will consider any evidence relevant to the discipline to be imposed.

(1) Suspension or disbarment is appropriate where there is evidence that the defendant's actions resulted in significant harm or potential significant harm to the clients, the public, the administration of justice, or the legal profession, and lesser discipline is insufficient to adequately protect the public. The following factors shall be considered in imposing suspension or disbarment:

(A) intent of the defendant to cause the resulting harm or potential harm;

(B) intent of the defendant to commit acts where the harm or potential harm is foreseeable;

(C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;

(D) elevation of the defendant's own interest above that of the client;
(E) negative impact of defendant's actions on client's or public's perception of the profession;
(F) negative impact of the defendant's actions on the administration of justice;
(G) impairment of the client's ability to achieve the goals of the representation;
(H) effect of defendant's conduct on third parties;
(I) acts of dishonesty, misrepresentation, deceit, or fabrication;
(J) multiple instances of failure to participate in the legal profession's self-regulation process.

(2) Disbarment shall be considered where the defendant is found to engage in:
(A) acts of dishonesty, misrepresentation, deceit, or fabrication;
(B) impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts;
(C) misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; or
(D) commission of a felony.

(3) In all cases, any or all of the following factors shall be considered in imposing the appropriate discipline:
(A) prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
(B) remoteness of prior offenses;
(C) dishonest or selfish motive, or the absence thereof;
(D) timely good faith efforts to make restitution or to rectify consequences of misconduct;
(E) indifference to making restitution;
(F) a pattern of misconduct;
(G) multiple offenses;
(H) effect of any personal or emotional problems on the conduct in question;
(I) effect of any physical or mental disability or impairment on the conduct in question;
(J) interim rehabilitation;
(K) full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
(L) delay in disciplinary proceedings through no fault of the defendant attorney;
(M) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
(N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(O) refusal to acknowledge wrongful nature of conduct;
(P) remorse;
(Q) character or reputation;
(R) vulnerability of victim;
(S) degree of experience in the practice of law;
(T) issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint;
(U) imposition of other penalties or sanctions;
(V) any other factors found to be pertinent to the consideration of the discipline to be imposed.

(g) Service of Final Orders - The clerk will serve the defendant with the final order of the hearing panel by certified mail, return receipt requested, or by personal service. A defendant who cannot, with reasonable diligence, be served by certified mail or personal service shall be deemed served when the clerk deposits a copy of the order enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service addressed to the defendant's last known address on file with the NC State Bar.

History Note: *Authority G.S. 84-23;*
Eff. September 22, 2016;
Amendments Approved by the Supreme Court: March 16, 2017.

27 NCAC 01B .0117 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: POSTTRIAL MOTIONS

(a) New Trials and Amendments of Judgments (N.C. R. Civ. 59)

(1) Either party may request a new trial or amendment of the hearing panel's final order, based on any of the grounds set out in Rule 59 of the North Carolina Rules of Civil Procedure.

(2) A motion for a new trial or amendment of judgment will be filed with the clerk no later than 20 days after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, will be filed with the motion.

(3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.

(4) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, order oral argument.

(b) Relief from Judgment or Order (N.C. R. Civ. 60)

(1) Either party may file a motion for relief from the final judgment or order, based on any of the grounds set out in Rule 60 of the North Carolina Rules of Civil Procedure.

(2) A motion for relief from the final judgment or order will be filed with the clerk no later than one year after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, will be filed with the motion.

(3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.

(4) The clerk will promptly transmit the motion and any response to the chairperson of the commission, who will appoint a hearing panel. The chairperson will appoint the members of the hearing panel that originally heard the matter wherever practicable.

(5) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, order oral argument.

(c) Effect of Filing Motion - The filing of a motion requesting a new trial, amendment of the judgment, or relief from the final judgment or order under this section will not automatically stay or otherwise affect the effective date of an order of the commission.

History Note: *Authority G.S. 84-23;*
Eff. September 22, 2016.

27 NCAC 01B .0118 PROCEEDINGS BEFORE THE DISCIPLINARY HEARING COMMISSION: STAYED SUSPENSION

(a) Procedures: Non-compliance with Conditions - In any case in which a period of suspension is stayed upon compliance by the defendant with conditions, the commission will retain jurisdiction of the matter until all conditions are satisfied. The following procedures apply during a stayed suspension:

(1) If, during the period the stay is in effect, the counsel receives information tending to show that a condition has been violated, the counsel may, with the consent of the chairperson of the Grievance Committee, file a motion in the cause with the clerk of the commission specifying the violation and seeking an order lifting the stay and activating the suspension. The counsel will serve a copy of the motion upon the defendant.

(2) The clerk will promptly transmit the motion to the chairperson of the commission. The chairperson will appoint a hearing panel to hold a hearing, appointing the members of the hearing panel that originally heard the matter wherever practicable. The chairperson of the commission will notify the counsel and the defendant of the composition of the hearing panel and the time and place for the hearing.

(3) At the hearing, the State Bar will have the burden of proving by the greater weight of the evidence that the defendant violated a condition of the stay.

(4) If the hearing panel finds by the greater weight of the evidence that the defendant violated a condition of the stay, the panel may enter an order lifting the stay and activating the suspension, or any portion thereof. Alternatively, the panel may allow the stay to remain in effect for the original term of the stay, may extend the term of the stay, and/or may include modified or additional conditions for the suspension to remain stayed. If the panel finds that the defendant violated a condition of the stay, the panel may tax the defendant with administrative fees and costs.

(A) In any order lifting a stay and activating a suspension in whole or in part, the panel may include a provision allowing the defendant to apply for a stay of the activated suspension on such terms and conditions as the panel concludes are appropriate.

(B) The panel may impose modified or additional conditions: (a) which the defendant must satisfy to obtain a stay of an activated suspension; (b) with which the defendant must comply during the stay of an activated suspension; and/or (c) which the defendant must satisfy to be reinstated to active status at the end of the activated suspension period.

(C) If the panel activated the entire period of suspension, in order to be reinstated at the end of the activated suspension, the defendant must comply with the requirements of Rule .0129(b) of this Subchapter and with any requirements imposed in previous orders entered by the commission.

(D) If the panel activated only a portion of the suspension, in order to be returned to active status at the end of the period of activated suspension the defendant must file a motion with the commission seeking a stay of the remainder of the original term of suspension. If the defendant is granted a stay of the remainder of the original term of suspension, the panel may impose modified and/or additional conditions with which the defendant must comply during the stayed suspension.

(5) If the panel finds that the greater weight of the evidence does not establish that the defendant violated a condition of the stay, it will enter an order continuing the stay.

(6) In any event, the panel will include in its order findings of fact and conclusions of law in support of its decision.

(b) Completion of Stayed Suspension; Continuation of Stay if Motion Alleging Lack of Compliance is Pending

(1) Unless there is pending a motion or proceeding in which it is alleged that the defendant failed to comply with the conditions of the stay, the defendant's obligations under an order of discipline end upon expiration of the period of the stay.

(2) When the period of the stay of the suspension would otherwise have terminated, if a motion or proceeding is pending in which it is alleged that the defendant failed to comply with the conditions of the stay, the commission retains jurisdiction to lift the stay and activate all or any part of the suspension. The defendant's obligation to comply with the conditions of the existing stay remains in effect until any such pending motion or proceeding is resolved.

(c) Applying for Stay of Suspension - The following procedures apply to a motion to stay a suspension:

(1) The defendant shall file a motion for stay with the clerk and serve a copy of the motion and all attachments upon the counsel. Such motion shall be filed no earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion filed earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion unless it is delivered to the clerk and served upon the counsel contemporaneously.

(2) The motion must identify each condition for stay and state how the defendant has met each condition. The defendant shall attach supporting documentation establishing compliance with each condition. The defendant has the burden of proving compliance with each condition by clear, cogent, and convincing evidence.

(3) The counsel shall have 30 days after the motion is filed to file a response.

(4) The clerk shall transmit the motion and the counsel's response to the chairperson of the commission. Within 14 days of transmittal of the motion and the response, the chairperson shall issue an order appointing a hearing panel and setting the date, time, and location for the hearing. Wherever practicable, the chairperson shall appoint the members of the hearing panel that entered the order of discipline.

(d) Hearing on Motion for Stay

(1) The defendant bears the burden of proving compliance with all conditions for a stay by clear, cogent, and convincing evidence.

(2) Any hearing on a motion for stay will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trials of nonjury civil causes in the superior courts.

(3) The decision to grant or deny a defendant's motion to stay a suspension is discretionary. The panel should consider whether the defendant has complied with Rule .0128 and Rule .0129 of this Subchapter, and any conditions in the order of discipline, as well as whether reinstatement of the defendant will cause harm or potential harm to clients, the profession, the public, or the administration of justice.

(e) Order on the Motion for Stay - The hearing panel will determine whether the defendant has established compliance with all conditions for a stay by clear, cogent, and convincing evidence. The panel must enter an order including findings of fact and conclusions of law. The panel may impose modified and/or additional conditions: (a) for the suspension to remain stayed; (b) for eligibility for a stay during the suspension; and/or (c) for reinstatement to active status at the end of the suspension period. The panel may tax costs and administrative fees in connection with the motion.

History Note: *Authority G.S. 84-23;*
Eff. September 22, 2016.

27 NCAC 01B .0119 EFFECT OF A FINDING OF GUILT IN ANY CRIMINAL CASE

(a) Conclusive Evidence of Guilt - A certified copy of the conviction of an attorney for any crime or a certified copy of a judgment entered against an attorney where a plea of guilty, nolo contendre, or no contest has been accepted by a court will be conclusive evidence of guilt of that crime in any disciplinary proceeding instituted against a member. For purposes of any disciplinary proceeding against a member, such conviction or judgment shall conclusively establish all elements of the criminal offense and shall conclusively establish all facts set out in the document charging the member with the criminal offense.

(b) Interim Suspension - Any member who has been convicted of, pleads guilty to, pleads no contest to, or is found guilty by a jury of a criminal offense showing professional unfitness in any state or federal court may be suspended from the practice of law as set out below.

(1) The counsel shall file with the clerk of the commission and serve upon the member a motion for interim suspension accompanied by proof of the conviction, plea, or verdict.

(2) The member shall have ten days in which to file a response.

(3) The chairperson of the commission may hold a hearing to determine whether the criminal offense is one showing professional unfitness and whether, in the chairperson's discretion, interim suspension is warranted. In determining whether interim suspension is warranted, the chairperson may consider harm or potential harm to a client, the administration of justice, the profession, or members of the public, and impact on the public's perception of the profession. The parties may present additional evidence pertaining to harm or to the circumstances surrounding the offense, but the member may not collaterally attack the conviction, plea or verdict.

(4) The chairperson shall issue an order containing findings of fact and conclusions of law addressing whether there is a qualifying conviction, plea, or verdict, and whether interim suspension is warranted, and either granting or denying the motion.

(5) If the member consents to entry of an order of interim suspension, the parties may submit a consent order of interim suspension to the chairperson of the commission.

(6) The provisions of Rule .0128(c) of this Subchapter will apply to the interim suspension.

History Note: *Authority G.S. 84-23; 84-28;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; February 3, 2000; December 30, 1998; March 6, 1997; November 7, 1996.

27 NCAC 01B .0120 RECIPROCAL DISCIPLINE AND DISABILITY PROCEEDINGS

(a) Notice to Secretary - All members who have been disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court or who have been transferred to disability inactive status or its equivalent by any state of federal court will inform the secretary of such action in writing no later than 30 days after entry of the order of discipline or transfer to disability inactive status. Failure to make the report required in this paragraph may subject the member to professional discipline as set out in Rule 8.3 of the Revised Rules of Professional Conduct.

(b) Administration of Reciprocal Discipline - Except as provided in Paragraph (c) of this Rule which applies to disciplinary proceedings in certain federal courts, reciprocal discipline and disability proceedings will be administered as follows:

(1) Notice and Challenge - Upon receipt of a certified copy of an order demonstrating that a member has been disciplined or transferred to disability inactive status or its equivalent in another jurisdiction, state or federal, the Grievance Committee will forthwith issue a notice directed to the member containing a copy of the order from the other jurisdiction and an order directing that the member inform the committee within 30 days from service of the notice of any claim by the member that the imposition of the identical discipline or an order transferring the member to disability inactive status in this state would be unwarranted and the reasons therefor. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure.

(2) Effect of Stay - If the discipline or transfer order imposed in the other jurisdiction has been stayed, any reciprocal discipline or transfer to disability inactive status imposed in this state will be deferred until such stay expires.

(3) Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(b)(1) above, the chairperson of the Grievance Committee will impose the identical discipline or enter an order transferring the member to disability inactive status unless the Grievance Committee concludes:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Grievance Committee could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) that the imposition of the same discipline would result in grave injustice; or

(D) that the misconduct established warrants substantially different discipline in this state; or

(E) that the reason for the original transfer to disability inactive status no longer exists.

(4) Dismissal - Where the Grievance Committee determines that any of the elements listed in Rule .0120(b)(3) above exist, the committee will dismiss the case or direct that a complaint be filed.

(5) Effect of Final Adjudication in Another Jurisdiction - If the elements listed in Rule .0120(b)(3) above are found not to exist, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct or should be transferred to disability inactive status will establish the misconduct or disability for purposes of reciprocal discipline or disability proceedings in this state.

(c) Reciprocal Discipline in the District of North Carolina, Fourth Circuit, or US Supreme Court - Reciprocal discipline with certain federal courts will be administered as follows:

(1) Notice and Challenge - Upon receipt of a certified copy of an order demonstrating that a member has been disciplined in a United States District Court in North Carolina, in the United States Fourth Circuit Court of Appeals, or in the United States Supreme Court, the chairperson of the Grievance Committee will forthwith issue a notice directed to the member. The notice will contain a copy of the order from the court and an order directing the member to inform the committee within 10 days from service of the notice whether the member will accept reciprocal discipline which is substantially similar to that imposed by the federal court. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure. The member will have 30 days from service of the notice to file a written challenge with the committee on the grounds that the imposition of discipline by the North Carolina State Bar would be unwarranted because the facts found in the federal disciplinary proceeding do not involve conduct which violates the North Carolina Rules of Professional Conduct. If the member notifies the North Carolina State Bar within 10 days after service of the notice that he or she accepts reciprocal discipline which is substantially similar to that imposed by the federal court, substantially similar discipline will be ordered as provided in Rule .0120(c)(2) below and will run concurrently with the discipline ordered by the federal court.

(2) Acceptance of Reciprocal Discipline - If the member notifies the North Carolina State Bar of his or her acceptance of reciprocal discipline as provided in Rule .0120(c)(1) above the chairperson of the Grievance Committee will execute an order of discipline which is of a type permitted by these rules and which is substantially similar to that ordered by the federal court and will cause said order to be served upon the member.

(3) Effect of Stay - If the discipline imposed by the federal court has been stayed, any reciprocal discipline imposed by the North Carolina State Bar will be deferred until such stay expires.

(4) Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(c)(1) above, the chairperson of the Grievance Committee will enter an order of reciprocal discipline imposing substantially similar discipline of a type permitted by these Rules to be effective throughout North Carolina unless the member requests a hearing before the Grievance Committee and at such hearing:

(A) the member demonstrates that the facts found in the federal disciplinary proceeding did not involve conduct which violates the North Carolina Rules of Professional Conduct, in which event the case will be dismissed; or

(B) the Grievance Committee determines that the discipline imposed by the federal court is not of a type described in Rule .0127(a) of this subchapter and, therefore, cannot be imposed by the North Carolina State Bar, in which event the Grievance Committee may dismiss the case or direct that a complaint be filed in the commission.

(5) Federal Findings of Fact - All findings of fact in the federal disciplinary proceeding will be binding upon the North Carolina State Bar and the member.

(6) Discipline Imposed by Other Federal Courts - Discipline imposed by any other federal court will be administered as provided in Rule .0120(b) above.

(d) Imposition of Discipline - If the member fails to accept reciprocal discipline as provided in Rule .0120(c) above or if a hearing is held before the Grievance Committee under either Rule .0120(b) above or Rule .0120(c) above and the committee orders the imposition of reciprocal discipline, such discipline will run from the date of service of the final order of the chairperson of the Grievance Committee unless the committee expressly provides otherwise.

History Note: *Authority G.S. 84-23; 84-28;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; December 30, 1998; March 7, 1996.

27 NCAC 01B .0121 SURRENDER OF LICENSE WHILE UNDER INVESTIGATION

(a) Surrender of License to the Council - A member who is the subject of an investigation into allegations of misconduct, but against whom no formal complaint has been filed before the commission may tender his or her license to practice by delivering to the secretary for transmittal to the council an affidavit stating that the member desires to resign and that

(1) the resignation is freely and voluntarily rendered, is not the result of coercion or duress, and the member is fully aware of the implications of submitting the resignation;
(2) the member is aware that there is presently pending an investigation or other proceedings regarding allegations that the member has been guilty of misconduct, the nature of which will specifically be set forth;
(3) the member acknowledges that the material facts upon which the grievance is predicated are true;
(4) the resignation is being submitted because the member knows that if charges were predicated upon the misconduct under investigation, the member could not successfully defend against them.

(b) Acceptance of Resignation - The council may accept a member's resignation only if the affidavit required under Rule .0121(a) above satisfies the requirements stated therein and the member has provided to the North Carolina State Bar all documents and financial records required to be kept pursuant to the Rules of Professional Conduct and requested by the counsel. If the council accepts a member's resignation, it will enter an order disbarring the member. The order of disbarment is effective on the date the council accepts the member's resignation.

(c) Public Record - The order disbarring the member and the affidavit required under Rule .0121(a) above are matters of public record.

(d) Consent to Disbarment Before the Commission - If a defendant against whom a formal complaint has been filed before the commission wishes to consent to disbarment, the defendant may do so by filing an affidavit with the chairperson of the commission. If the chairperson determines that the affidavit meets the requirements set out in .0121(a)(1), (2), (3), and (4) above, the chairperson will accept the surrender and issue an order of disbarment. The order of disbarment becomes effective upon entry of the order with the secretary. If the affidavit does not meet the requirements set out above, the consent to disbarment will not be accepted and the disciplinary complaint will be heard pursuant to Rule .0114 to Rule .0118 of this subchapter.

(e) Wind-Down Period - After a member tenders his or her license or consents to disbarment under this section the member may not undertake any new legal matters. The member may complete any legal matters which were pending on the date of the tender of the affidavit or consent to disbarment which can be completed within 30 days of the tender or consent. The member has 30 days from the date on which the member tenders the affidavit of surrender or consent to disbarment in which to comply with all of the duties set out in Rule .0128 of this subchapter.

History Note: *Authority G.S. 84-23; 84-28; 84-32(b);*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 2, 2006.

27 NCAC 01B .0122 DISABILITY

(a) Transfer by Secretary where Member Judicially Declared Incompetent. Where a member of the North Carolina State Bar has been judicially declared incapacitated, incompetent, or mentally ill by a North Carolina court or by a court of any other jurisdiction, the secretary, upon proper proof of such declaration, will enter an order transferring the member to disability inactive status effective immediately and for an indefinite period until further order of the Disciplinary Hearing Commission. A copy of the order transferring the member to disability inactive status will be served upon the member, the member's guardian, or the director of any institution to which the member is committed.

(b) Transfer to Disability Inactive Status by Consent. The chairperson of the Grievance Committee may transfer a member to disability inactive status upon consent of the member and the counsel.

(c) Initiation of Disability Proceeding

(1) Disability Proceeding Initiated by the North Carolina State Bar

(A) Evidence a Member has Become Disabled. When the North Carolina State Bar obtains evidence that a member has become disabled, the Grievance Committee will conduct an inquiry which substantially complies with the procedures set forth in Rule .0113 (a)-(h) of this subchapter. The Grievance Committee will determine whether there is probable cause to believe that the member is disabled within the meaning of Rule .0103(19) of this subchapter. If the Grievance Committee finds probable cause, the counsel will file with the commission a complaint in the name of the North Carolina State Bar, signed by the chairperson of the Grievance Committee, alleging disability. The chairperson of the commission shall appoint a hearing panel to determine whether the member is disabled.

(B) Disability Proceeding Initiated While Disciplinary Proceeding is Pending. If, during the pendency of a disciplinary proceeding, the counsel receives evidence constituting probable cause to believe the defendant is disabled within the meaning of Rule .0103(19) of this subchapter, the chairperson of the Grievance Committee may authorize the counsel to file a motion seeking a determination that the defendant is disabled and seeking the defendant's transfer to disability inactive status. The hearing panel appointed to hear the disciplinary proceeding will hear the disability proceeding.

(C) Pleading in the Alternative. When the Grievance Committee has found probable cause to believe a member has committed professional misconduct and the Grievance Committee or the chairperson of the Grievance Committee has found probable cause to believe the member is disabled, the State Bar may file a complaint seeking, in the alternative, the imposition of professional discipline for professional misconduct or a determination that the defendant is disabled.

(2) Initiated by Hearing Panel During Disciplinary Proceeding. If, during the pendency of a disciplinary proceeding, a majority of the members of the hearing panel find probable cause to believe that the defendant is disabled, the panel will, on its own motion, enter an order staying the disciplinary proceeding until the question of disability can be determined. The hearing panel will instruct the Office of Counsel of the State Bar to file a complaint alleging disability. The chairperson of the commission will appoint a new hearing panel to hear the disability proceeding. If the new panel does not find the defendant disabled, the disciplinary proceeding will resume before the original hearing panel.

(3) Disability Proceeding where Defendant Alleges Disability in Disciplinary Proceeding. If, during the course of a disciplinary proceeding, the defendant contends that he or she is disabled within the meaning of Rule .0103(19) of this subchapter, the defendant will be immediately transferred to disability inactive status pending conclusion of a disability hearing. The disciplinary proceeding will be stayed pending conclusion of the disability hearing. The hearing panel appointed to hear the disciplinary proceeding will hear the disability proceeding.

(d) Disability Hearings

(1) Burden of Proof

(A) In any disability proceeding initiated by the State Bar or by the commission, the State Bar bears the burden of proving the defendant's disability by clear, cogent, and convincing evidence.

(B) In any disability proceeding initiated by the defendant, the defendant bears the burden of proving the defendant's disability by clear, cogent, and convincing evidence.

(2) Procedure. The disability hearing will be conducted in the same manner as a disciplinary proceeding under Rule .0114 to .0118 of this subchapter. The North Carolina Rules of Civil Procedure and the North Carolina Rules of Evidence apply, unless a different or more specific procedure is specified in these rules. The hearing will be open to the public.

(3) Medical Examination. The hearing panel may require the member to undergo psychiatric, physical, or other medical examination or testing by qualified medical experts selected or approved by the hearing panel.

(4) Appointment of Counsel. The hearing panel may appoint a lawyer to represent the defendant in a disability proceeding if the hearing panel concludes that justice so requires.

(5) Order

(A) When Disability is Proven. If the hearing panel finds that the defendant is disabled, the panel will enter an order continuing the defendant's disability inactive status or transferring the defendant to disability inactive status. An order transferring the defendant to disability inactive status is

effective when it is entered. A copy of the order shall be served upon the defendant or the defendant's guardian or lawyer of record.

(B) When Disability is Not Proven. When the hearing panel finds that it has not been proven by clear, cogent, and convincing evidence that the defendant is disabled, the hearing panel shall enter an order so finding. If the defendant had been transferred to disability inactive status pursuant to paragraph (c)(3) of this rule, the order shall also terminate the defendant's disability inactive status.

(e) Stay/Resumption of Pending Disciplinary Matters

(1) Stay or Abatement. When a member is transferred to disability inactive status, any proceeding then pending before the Grievance Committee or the commission against the member shall be stayed or abated unless and until the member's disability inactive status is terminated.

(2) Preservation of Evidence. When a disciplinary proceeding against a member has been stayed because the member has been transferred to disability inactive status, the counsel may continue to investigate allegations of misconduct. The counsel may seek orders from the chairperson of the commission, or the chairperson of a hearing panel if one has been appointed, to preserve evidence of any alleged professional misconduct by the member, including orders which permit the taking of depositions. The chairperson of the commission, or the chairperson of a hearing panel if one has been appointed, may appoint counsel to represent the member when necessary to protect the interests of the member during the preservation of evidence.

(3) Termination of Disability Inactive Status. Upon termination of disability inactive status, all disciplinary proceedings pending against the member shall resume. The State Bar may immediately pursue any disciplinary proceedings that were pending when the member was transferred to disability inactive status and any allegations of professional misconduct that came to the State Bar's attention while the member was in disability inactive status. Any disciplinary proceeding pending before the commission that had been stayed shall be set for hearing by the chairperson of the commission.

(f) Fees and Costs. The hearing panel may direct the member to pay the costs of the disability proceeding, including the cost of any medical examination and the fees of any lawyer appointed to represent the member.

History Note: *Authority G.S. 84-23; 84-28(g); 84-28.1; 84-29; 84-30;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 8, 2013; October 8, 2009; March 6, 2002; March 5, 1998.

27 NCAC 01B .0123 ENFORCEMENT OF POWERS

In addition to the other powers contained herein, in proceedings before any subcommittee or panel of the Grievance Committee or the commission, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, refuses to obey any order in aid of discovery, or refuses to obey any lawful order of the panel contained in its decision rendered after hearing, the counsel or secretary may apply to the appropriate court for an order directing that person to comply by taking the requisite action.

History Note: *Authority G.S. 84-23; 84-28(i);*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009.

27 NCAC 01B .0124 NOTICE TO MEMBER OF ACTION AND DISMISSAL

In every disciplinary case wherein the respondent has received a letter of notice and the grievance has been dismissed, the respondent will be notified of the dismissal by a letter by the chairperson of the Grievance Committee. The chairperson will have discretion to give similar notice to the respondent in cases wherein a letter of notice has not been issued but the chairperson deems such notice to be appropriate.

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

27 NCAC 01B .0125 NOTICE TO COMPLAINANT

(a) Notice of Discipline - If the Grievance Committee finds probable cause and imposes discipline, the chairperson of the Grievance Committee will notify the complainant of the action of the committee.
(b) Referral for Disciplinary Commission Hearing - If the Grievance Committee finds probable cause and refers the matter to the commission, the chairperson of the Grievance Committee will advise the complainant that the grievance has been received and considered and has been referred to the commission for hearing.
(c) Notice of Dismissal - If the Grievance Committee finds that there is no probable cause to believe that misconduct occurred and votes to dismiss a grievance, the chairperson of the Grievance Committee will advise the complainant that the committee did not find probable cause to justify imposing discipline and dismissed the grievance.
(d) Notice of Letter of Caution or Letter of Warning - If final action on a grievance is taken by the Grievance Committee in the form of a letter of caution or a letter of warning, the chairperson of the Grievance Committee will so advise the complainant. The communication to the complainant will explain that the letter of caution or letter of warning is not a form of discipline.
(e) Referral to Board of Continuing Legal Education - If a grievance is referred to the Board of Continuing Legal Education, the chairperson of the Grievance Committee will advise the complainant of that fact and the reason for the referral. If the respondent successfully completes the prescribed training and the grievance is dismissed, the chairperson of the Grievance Committee will advise the complainant. If the respondent does not successfully complete the prescribed course of training, the chairperson of the Grievance Committee will advise the complainant that investigation of the original grievance has resumed.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 7, 1996.

27 NCAC 01B .0126 APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN ATTORNEY DISAPPEARS, DIES, OR IS TRANSFERRED TO DISABILITY INACTIVE STATUS
(a) Appointment by Senior Resident Judge - Whenever a member of the North Carolina State Bar has been transferred to disability inactive status, disappears, or dies and no partner or other member of the North Carolina State Bar capable of protecting the interests of the attorney's clients is known to exist, the senior resident judge of the superior court in the district of the member's most recent address on file with the North Carolina State Bar, if it is in this state, will be requested by the secretary to appoint an attorney or attorneys to inventory the files of the member and to take action to protect the interests of the member and his or her clients.
(b) Disclosure of Client Information - Any member so appointed will not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such files relate except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

History Note: *Authority G.S. 84-23; 84-28(j);*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016.

27 NCAC 01B .0127 IMPOSITION OF DISCIPLINE; FINDINGS OF INCAPACITY OR DISABILITY; NOTICE TO COURTS
(a) Imposition of Discipline - Upon the final determination of a disciplinary proceeding wherein discipline is imposed, one of the following actions will be taken:

(1) Admonition - An admonition will be prepared by the chairperson of the Grievance Committee or the chairperson of the hearing panel depending upon the agency ordering the admonition. The admonition will be served upon the defendant. The admonition will not be recorded in the judgment docket of the North Carolina State Bar. Where the admonition is imposed by the Grievance Committee, the complainant will be notified that the defendant has been admonished, but will not be entitled to a copy of the admonition. An order of admonition imposed by the commission will be a public document.
(2) Reprimand - The chairperson of the Grievance Committee or chairperson of the hearing panel depending upon the body ordering the discipline, will file an order of reprimand with the secretary, who will record the order on the judgment docket of the North Carolina State Bar and will forward a copy to the complainant.
(3) Censure, suspension, or disbarment - The chairperson of the hearing panel will file the censure, order of suspension, or disbarment with the secretary, who will record the order on the judgment docket of the

North Carolina State Bar and will forward a copy to the complainant. The secretary will also cause a certified copy of the order to be entered upon the judgment docket of the superior court of the county of the defendant's last known address and of any county where the defendant maintains an office. A copy of the censure, order of suspension, or disbarment will also be sent to the North Carolina Court of Appeals, the North Carolina Supreme Court, the United States District Courts in North Carolina, the Fourth Circuit Court of Appeals, and to the United States Supreme Court. Censures imposed by the Grievance Committee will be filed by the panel chairperson with the secretary. Notice of the censure will be given to the complainant and to the courts in the same manner as censures imposed by the commission.

(b) Notification of Incapacity or Disability and Transfer to Disability Inactive Status - Upon the final determination of incapacity or disability, the chairperson of the hearing panel or the secretary, depending upon the agency entering the order, will file with the secretary a copy of the order transferring the member to disability inactive status. The secretary will cause a certified copy of the order to be entered upon the judgment docket of the superior court of the county of the disabled member's last address on file with the North Carolina State Bar and any county where the disabled member maintains an office and will forward a copy of the order to the courts referred to in Rule .0127(a)(3) above.

History Note: *Authority G.S. 84-23; 84-32(a);*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 8, 2009; November 7, 1996.

27 NCAC 01B .0128 OBLIGATIONS OF DISBARRED OR SUSPENDED ATTORNEYS

(a) Client Notification - A disbarred or suspended member of the North Carolina State Bar will promptly notify by certified mail, return receipt requested, all clients being represented in pending matters of the disbarment or suspension, the reasons for the disbarment or suspension, and consequent inability of the member to act as an attorney after the effective date of disbarment or suspension and will advise such clients to seek legal advice elsewhere. The written notice must be received by the client before a disbarred or suspended attorney enters into any agreement with or on behalf of any client to settle, compromise or resolve any claim, dispute or lawsuit of the client. The disbarred or suspended attorney will take reasonable steps to avoid foreseeable prejudice to the rights of his or her clients, including promptly delivering all file materials and property to which the clients are entitled to the clients or the clients' substituted attorney. No disbarred or suspended attorney will transfer active client files containing confidential information or property to another attorney, nor may another attorney receive such files or property, without prior written permission from the client.

(b) Withdrawal - The disbarred or suspended member will withdraw from all pending administrative or litigation matters before the effective date of the suspension or disbarment and will follow all applicable laws and disciplinary rules regarding the manner of withdrawal.

(c) Effective Date - In cases not governed by Rule .0121 of this subchapter, orders imposing suspension or disbarment will be effective 30 days after being served upon the defendant. In such cases, after entry of the disbarment or suspension order, the disbarred or suspended attorney will not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, between the entry date of the order and its effective date, the member may complete, on behalf of any client, matters which were pending on the entry date and which can be completed before the effective date of the order.

(d) Affidavit Showing Compliance with Order - Within 10 days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney will file with the secretary an affidavit showing that he or she has fully complied with the provisions of the order, with the provisions of this Section, and with the provisions of all other state, federal, and administrative jurisdictions to which he or she is admitted to practice. The affidavit will also set forth the residence or other address of the disbarred or suspended member to which communications may thereafter be directed.

(e) Records of Compliance - The disbarred or suspended member will keep and maintain records of the various steps taken under this Section so that, upon any subsequent proceeding, proof of compliance with this Section and with the disbarment or suspension order will be available. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement.

(f) Contempt - A suspended or disbarred attorney who fails to comply with Rules .0128(a) - (e) above may be subject to an action for contempt instituted by the appropriate authority. Failure to comply with the requirements of Rule .0128(a) above will be grounds for appointment of counsel pursuant to Rule .0126 of this subchapter.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; March 6, 1997.

27 NCAC 01B .0129 REINSTATEMENT

(a) After Disbarment

(1) Reinstatement Procedure and Costs - A person who has been disbarred may have his or her license restored upon a verified petition for reinstatement, a hearing before a hearing panel of the commission, and entry of an order of reinstatement by the council as provided herein. The hearing will commence only if security for the costs of such hearing has been deposited by the petitioner with the secretary in an amount not to exceed $500.00.

(2) Time Limits - A disbarred lawyer may petition for reinstatement upon the expiration of at least five years from the effective date of the disbarment.

(3) Burden of Proof and Elements to be Proved - The petitioner will have the burden of proving by clear, cogent, and convincing evidence that

(A) not more than six months or less than 60 days before filing the petition for reinstatement, a notice of intent to seek reinstatement has been published by the petitioner in an official publication of the North Carolina State Bar. The notice will inform members of the Bar about the application for reinstatement and will request that all interested individuals file with the secretary notice of opposition to or concurrence with the petition within 60 days after the date of publication;

(B) not more than six months or less than 60 days before filing the petition for reinstatement, the petitioner has notified the complainant(s) in the disciplinary proceeding which led to the lawyer's disbarment of the notice of intent to seek reinstatement. The notice will specify that each complainant has 60 days from the date of publication in which to file with the secretary notice of opposition to or concurrence with the petition;

(C) the petitioner has reformed and presently possesses the moral qualifications required for admission to practice law in this state taking into account the gravity of the misconduct which resulted in the order of disbarment;

(D) permitting the petitioner to resume the practice of law within the state will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment;

(E) the petitioner's citizenship has been restored if the petitioner has been convicted of or sentenced for the commission of a felony;

(F) the petitioner has complied with Rule .0128 of this subchapter;

(G) the petitioner has complied with all applicable orders of the commission and the council;

(H) the petitioner has complied with the orders and judgments of any court relating to the matters resulting in the disbarment;

(I) the petitioner has not engaged in the unauthorized practice of law during the period of disbarment;

(J) the petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b);

(K) the petitioner understands the current Rules of Professional Conduct. Participation in continuing legal education programs in ethics and professional responsibility for each of the three years preceding the petition date may be considered on the issue of the petitioner's understanding of the Rules of Professional Conduct. Such evidence creates no presumption that the petitioner has met the burden of proof established by this section;

(L) the petitioner has reimbursed the Client Security Fund of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct. The petitioner is not permitted to collaterally attack the decision of the Client Security Fund Board of Trustees regarding whether to reimburse losses occasioned by the misconduct of the petitioner. This provision shall apply to petitions for reinstatement submitted by petitioners who were disbarred after August 29, 1984;

(M) the petitioner has reimbursed all sums which the Disciplinary Hearing Commission found in the order of disbarment were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund;

(N) the petitioner paid all dues, Client Security Fund assessments, and late fees owed to the North Carolina State Bar as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of disbarment.

(O) if a trustee was appointed by the court to protect the interests of the petitioner's clients, the petitioner has reimbursed the State Bar all sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship;

(P) the petitioner has properly reconciled all trust or fiduciary accounts, and all entrusted funds of which the petitioner took receipt have been disbursed to the beneficial owner(s) of the funds or the petitioner has taken all necessary steps to escheat the funds.

(4) Petitions Filed Less than Seven Years After Disbarment

(A) Proof of Competency and Learning - If less than seven years have elapsed between the effective date of the disbarment and the filing date of the petition for reinstatement, the petitioner will also have the burden of proving by clear, cogent, and convincing evidence that the petitioner has the competency and learning in the law required to practice law in this state.

(B) Factors which may be considered in deciding the issue of competency include

(i) experience in the practice of law;

(ii) areas of expertise;

(iii) certification of expertise;

(iv) participation in continuing legal education programs in each of the three years immediately preceding the petition date;

(v) certification by three lawyers who are familiar with the petitioner's present knowledge of the law that the petitioner is competent to engage in the practice of law.

(C) The factors listed in Rule .0129(a)(4)(B) above are provided by way of example only. The petitioner's satisfaction of one or all of these factors creates no presumption that the petitioner has met the burden of proof established by this section.

(D) Passing Bar Exam as Conclusive Evidence - Attainment of a passing score on a regularly scheduled written Uniform Bar Examination prepared by the National Conference of Bar Examiners and successful completion of the State-Specific Component prescribed by the North Carolina Board of Law Examiners, no more than nine months before filing the petition, and taken voluntarily by the petitioner, shall be conclusive evidence on the issue of the petitioner's competence to practice law.

(5) Bar Exam Required for Petitions Filed Seven Years or More After Disbarment - If the petition is filed seven years or more after the effective date of disbarment, reinstatement will be conditioned upon:

(A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;

(B) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and

(C) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners.

(6) Petition, Service, and Hearing - The petitioner shall file a verified petition for reinstatement with the secretary and shall contemporaneously serve a copy upon the counsel. The petition must identify each requirement for reinstatement and state how the petitioner has met each requirement. The petitioner shall attach supporting documentation establishing satisfaction of each requirement. Upon receipt of the petition, the secretary will transmit the petition to the chairperson of the commission. The chairperson will within 14 days appoint a hearing panel as provided in Rule .0108(a)(2) of this Subchapter and schedule a time and place for a hearing to take place within 60 to 90 days after the filing of the petition with the secretary. The chairperson will notify the counsel and the petitioner of the composition of the hearing panel and the time and place of the hearing, which will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter. The secretary shall transmit to the counsel and to the petitioner any notices in opposition to or concurrence with the petition filed with the secretary pursuant to .0129(a)(3)(A) or (B).

(7) Report of Findings - As soon as possible after the conclusion of the hearing, the hearing panel will file a report containing its findings, conclusions, and recommendations with the secretary. The order may tax against the petitioner such costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.

(8) Review by the Council - If the hearing panel recommends that reinstatement be denied, the petitioner may file notice of appeal to the council. The notice of appeal must be filed with the secretary within 30 days

after service of the panel report upon the petitioner. If no appeal is timely filed, the recommendation of the hearing panel to deny reinstatement will become a final order denying the petition. All cases in which the hearing panel recommends reinstatement of a disbarred lawyer's license shall be heard by the council and no notice of appeal need be filed by the North Carolina State Bar.

(A) Transcript of Hearing Panel Proceedings - Within 60 days of entry of the hearing panel's report, the petitioner shall produce a transcript of the proceedings before the hearing panel. The chairperson of the hearing panel, may, for good cause shown, extend the time to produce the transcript.

(B) Composition of the Record - The petitioner will provide a record of the proceedings before the hearing panel, including a legible copy of the complete transcript, all exhibits introduced into evidence, and all pleadings, motions, and orders, unless the petitioner and the counsel agree in writing to shorten the record. The petitioner will provide the proposed record to the counsel not later than 90 days after the hearing before the hearing panel, unless an extension of time is granted by the chairperson of the hearing panel for good cause shown. Any agreement regarding the record will be in writing and will be included in the record transmitted to the council.

(C) Settlement of the Record

(i) By Agreement - At any time following service of the proposed record upon the counsel, the parties may by agreement entered in the record settle the record to the council.

(ii) By Counsel's Failure to Object to the Proposed Record - Within 20 days after service of the proposed record, the counsel may serve a written objection or a proposed alternative record upon the petitioner. If the counsel fails to serve a notice of approval or an objection or a proposed alternative record, the petitioner's proposed record will constitute the record to the council.

(iii) By Judicial Settlement - If the counsel raises a timely objection to the proposed record or serves a proposed alternative record upon the petitioner, either party may request the chairperson of the hearing panel which heard the reinstatement petition to settle the record. Such request shall be filed in writing with the hearing panel chairperson no later than 15 days after the counsel files an objection or proposed alternative record. Each party shall promptly provide to the chairperson a reference copy of the proposed record, amendments and objections filed by that party in the case. The chairperson of the hearing panel shall settle the record on appeal by order not more than 20 days after service of the request for judicial settlement upon the chairperson. The chairperson may allow oral argument by the parties or may settle the record based upon written submissions by the parties.

(D) Filing and Service of the Settled Record - No later than 30 days before the council meeting at which the petition is to be considered, the petitioner will file the settled record with the secretary, will make arrangements with the secretary for a copy of the settled record to be transmitted to each member of the council, and will transmit a copy of the settled record to the counsel.

(E) Costs - The petitioner will bear the costs of transcribing, copying, and transmitting a copy of the settled record to each member of the council.

(F) Determination by the Council - The council will review the report of the hearing panel and the record and determine whether, and upon what conditions, the petitioner will be reinstated. The council may tax against the petitioner such costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.

(9) Failure to Comply with Rule .0129(a) - If the petitioner fails to comply with any provisions of this Rule .0129(a), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.

(10) Reapplication - No person who has been disbarred and has unsuccessfully petitioned for reinstatement may reapply until the expiration of one year from the date of the last order denying reinstatement.

(b) After Suspension

(1) Restoration - No lawyer who has been suspended may have his or her license restored but upon order of the commission or the secretary after the filing of a verified petition as provided herein.

(2) Eligibility - No lawyer who has been suspended for a period of 120 days or less is eligible for reinstatement until the expiration of the period of suspension and, in no event, until 10 days have elapsed from the date of

filing the petition for reinstatement. No lawyer whose license has been suspended for a period of more than 120 days is eligible for reinstatement until the expiration of the period of suspension and, in no event, until 30 days have elapsed from the date of the filing of the petition for reinstatement.

(3) If the petition is filed seven years or more after the effective date of suspension, reinstatement will be conditioned upon:

(A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;

(B) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and

(C) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners.

(4) Reinstatement Requirements - Any suspended lawyer seeking reinstatement must file a verified petition with the secretary, a copy of which the secretary will transmit to the counsel. The petitioner will have the burden of proving the following by clear, cogent, and convincing evidence:

(A) compliance with Rule .0128 of this subchapter;

(B) compliance with all applicable orders of the commission and the council;

(C) abstention from the unauthorized practice of law during the period of suspension;

(D) abstention from conduct during the period of suspension constituting grounds for discipline under G.S. 84-28(b);

(E) Reimbursement of the Client Security Fund - reimbursement of the Client Security Fund of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct. The petitioner is not permitted to collaterally attack the decision of the Client Security Fund Board of Trustees regarding whether to reimburse losses occasioned by the misconduct of the petitioner. This provision shall apply to petitions for reinstatement submitted by lawyers who were suspended after August 29, 1984;

(F) Reimbursement of Funds in DHC Order - reimbursement of all sums which the Disciplinary Hearing Commission found in the order of suspension were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund;

(G) Satisfaction of Pre-Suspension CLE Requirements - satisfaction of the minimum continuing legal education requirements, as set forth in Rule .1518 of Subchapter 1D of these rules, for the two calendar years immediately preceding the year in which the petitioner was suspended, which shall include the satisfaction of any deficit recorded in the petitioner's State Bar CLE transcript for such period; provided that the petitioner may attend CLE programs after the effective date of the suspension to make up any unsatisfied requirement. These requirements shall be in addition to any continuing legal education requirements imposed by the Disciplinary Hearing Commission;

(H) Satisfaction of Post-Suspension CLE Requirements - [effective for petitioners suspended on or after January 1, 1997] if two or more years have elapsed between the effective date of the suspension order and the date on which the reinstatement petition is filed with the secretary, the petitioner must, within one year prior to filing the petition, complete 15 hours of CLE approved by the Board of Continuing Legal Education pursuant to Subchapter 1D, Rule .1519 of these rules. Three hours of the 15 hours must be earned by attending courses of instruction devoted exclusively to professional responsibility and/or professionalism. These requirements shall be in addition to any continuing legal education requirements imposed by the Disciplinary Hearing Commission;

(I) Payment of Fees and Assessments - payment of all membership fees, Client Security Fund assessments, and late fees due and owing to the North Carolina State Bar, including any reinstatement fee due under Rule .0904 or Rule .1524 of Subchapter 1D of these rules, as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of suspension;

(J) if a trustee was appointed by the court to protect the interests of the petitioner's clients, the petitioner has reimbursed the State Bar all sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship; and

(K) the petitioner has properly reconciled all trust or fiduciary accounts, and all entrusted funds of which the petitioner took receipt have been disbursed to the beneficial owner(s) of the funds or the petitioner has taken all necessary steps to escheat the funds.

(5) Investigation and Response - The counsel will conduct any necessary investigation regarding the compliance of the petitioner with the requirements set forth in Rule .0129(b)(3) above, and the counsel may file a response to the petition with the secretary prior to the date the petitioner is first eligible for reinstatement. The counsel will serve a copy of any response filed upon the petitioner.

(6) Failure of Counsel to File Response - If the counsel does not file a response to the petition before the date the petitioner is first eligible for reinstatement, then the secretary will issue an order of reinstatement.

(7) Specific Objections in Response - If the counsel files a timely response to the petition, such response must set forth specific objections supported by factual allegations sufficient to put the petitioner on notice of the events at issue.

(8) Reinstatement Hearing - The secretary will, upon the filing of a response to the petition, refer the matter to the chairperson of the commission. The chairperson will within 14 days appoint a hearing panel as provided in Rule .0108(a)(2) of this Subchapter, schedule a time and place for a hearing, and notify the counsel and the petitioner of the composition of the hearing panel and the time and place of the hearing. The hearing will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter.

(9) Reinstatement Order - The hearing panel will determine whether the petitioner's license should be reinstated and enter an appropriate order which may include additional sanctions in the event violations of the petitioner's order of suspension are found. In any event, the hearing panel must include in its order findings of fact and conclusions of law in support of its decision and may tax against the petitioner such costs and administrative fees as it deems appropriate for the necessary expenses attributable to the investigation and processing of the petition.

(10) Failure to Comply with Rule .0129(b) - If the petitioner fails to comply with any provision of this Rule .0129(b), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.

(c) After Transfer to Disability Inactive Status

(1) Reinstatement - No member of the North Carolina State Bar transferred to disability inactive status may resume active status until reinstated by order of the commission. Any member transferred to disability inactive status will be entitled to apply to the commission for reinstatement to active status once a year or at such shorter intervals as are stated in the order transferring the member to disability inactive status or any modification thereof.

(2) Reinstatement Petition - Petitions for reinstatement by members transferred to disability inactive status will be filed with the secretary. Upon receipt of the petition the secretary will refer the petition to the commission chairperson. The chairperson will appoint a hearing panel as provided in Rule .0108(a)(2) of this subchapter. A hearing will be conducted pursuant to the procedures set out in Rules .0114 to .0118 of this subchapter.

(3) Burden of Proof - The petitioner will have the burden of proving by clear, cogent, and convincing evidence that he or she is no longer disabled within the meaning of Rule .0103(19) of this subchapter and that he or she is fit to resume the practice of law.

(4) Medical Records - Within 10 days of filing the petition for reinstatement, the petitioner will deliver to the secretary a list of the names and addresses of every psychiatrist, psychologist, physician, hospital, and other health care provider by whom or in which the petitioner has been examined or treated or sought treatment while disabled and a written consent to release all information and records relating to the disability. The secretary will deliver to the counsel all information and records relating to the disability received from the petitioner.

(5) Judicial Findings - Where a member has been transferred to disability inactive status based solely upon a judicial finding of incapacity, and thereafter a court of competent jurisdiction enters an order adjudicating that the member's incapacity has ended, the chairperson of the commission will enter an order returning the member to active status upon receipt of a certified copy of the court's order. Entry of the order will not preclude the North Carolina State Bar from bringing an action pursuant to Rule .0122 of this subchapter to determine whether the member is disabled.

(6) Costs - The hearing panel may direct the petitioner to pay the costs of the reinstatement hearing, including the cost of any medical examination ordered by the panel.

(7) Failure to Comply with Rule .0129(c) - If the petitioner fails to comply with any provision of this Rule .0129(c), the counsel may file a motion to dismiss the petition. The motion to dismiss shall specify the alleged deficiencies of the petition. The counsel shall serve the motion to dismiss upon the petitioner. The petitioner shall have ten days in which to file a response to the motion to dismiss.

(8) Reimbursement of Trustee Fees and Expenses - If a trustee was appointed to protect the interests of the petitioner's clients, the hearing panel may require the petitioner, as a condition of reinstatement, to reimburse the State Bar sums expended by the State Bar to compensate the trustee and to reimburse the trustee for any expenses of the trusteeship.

(9) Entrusted Funds - The hearing panel may require the petitioner, as a condition of reinstatement, to demonstrate that the petitioner has properly reconciled all trust or fiduciary accounts and has taken all steps necessary to ensure that all entrusted funds of which the petitioner took receipt are disbursed to the beneficial owner(s) of the funds or are escheated.

(d) Conditions of Reinstatement - The hearing panel, and the council in petitions for reinstatement from disbarment, may impose reasonable conditions on a lawyer's reinstatement from disbarment, suspension, or disability inactive status in any case in which the hearing panel concludes that such conditions are necessary for the protection of the public. Such conditions may include, but are not limited to, a requirement that the petitioner complete specified hours of continuing legal education, a requirement that the petitioner participate in medical, psychological, or substance use treatment, and a requirement that the petitioner attain a passing score on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within nine months following entry of an order conditionally granting the petition.

(e) After Entry of a Reciprocal Order of Suspension or Disbarment - No member whose license to practice law has been suspended or who has been disbarred by any state or federal court and who is the subject of a reciprocal discipline order in North Carolina may seek reinstatement of his or her North Carolina law license until the member provides to the secretary a certified copy of an order reinstating the member to the active practice of law in the state or federal court which entered the original order of discipline.

History Note: *Authority G.S. 84-23; 84-28.1; 84-29; 84-30;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 20, 1995; March 6, 1997; October 2, 1997; December 30, 1998; July 22, 1999; August 24, 2000; March 6, 2002; February 27, 2003; October 8, 2009; March 10, 2011; September 22, 2016; December 14, 2021.

27 NCAC 01B .0130 ADDRESS OF RECORD

Except where otherwise specified, any provision herein for notice to a respondent, member, petitioner, or a defendant will be deemed satisfied by appropriate correspondence addressed to that attorney by mail to the last address maintained by the North Carolina State Bar.

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

27 NCAC 01B .0131 DISQUALIFICATION DUE TO INTEREST

No member of the council or hearing commission will participate in any disciplinary matter involving the member, any partner, or associate in the practice of law of the member, or in which the member has a personal interest.

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

27 NCAC 01B .0132 TRUST ACCOUNTS; AUDIT

(a) Investigative Subpoena for Reasonable Cause - For reasonable cause, the chairperson of the Grievance Committee is empowered to issue an investigative subpoena to a member compelling the production of any records required to be kept relative to the handling of client funds and property by the Rules of Professional Conduct for inspection, copying, or audit by the counsel or any auditor appointed by the counsel. For the purposes of this rule, circumstances that constitute reasonable cause, include, but are not limited to:

(1) any sworn statement of grievance received by the North Carolina State Bar alleging facts which, if true, would constitute misconduct in the handling of a client's funds or property;
(2) any facts coming to the attention of the North Carolina State Bar, whether through random review as contemplated by Rule .0132(b) below or otherwise, which if true, would constitute a probable violation of any provision of the Rules of Professional Conduct concerning the handling of client funds or property;
(3) two or more grievances received by the North Carolina State Bar over a twelve month period alleging facts which, if true, would indicate misconduct for neglect of a client matter or failure to communicate with a client;
(4) any failure to respond to any notices issued by the North Carolina State Bar with regard to a grievance or a fee dispute;
(5) any information received by the North Carolina State Bar which, if true, would constitute a failure to file any federal, state, or local tax return or pay an federal, state, or local tax obligation; or
(6) any finding of probable cause, indictment, or conviction relative to a criminal charge involving moral turpitude. The grounds supporting the issuance of any such subpoena will be set forth upon the face of the subpoena.

(b) Random Investigative Subpoenas - The chairperson of the Grievance Committee may randomly issue investigative subpoenas to members compelling the production of any records required to be kept relative to the handling of client funds or property by the Rules of Professional Conduct for inspection by the counsel or any auditor appointed by the counsel to determine compliance with the Rules of Professional Conduct. Any such subpoena will disclose upon its face its random character and contain a verification of the secretary that it was randomly issued. No member will be subject to random selection under this section more than once in three years. The auditor may report any violation of the Rules of Professional Conduct discovered during the random audit to the Grievance Committee for investigation. The auditor may allow the attorney a reasonable amount of time to correct any procedural violation in lieu of reporting the matter to the Grievance Committee. The auditor shall have authority under the original subpoena for random audit to compel the production of any documents necessary to determine whether the attorney has corrected any violation identified during the audit.

(c) Time Limit - No subpoena issued pursuant to this rule may compel production within five days of service.

(d) Evidence - The rules of evidence applicable in the superior courts of the state will govern the use of any material subpoenaed pursuant to this rule in any hearing before the commission.

(e) Attorney-Client Privilege/Confidentiality - No assertion of attorney-client privilege or confidentiality will prevent an inspection or audit of a trust account as provided in this rule.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; November 16, 2006.

27 NCAC 01B .0133 CONFIDENTIALITY

(a) Allegations of Misconduct or Alleged Disability - Except as otherwise provided in this rule and G.S. 84-28(f), all proceedings involving allegations of misconduct by or alleged disability of a member will remain confidential until
(1) a complaint against a member has been filed with the secretary after a finding by the Grievance Committee that there is probable cause to believe that the member is guilty of misconduct justifying disciplinary action or is disabled;
(2) the member requests that the matter be made public prior to the filing of a complaint;
(3) the investigation is predicated upon conviction of the member of or sentencing for a crime;
(4) a petition or action is filed in the general courts of justice;
(5) the member files an affidavit of surrender of license; or
(6) a member is transferred to disability inactive status pursuant to Rule .0122(g). In such an instance, the order transferring the member shall be public. Any other materials, including the medical evidence supporting the order, shall be kept confidential unless and until the member petitions for reinstatement pursuant to Rule .0122(c), unless provided otherwise in the order.

(b) Disciplinary Complaints Filed Pursuant to Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4)- The State Bar may disclose that it filed the complaint before the Disciplinary Hearing Commission pursuant to Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4):
(1) after proceedings before the Disciplinary Hearing Commission have concluded; or
(2) while proceedings are pending before the Disciplinary Hearing Commission, in order to address

(c) Letter of Warning or Admonition - The previous issuance of a letter of warning, formerly known as a letter of admonition, or an admonition to a member may be revealed in any subsequent disciplinary proceeding.

(d) Attorney's Response to a Grievance - This provision will not be construed to prohibit the North Carolina State Bar from providing a copy of an attorney's response to a grievance to the complaining party where such attorney has not objected thereto in writing.
(e) Law Enforcement or Regulatory Agency - This provision will not be construed to prohibit the North Carolina State Bar from providing information or evidence to any law enforcement or regulatory agency.
(f) Chief Justice's Commission on Professionalism - This provision will not be construed to prevent the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from notifying the Chief Justice's Commission on Professionalism of any allegation of unprofessional conduct by any member.
(g) Lawyer Assistance Program - This provision will not be construed to prevent the North Carolina State Bar from notifying the Lawyer Assistance Program of any circumstances that indicate a member may have a substance abuse or mental health issue.
(h) Other Jurisdictions - This provision will not be construed to prohibit the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from providing information concerning the existence of a letter of caution, letter of warning, or admonition to any agency that regulates the legal profession in any other jurisdiction so long as the inquiring jurisdiction maintains the same level of confidentiality respecting the information as does the North Carolina State Bar.
(i) National Discipline Data Bank - The secretary will transmit notice of all public discipline imposed and transfers to disability inactive status to the National Discipline Data Bank maintained by the American Bar Association.
(j) Client Security Fund Board of Trustees - The secretary may also transmit any relevant information to the Client Security Fund Board of Trustees to assist the Client Security Fund Board in determining losses caused by dishonest conduct of members of the North Carolina State Bar.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 9, 2008; March 6, 2002; November 7, 1996; February 20, 1996.

27 NCAC 01B .0134 DISCIPLINARY AMNESTY IN ILLICIT DRUG USE CASES
(a) Information Concerning Illicit Drug Use - The North Carolina State Bar will not treat as a grievance information that a member has used or is using illicit drugs except as provided in Rules.0134(c), (d) and (e) below. The information will be provided to director of the lawyer assistance program of the North Carolina State Bar.
(b) Lawyer Assistance Program - If the director of the lawyer assistance program concludes after investigation that a member has used or is using an illicit drug and the member participates and successfully complies with any course of treatment prescribed by the lawyer assistance program, the member will not be disciplined by the North Carolina State Bar for illicit drug use occurring prior to the prescribed course of treatment.
(c) Failure to Complete Treatment - If a member under Rule .0134(b) above fails to cooperate with the Lawyer Assistance Program Board or fails to successfully complete any treatment prescribed for the member's illicit drug use, the director of the lawyer assistance program will report such failure to participate in or complete the prescribed treatment to the chairperson of the Grievance Committee. The chairperson of the Grievance Committee will then treat the information originally received as a grievance.
(d) Crime Relating to Use or Possession of Illicit Drugs - A member charged with a crime relating to the use or possession of illicit drugs will not be entitled to amnesty from discipline by the North Carolina State Bar relating to the illicit drug use or possession.
(e) Additional Misconduct - If the North Carolina State Bar receives information that a member has used or is using illicit drugs and that the member has violated some other provision of the Revised Rules of Professional Conduct, the information regarding the member's alleged illicit drug use will be referred to the director of lawyer assistance program pursuant to Rule .0134(a) above. The information regarding the member's alleged additional misconduct will be reported to the chairperson of the Grievance Committee.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016: February 3, 2000; February 20, 1995.

27 NCAC 01B .0135 NONCOMPLIANCE SUSPENSION
(a) Noncompliant and Noncompliance Defined. Failure to respond fully and timely to a letter of notice issued pursuant to N.C.A.C. 1B, .0112, failure to respond fully and timely to any request from the State Bar for additional information in any

pending grievance investigation, failure to respond fully and timely to any request from the State Bar to produce documents or other tangible or electronic materials in connection with a grievance investigation, and/or failure to respond fully and timely to a subpoena issued by the chair of the Grievance Committee or issued by the secretary of the State Bar shall be referred to herein as "noncompliant" or "noncompliance."

(b) Petition for Noncompliance Suspension. If a respondent against whom a grievance file has been opened and who has been served with a letter of notice or who has been served with a subpoena issued by the chair of the Grievance Committee or issued by the secretary of the State Bar is noncompliant, the State Bar may petition the chair of the Disciplinary Hearing Commission (DHC) for an order requiring the respondent to show cause why the chair should not enter an order suspending the respondent's law license.

(c) Content of Petition

(1) The petition shall be a verified petition, or shall be supported by an affidavit, demonstrating by clear, cogent, and convincing evidence that the respondent is noncompliant.

(2) The petition shall set forth the efforts made by the State Bar to obtain the respondent's compliance.

(3) Service of Petition

(A) The petition shall be served upon the respondent by mailing a copy of the petition addressed to the last address the respondent provided to the Membership Department of the State Bar pursuant to N.C. Gen. Stat. § 84-34 or addressed to any more recent address that might be known to the State Bar representative who is attempting service.

(B) Service of the petition shall be complete upon mailing.

(d) Order to Show Cause

(1) Upon receiving the State Bar's filed petition, the chair of the DHC shall issue to the respondent an order to show cause.

(2) The order to show cause shall notify the respondent that the respondent's noncompliance or failure to respond to the order to show cause may result in suspension of the respondent's law license.

(3) The order to show cause shall be served upon the respondent by mailing a copy of the order addressed to the last address the respondent provided to the Membership Department of the State Bar pursuant to N.C. Gen. Stat. § 84-34, addressed to any more recent address that might be known to the DHC, or addressed to the address where the State Bar served the petition.

(4) Service of the order to show cause shall be complete upon mailing.

(e) Response to Order to Show Cause

(1) The respondent shall respond to the order to show cause within 14 days of the date of service of the order upon the respondent.

(2) If the respondent responds to the order to show cause within 14 days of the date of service of the order upon the respondent, the chair of the DHC shall schedule a hearing on the order to show cause within ten days of the filing of the respondent's response and shall provide notice to the respondent and to the State Bar of such hearing.

(3) If the respondent does not file a response to the order to show cause within 14 days of the date of service of the order to show cause upon the respondent, the chair of the DHC may enter an order suspending the respondent's law license. Such order of suspension will remain in effect until the chair enters an order finding by clear, cogent, and convincing evidence that the respondent fully cured the noncompliance and reinstating the respondent's law license to active status.

(f) Hearing on Order to Show Cause; Burden of Proof

(1) The State Bar shall have the burden of proving the respondent's noncompliance by clear, cogent, and convincing evidence.

(2) If the chair of the DHC finds that the State Bar has met its burden of proof, the burden of proof shall shift to the respondent to prove one or more of the following by clear, cogent, and convincing evidence:

(A) That the respondent was and is fully in compliance;

(B) That the respondent has fully cured all noncompliance; or

(C) That there is good cause for the respondent's noncompliance.

(g) Entry of Order

If the chair finds that the State Bar has met its burden of proof; finds by clear, cogent, and convincing evidence that the respondent is noncompliant; finds that the respondent has not met the respondent's burden of proof; and fails to find by clear, cogent, and convincing evidence any of the circumstances listed in paragraph (f)(2) above, the chair may enter an order suspending the respondent's law license. Such order of suspension shall remain in effect until the chair enters an order finding

by clear, cogent, and convincing evidence that the respondent fully cured the noncompliance and reinstating the respondent's law license to active status.

(h) Wind Down

Any attorney suspended for noncompliance shall comply with the wind-down provisions for suspended attorneys as set forth in N.C.A.C. 1B .0128.

(i) Reinstatement from Noncompliance Suspension

(1) Following entry of a noncompliance suspension order, the respondent may seek reinstatement by filing a verified petition with the chair of the DHC demonstrating by clear, cogent, and convincing evidence that the respondent has become, and is at the time of the petition, fully compliant. The respondent shall simultaneously serve a copy of the verified petition on the State Bar.

(2) The State Bar shall have five days from the date of receipt to file an objection to the respondent's petition. If the State Bar does not object, the chair may enter an order finding by clear, cogent, and convincing evidence that the respondent has become, and is at the time of the petition, fully compliant and reinstating the respondent to the active practice of law.

(3) If the State Bar objects to the petition, the chair shall schedule a hearing within ten days of the filing of such objection. It shall be the respondent's burden to prove by clear, cogent, and convincing evidence that the respondent has become, and remains at the time of the hearing, fully compliant.

(4) At the conclusion of the hearing, if the chair finds that the respondent has met her/his burden of proof and finds by clear, cogent, and convincing evidence that the respondent is fully compliant at the time of the hearing, the chair shall enter an order reinstating the respondent to the active practice of law.

(j) Subsequent Petitions for Noncompliance Suspension The State Bar may file a petition under this rule on the first occasion when a respondent is noncompliant and may file a petition on any subsequent occasions when a respondent is noncompliant.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: March 27, 2019.

SECTION .0200 - RULES GOVERNING JUDICIAL DISTRICT GRIEVANCE COMMITTEES

27 NCAC 01B .0201 ORGANIZATION OF JUDICIAL DISTRICT GRIEVANCE COMMITTEES

(a) Judicial Districts Eligible to Form District Grievance Committees

(1) Membership Requirements for Establishing a District Grievance Committee - Any judicial district which has more than 100 licensed attorneys as determined by the North Carolina State Bar's records may establish a judicial district grievance committee (hereafter, "district grievance committee") pursuant to the rules and regulations set out herein. A judicial district with fewer than 100 licensed attorneys may establish a district grievance committee with consent of the Council of the North Carolina State Bar.

(2) Multi-District Grievance Committees - One or more judicial districts, including those with fewer than 100 licensed attorneys, may also establish a multi-district grievance committee, as set out in Rule .0201(b)(2) below. Such multi-district grievance committees shall be subject to all of the rules and regulations set out herein and all references to district grievance committees in these rules shall also apply to multi-district grievance committees.

(b) Creation of District Grievance Committees

(1) Meeting Establishing a District Grievance Committee and Certification - A judicial district may establish a district grievance committee at a duly called meeting of the judicial district bar, at which a quorum is present, upon the affirmative vote of a majority of the active members present. Within 30 days of the election, the president of the judicial district bar shall certify in writing the establishment of the district grievance committee to the secretary of the North Carolina State Bar.

(2) Meeting Establishing a Multi-District Grievance Committee and Certification - A multi-district grievance committee may be established by affirmative vote of a majority of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. Within 30 days of the election, the chairperson of the multi-district grievance committee shall certify in writing the establishment of the district grievance committee to the secretary of the North Carolina State Bar. The active members of each participating judicial district may adopt a set of bylaws not inconsistent with these rules by majority vote of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. The

chairperson of the multi-district grievance committee shall promptly provide a copy of any such bylaws to the secretary of the North Carolina State Bar.

(c) Appointment of District Grievance Committee Members

(1) Members of District Committees - Each district grievance committee shall be composed of not fewer than five nor more than 21 members, all of whom shall be active members in good standing both of the judicial district bar to which they belong and of the North Carolina State Bar. In addition to the attorney members, each district grievance committee may also include one to five public members who have never been licensed to practice law in any jurisdiction. Public members shall not perform investigative functions regarding grievances but in all other respects shall have the same authority as the attorney members of the district grievance committee.

(2) Chairperson - The chairperson of the district grievance committee shall be selected by the president of the judicial district and shall serve at his or her pleasure. Alternatively, the chairperson may be selected and removed as provided in the district bar bylaws.

(3) Selection of Attorney and Public Members - The attorney and public members of the district grievance committee shall be selected by and serve at the pleasure of the president of the judicial district bar and the chairperson of the district grievance committee. Alternatively, the district grievance committee members may be selected and removed as provided in the district bar bylaws.

(4) Term and Replacement of Members - The members of the district grievance committee, including the chairperson, shall be appointed for staggered three-year terms, except that the president and chairperson shall appoint some of the initial committee members to terms of less than three years, to effectuate the staggered terms. No member shall serve more than one term, without first having rotated off the committee for a period of at least one year between three-year terms. Any member who resigns or otherwise becomes ineligible to continue serving as a member shall be replaced by appointment by the president of the judicial district bar and the chairperson of the committee or as provided in the district bar bylaws as soon as practicable.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. October 7, 2010.

27 NCAC 01B .0202 JURISDICTION & AUTHORITY OF DISTRICT GRIEVANCE COMMITTEES

(a) District Grievance Committees are Subject to the Rules of the North Carolina State Bar - The district grievance committee shall be subject to the rules and regulations adopted by the Council of the North Carolina State Bar.

(b) Grievances Filed With District Grievance Committee - A district grievance committee may investigate and consider grievances filed against attorneys who live or maintain offices within the judicial district and which are filed in the first instance with the chairperson of the district grievance committee. The chairperson of the district grievance committee will immediately refer to the State Bar any grievance filed locally in the first instance which

(1) alleges misconduct against a member of the district grievance committee;

(2) alleges that any attorney has embezzled or misapplied client funds; or

(3) alleges any other serious violation of the Rules of Professional Conduct which may be beyond the capacity of the district grievance committee to investigate.

(c) Grievances Referred to District Grievance Committee - The district grievance committee shall also investigate and consider such grievances as are referred to it for investigation by the counsel of the North Carolina State Bar.

(d) Grievances Involving Fee Disputes

(1) Notice to Complainant of Fee Dispute Resolution Program - If a grievance filed initially with the district bar consists solely or in part of a fee dispute, the chairperson of the district grievance committee shall notify the complainant in writing within 10 working days of receipt of the grievance that the complainant may elect to participate in the North Carolina State Bar Fee Dispute Resolution Program. If the grievance consists solely of a fee dispute, the letter to the complainant shall follow the format set out in Rule .0208 of this subchapter. If the grievance consists in part of matters other than a fee dispute, the letter to the complainant shall follow the format set out in Rule .0209 of this subchapter. A respondent attorney shall not have the right to elect to participate in fee arbitration.

(2) Handling Claims Not Involving Fee Dispute - Where a grievance alleges multiple claims, the allegations not involving a fee dispute will be handled in the same manner as any other grievance filed with the district grievance committee.

(3) Handling Claims Not Submitted to Fee Dispute Resolution by Complainant - If the complainant elects not to participate in the State Bar's Fee Dispute Resolution Program, or fails to notify the chairperson that he or she elects to participate within 20 days following mailing of the notice referred to in Rule .0202(d)(1) above, the grievance will be handled in the same manner as any other grievance filed with the district grievance committee.

(4) Referral to Fee Dispute Resolution Program - Where a complainant timely elects to participate in fee dispute resolution, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the State Bar Fee Dispute Resolution Program for resolution. If the grievance consists entirely of a fee dispute, and the complainant timely elects to participate in fee dispute resolution, no grievance file will be established.

(e) Authority of District Grievance Committees - The district grievance committee shall have authority to

(1) assist a complainant who requests assistance to reduce a grievance to writing;

(2) investigate complaints described in Rule .0202(b) and(c) above by interviewing the complainant, the attorney against whom the grievance was filed and any other persons who may have relevant information regarding the grievance and by requesting written materials from the complainant, respondent attorney, and other individuals;

(3) explain the procedures of the district grievance committee to complainants and respondent attorneys;

(4) find facts and recommend whether or not the State Bar's Grievance Committee should find that there is probable cause to believe that the respondent has violated one or more provisions of the Revised Rules of Professional Conduct. The district grievance committee may also make a recommendation to the State Bar regarding the appropriate disposition of the case, including referral to the Lawyer Assistance Program pursuant to Rule .0112(j) or to a program of law office management training approved by the State Bar;

(5) draft a written report stating the grounds for the recommended disposition of a grievance assigned to the district grievance committee;

(6) notify the complainant and the respondent attorney where the district grievance committee recommends that the State Bar find that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct. Where the district grievance committee recommends that the State Bar find that there is probable cause to believe that the respondent has violated one or more provisions of the Rules of Professional Conduct, the committee shall notify the respondent attorney of its recommendation and shall notify the complainant that the district grievance committee has concluded its investigation and has referred the matter to the State Bar for final resolution. Where the district grievance committee recommends a finding of no probable cause, the letter of notification to the respondent attorney and to the complainant shall follow the format set out in Rule .0210 of this subchapter. Where the district grievance committee recommends a finding of probable cause, the letter of notification to the respondent attorney shall follow the format set out in Rule .0211 of this subchapter. The letter of notification to the complainant shall follow the format set out in Rule .0212 of this subchapter;

(7) maintain records of grievances investigated by the district grievance committee for at least one year from the date on which the district grievance committee makes its final recommendation regarding a grievance to the State Bar.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 1999; December 20, 2000; August 23, 2007; September 25, 2019.

27 NCAC 01B .0203 MEETINGS OF THE DISTRICT GRIEVANCE COMMITTEES

(a) Notice of Meeting - The district grievance committee shall meet at the call of the chairperson upon reasonable notice, as often as is necessary to dispatch its business and not less than once every 60 days, provided the committee has grievances pending.

(b) Confidentiality - The district grievance committee shall meet in private. Discussions of the committee, its records and its actions shall be confidential. The names of the members of the committee shall not be confidential.

(c) Quorum - A simple majority of the district grievance committee must be present at any meeting in order to constitute a quorum. The committee may take no action unless a quorum is present. A majority vote in favor of a motion or any proposed action shall be required for the motion to pass or the action to be taken.

(d) Appearances by Complainants and Respondents - No complainant nor any attorney against whom a grievance has been filed may appear before the district grievance committee, present argument to or be present at the committee's deliberations.

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

27 NCAC 01B .0204 PROCEDURE UPON INSTITUTION OF A GRIEVANCE

(a) Receipt of Grievance - A grievance may be filed by any person against a member of the North Carolina State Bar. Such grievance must be in writing and signed by the complaining person. A district grievance committee may, however, investigate matters which come to its attention during the investigation of a grievance, whether or not such matters are included in the original written grievance.

(b) Acknowledgment of Receipt of Grievance from State Bar - The chairperson of the district grievance committee shall send a letter to the complainant within 10 working days of receipt of the grievance from the State Bar, acknowledging that a grievance file has been set up. The acknowledgment letter shall include the name of the district grievance committee member assigned to investigate the matter and shall follow the format set out in Rule .0213 of this subchapter. A copy of the letter shall be sent contemporaneously to the office of counsel of the State Bar.

(c) Notice to State Bar of Locally Filed Grievances

(1) Where a grievance is filed in the first instance with the district grievance committee, the chairperson of the district grievance committee shall notify the office of counsel of the State Bar of the name of the complainant, respondent attorney, file number and nature of the grievance within 10 working days of receipt of the grievance.

(2) The chairperson of the district grievance committee shall send a letter to the complainant within 10 working days of receipt of the grievance, acknowledging that a grievance file has been set up. The acknowledgment letter shall include the name of the district grievance committee member assigned to investigate the matter and shall follow the format set out in Rule .0213 of this subchapter.

(3) Grievances filed initially with the district grievance committee shall be assigned a local file number which shall be used to refer to the grievance. The first two digits of the file number shall indicate the year in which the grievance was filed, followed by the number of the judicial district, the letters GR, and ending with the number of the file. File numbers shall be assigned sequentially during the calendar year, beginning with the number 1. For example, the first locally filed grievance set up in the 10th judicial district in 1994 would bear the following number: 9410GR001.

(d) Assignment to Investigating Member - Within 10 working days after receipt of a grievance, the chairperson shall appoint a member of the district grievance committee to investigate the grievance and shall forward the relevant materials to the investigating member. The letter to the investigating member shall follow the format set out in Rule .0214 of this subchapter.

(e) Investigation of the Grievance

(1) The investigating member shall attempt to contact the complainant as soon as possible but no later than 15 working days after receiving notice of the assignment. If the initial contact with the complainant is made in writing, the letter shall follow the format set out in Rule .0215 of this subchapter.

(2) The investigating member shall have the authority to contact other witnesses or individuals who may have information about the subject of the grievance, including the respondent.

(3) The failure of the complainant to cooperate shall not cause a grievance to be dismissed or abated. Once filed, grievances shall not be dismissed or abated upon the request of the complainant.

(f) Letter of Notice to Respondent Attorney and Responses

(1) Within 10 working days after receipt of a grievance, the chairperson of the district grievance committee shall send a copy of the grievance and a letter of notice to the respondent attorney. The letter to the respondent attorney shall follow the form set out in Rule .0216 of this subchapter and shall be sent by U.S. Mail to the attorney's last known address on file with the State Bar. The letter of notice shall request the respondent to reply to the investigating attorney in writing within 15 days after receipt of the letter of notice.

(2) A substance of grievance will be provided to the district grievance committee by the State Bar at the time the file is assigned to the committee. The substance of grievance will summarize the nature of the complaint against the respondent attorney and cite the applicable provisions of the Rules of Professional Conduct, if any.

(3) The respondent attorney shall respond in writing to the letter of notice from the district grievance committee within 15 days of receipt of the letter. The chairperson of the district grievance committee may allow a longer period for response, for good cause shown.

(4) If the respondent attorney fails to respond in a timely manner to the letter of notice, the chairperson of the district grievance committee may seek the assistance of the State Bar to issue a subpoena or take other appropriate steps to ensure a proper and complete investigation of the grievance. District grievance committees do not have authority to issue a subpoena to a witness or respondent attorney.

(5) Unless necessary to complete its investigation, the district grievance committee should not release copies of the respondent attorney's response to the grievance to the complainant. The investigating attorney may summarize the response for the complainant orally or in writing.

(g) District Grievance Committee Deliberations

(1) Upon completion of the investigation, the investigating member shall promptly report his or her findings and recommendations to the district grievance committee in writing.

(2) The district grievance committee shall consider the submissions of the parties, the information gathered by the investigating attorney and such other material as it deems relevant in reaching a recommendation. The district grievance committee may also make further inquiry as it deems appropriate, including investigating other facts and possible violations of the Rules of Professional Conduct discovered during its investigation.

(3) The district grievance committee shall make a determination as to whether or not it finds that there is probable cause to believe that the respondent violated one or more provisions of the Rules of Professional Conduct.

(h) Report of Committee's Decision

(1) Upon making a decision in a case, the district grievance committee shall submit a written report to the office of counsel, including its recommendation and the basis for its decision. The original file and grievance materials of the investigating attorney shall be sent to the State Bar along with the report. The letter from the district bar grievance committee enclosing the report shall follow the format set out in Rule .0217 of this subchapter.

(2) The district grievance committee shall submit its written report to the office of counsel no later than 180 days after the grievance is initiated or received by the district committee. The State Bar may recall any grievance file which has not been investigated and considered by a district grievance committee within 180 days after the matter is assigned to the committee. The State Bar may also recall any grievance file for any reason.

(3) Within 10 working days of submitting the written report and returning the file to the office of counsel, the chairperson of the district grievance committee shall notify the respondent attorney and the complainant in writing of the district grievance committee's recommendation, as provided in Rule .0202(d)(6) of this subchapter.

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

27 NCAC 01B .0205 RECORD KEEPING

The district grievance committee shall maintain records of all grievances referred to it by the State Bar and all grievances initially filed with the district grievance committee for at least one year. The district grievance committee shall provide such reports and information as are requested of it from time to time by the State Bar.

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

27 NCAC 01B .0206 MISCELLANEOUS

(a) Assistance and Questions - The office of counsel, including the staff attorneys and the grievance coordinator, are available to answer questions and provide assistance regarding any matters before the district grievance committee.

(b) Missing Attorneys - Where a respondent attorney is missing or cannot be located, the district grievance committee shall promptly return the grievance file to the office of counsel for appropriate action.

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

27 NCAC 01B .0207 CONFLICTS OF INTEREST

(a) No district grievance committee shall investigate or consider a grievance which alleges misconduct by any current member of the committee. If a file is referred to the committee by the State Bar or is initiated locally which alleges misconduct by a member of the district grievance committee, the file will be sent to the State Bar for investigation and handling within 10 working days after receipt of the grievance.
(b) A member of a district grievance committee shall not investigate or participate in deliberations concerning any of the following matters:

(1) alleged misconduct of an attorney who works in the same law firm or office with the committee member;
(2) alleged misconduct of a relative of the committee member;
(3) a grievance involving facts concerning which the committee member or a partner or associate in the committee member's law firm acted as an attorney.

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

27 NCAC 01B .0208 LETTER TO COMPLAINANT WHERE LOCAL GRIEVANCE ALLEGES FEE DISPUTE ONLY

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe

Dear Mr. Smith:

The district grievance committee has received your complaint against the above-listed attorney. Based upon our initial review of the materials which you submitted, it appears that your complaint involves a fee dispute. Accordingly, I would like to take this opportunity to notify you of the North Carolina State Bar Fee Dispute Resolution Program. The program is designed to provide citizens with a means of resolving disputes over attorney fees at no cost to them and without going to court. A pamphlet which describes the program in greater detail is enclosed, along with an application form.

If you would like to participate in the fee dispute resolution program, please complete and return the form to me within 20 days of the date of this letter. If you decide to participate, no grievance file will be opened and the district bar grievance committee will take no other action against the attorney.

If you do not wish to participate in the fee dispute resolution program, you may elect to have your complaint investigated by the district grievance committee. If we do not hear from you within 20 days of the date of this letter, we will assume that you do not wish to participate in fee dispute resolution, and we will handle your complaint like any other grievance. However, the district grievance committee has no authority to attempt to resolve a fee dispute between an attorney and his or her client. Its sole function is to investigate your complaint and make a recommendation to the North Carolina State Bar regarding whether there is probable cause to believe that the attorney has violated one or more provisions of the Rules of Professional Conduct which govern attorneys in this state.

Thank you for your cooperation.

Sincerely yours,

Chairperson
District Bar Grievance Committee

cc: PERSONAL & CONFIDENTIAL
Director of Investigations,
The N.C. State Bar

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

Readopted Eff. December 8, 1994;
Amended Eff. August 23, 2007.

27 NCAC 01B .0209 LETTER TO COMPLAINANT WHERE LOCAL GRIEVANCE ALLEGES FEE DISPUTE AND OTHER VIOLATIONS

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe

Dear Mr. Smith:

The district grievance committee has received your complaint against the above-listed attorney. Based upon our initial review of the materials which you submitted, it appears that your complaint involves a fee dispute as well as other possible violations of the rules of ethics. Accordingly, I would like to take this opportunity to notify you of the North Carolina State Bar Fee Dispute Resolution Program. The program is designed to provide citizens with a means of resolving disputes over attorney fees at no cost to them and without going to court. A pamphlet which describes the program in greater detail is enclosed, along with an application form.

If you would like to participate in the fee dispute resolution program, please complete and return the form to me within 20 days of the date of this letter. If you decide to participate, the fee dispute resolution committee will handle those portions of your complaint which involve an apparent fee dispute.

If you do not wish to participate in the fee dispute resolution program, you may elect to have your entire complaint investigated by the district grievance committee. If we do not hear from you within 20 days of the date of this letter, we will assume that you do not wish to participate in fee dispute resolution, and we will handle your entire complaint like any other grievance. However, the district grievance committee has no authority to attempt to resolve a fee dispute between an attorney and his or her client. Its sole function is to investigate your complaint and make a recommendation to the North Carolina State Bar regarding whether there is probable cause to believe that the attorney has violated one or more provisions of the Rules of Professional Conduct which govern attorneys in this state.

Thank you for your cooperation.

Sincerely yours,

Chairperson
District Bar Grievance Committee

cc: PERSONAL & CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0210 LETTER TO COMPLAINANT/RESPONDENT WHERE DISTRICT COMMITTEE RECOMMENDS FINDING OF NO PROBABLE CAUSE

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe

Our File No.

Dear Mr. Smith:

The district grievance committee has completed its investigation of your grievance. Based upon its investigation, the committee does not believe that there is probable cause to find that the attorney has violated any provisions of the Rules of Professional Conduct. The committee will forward a report with its recommendation to the North Carolina State Bar Grievance Committee. The final decision regarding your grievance will be made by the North Carolina State Bar Grievance Committee. You will be notified in writing of the State Bar's decision.

If you have any questions or wish to communicate further regarding your grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611

Neither I nor any member of the district grievance committee can give you any advice regarding any legal rights you may have regarding the matters set out in your grievance. You may pursue any questions you have regarding your legal rights with an attorney of your choice.

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Respondent Attorney

PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0211 LETTER TO RESPONDENT WHERE DISTRICT COMMITTEE RECOMMENDS FINDING OF PROBABLE CAUSE

Ms. Jane Doe
Anywhere, N.C.

Re: Grievance of John Smith
Our File No.

Dear Ms. Doe:

The district grievance committee has completed its investigation of Mr. Smith's grievance and has voted to recommend that the North Carolina State Bar Grievance Committee find probable cause to believe that you violated one or more provisions of

the Rules of Professional Conduct. Specifically, the [] district grievance committee found that there is probable cause to believe that you may have violated [set out brief description of rule allegedly violated and pertinent facts].

The final decision in this matter will be made by the North Carolina State Bar Grievance Committee and you will be notified in writing of the State Bar's decision. The complainant has been notified that the district grievance committee has concluded its investigation and that the grievance has been sent to the North Carolina State Bar for final resolution, but has not been informed of the district committee's specific recommendation.

If you have any questions or wish to communicate further regarding this grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611
Tel. 919-828-4620

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0212 LETTER TO COMPLAINANT WHERE DISTRICT COMMITTEE RECOMMENDS FINDING OF PROBABLE CAUSE

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No.

Dear Mr. Smith:

The district grievance committee has completed its investigation of your grievance and has forwarded its file to the North Carolina State Bar Grievance Committee in Raleigh for final resolution. The final decision in this matter will be made by the North Carolina State Bar Grievance Committee and you will be notified in writing of the State Bar's decision.

If you have any questions or wish to communicate further regarding your grievance, you may contact the North Carolina State Bar at the following address:

The North Carolina State Bar
Grievance Committee
P.O. Box 25908
Raleigh, N.C. 27611

Neither I nor any member of the district grievance committee can give you any advice regarding any legal rights you may have regarding the matters set out in your grievance. You may pursue any questions you have regarding your legal rights with an attorney of your choice.

Thank you very much for your cooperation.

Sincerely yours,

Chairperson
District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Respondent Attorney

PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0213 LETTER TO COMPLAINANT ACKNOWLEDGING GRIEVANCE

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No. []

Dear Mr. Smith:

I am the chairperson of the [] district grievance committee. Your grievance against [respondent attorney] [was received in my office]\[has been forwarded to my office by the North Carolina State Bar] on [date]. I have assigned [investigator's name], a member of the [] district grievance committee, to investigate your grievance. []'s name, address and telephone number are as follows: [].

Please be sure that you have provided all information and materials which relate to or support your complaint to the [] district grievance committee. If you have other information which you would like our committee to consider, or if you wish to discuss your complaint, please contact the investigating attorney by telephone or in writing as soon as possible.

After []'s investigation is complete, the [] district grievance committee will make a recommendation to the North Carolina State Bar Grievance Committee regarding whether or not there is probable cause to believe that [respondent attorney] violated one or more provisions of the Rules of Professional Conduct. Your complaint and the results of our investigation will be sent to the North Carolina State Bar at that time. The [] district grievance committee's recommendation is not binding upon the North Carolina State Bar Grievance Committee, which will make the final determination. You will be notified in writing when the [] district grievance committee's investigation is concluded.

Neither the investigating attorney nor any member of the [] district grievance committee can give you any legal advice or represent you regarding any underlying legal matter in which you may be involved. You may pursue any questions you have about your legal rights with an attorney of your own choice.

Thank you very much for your cooperation.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0214 LETTER TO INVESTIGATING ATTORNEY ASSIGNING GRIEVANCE

James Roe
[] District Grievance Committee Member
Anywhere, N.C.

Re: Grievance of John Smith against Jane Doe
Our File No. []

Dear Mr. Roe:

Enclosed you will find a copy of the grievance which I recently received regarding the above-captioned matter. Please investigate the complaint and provide a written report with your recommendations by [deadline].

Thank you very much.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Director of Investigations
The N.C. State Bar

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

27 NCAC 01B .0215 LETTER TO COMPLAINANT FROM INVESTIGATING ATTORNEY

John Smith
Anywhere, N.C.

Re: Your complaint against Jane Doe
Our File No. []

Dear Mr. Smith:

I am the member of the [] district grievance committee assigned to investigate your grievance against [respondent attorney]. It is part of my job to ensure that you have had a chance to explain your complaint and that the [] district grievance committee has copies of all of the documents which you believe relate to your complaint.

If you have other information or materials which you would like the [] district grievance committee to consider, or if you would like to discuss this matter, please contact me as soon as possible.

If you have already fully explained your complaint, you do not need to take any additional action regarding your grievance. The [] district grievance committee will notify you in writing when its investigation is complete. At that time, the matter will be forwarded to the North Carolina State Bar Grievance Committee in Raleigh for its final decision. You will be notified in writing of the North Carolina State Bar's decision.

Thank you very much for your cooperation.

Sincerely yours,

[] Investigating Member
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
Chairperson, [] District Grievance Committee

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

27 NCAC 01B .0216 LETTER OF NOTICE TO RESPONDENT ATTORNEY

Ms. Jane Doe
Anywhere, N.C.

Re: Grievance of John Smith
Our File No. []

Dear Ms. Doe:

Enclosed you will find a copy of a grievance which has been filed against you by [complainant] and which was received in my office on [date]. As chairperson of the [] district grievance committee, I have asked [investigating attorney], a member of the committee, to investigate this grievance.

Please file a written response with [investigating attorney] within 15 days from receipt of this letter. Your response should provide a full and fair disclosure of all of the facts and circumstances relating to the matters set out in the grievance.

Thank you.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

cc: PERSONAL AND CONFIDENTIAL
[] Investigating member

[] District Grievance Committee

PERSONAL AND CONFIDENTIAL
Director of Investigations
N.C. State Bar

PERSONAL AND CONFIDENTIAL
[] Complainant

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

27 NCAC 01B .0217 LETTER TRANSMITTING COMPLETED FILE TO NORTH CAROLINA STATE BAR

Director of Investigations
N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611

Re: Grievance of John Smith
File No. []

Dear Director:

The [] district grievance committee has completed its investigation in the above-listed matter. Based upon our investigation, the committee determined in its opinion that there is/is not probable cause to believe that the respondent violated one or more provisions of the Rules of Professional Conduct for the reasons set out in the enclosed report.

We are forwarding this matter for final determination by the North Carolina State Bar Grievance Committee along with the following materials:

1. The original grievance of [complainant].

2. A copy of the file of the investigating attorney.

3. The investigating attorney's report, which includes a summary of the facts and the reason(s) for the committee's decision.

Please let me know if you have any questions or if you need any additional information. Thank you.

Sincerely yours,

[] Chairperson
[] District Grievance Committee

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

SUBCHAPTER 01C - RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0100 - BOARD OF LAW EXAMINERS

27 NCAC 01C .0101 ELECTION

(a) The Board of Law Examiners shall consist of 11 members. The members are appointed for three-year terms to serve until expiration of the term, resignation, death, or other cause for termination of members' service.

(b) The council, in making appointments to the Board of Law Examiners, shall make appointments for no more than four consecutive three-year terms, not counting any partial term which may have previously been served.

(c) The council shall appoint board members for three-year terms at its annual meeting in October, with the term of service to begin on the following January 1. Appointment of a board member to complete an unexpired term shall be conducted at the next meeting of the council following the termination of service by the member and the giving of notice of the vacancy.

(d) When vacancies occur for the Board of Law Examiners, notice shall be published in the official publication of the North Carolina State Bar giving the date by which any person desiring to make a suggestion for someone to be considered as a possible member of the Board of Law Examiners must submit the name to the North Carolina State Bar.

(e) In considering an appointment to the Board of Law Examiners, the council may consult with current members of the Board of Law Examiners and consider factors such as geography, practice area, gender, and racial diversity.

(f) No member of the council shall be a member of the Board of Law Examiners.

(g) Any former Board of Law Examiners member being considered for appointment as emeritus member shall have served on the Board of Law Examiners for not less than five years.

History Note: *Authority G.S. 84-24;*
Readopted Eff. December 8, 1994;
Amended Eff. June 9, 2016.

27 NCAC 01C .0102 EXAMINATION OF APPLICANTS FOR LICENSE

All applicants for admission to the Bar shall first obtain a certificate or license from the Board of Law Examiners in accordance with the rules and regulations of that board.

History Note: *Authority G.S. 84-24;*
Readopted Eff. December 8, 1994.

27 NCAC 01C .0103 ADMISSION TO PRACTICE

Upon receiving license to practice law from the Board of Law Examiners, the applicant shall be admitted to the practice thereof by taking the oath in the manner and form now provided by law.

History Note: *Authority G.S. 84-24;*
Readopted Eff. December 8, 1994.

27 NCAC 01C .0104 APPROVAL OF RULES AND REGULATIONS OF BOARD OF LAW EXAMINERS

The council shall, as soon as possible, after the presentation to it of rules and regulations for admission to the Bar, approve or disapprove such rules and regulations. The rules and regulations approved shall immediately be certified to the Supreme Court. Such rules and regulations as may not be approved by the council shall be the subject of further study and action, and for the purpose of study, the council and Board of Law Examiners may sit in joint session. No action, however, shall be taken by the joint meeting, but each shall act separately, and no rule or regulation shall be certified to the Supreme Court until approved by the council.

History Note: *Authority G.S. 84-24;*
Readopted Eff. December 8, 1994.

27 NCAC 01C .0105 APPROVAL OF LAW SCHOOLS

Every applicant for admission to the North Carolina State Bar must meet the requirements set out in at least one of the numbered paragraphs below:

(1) The applicant holds an LL.B or J.D. degree from a law school that was approved by the American Bar Association at the time the degree was conferred; or

(2) Prior to August 1995, the applicant received an LL.B., J.D., LL.M., or S.J.D. degree from a law school that was approved by the council of the N.C. State Bar at the time the degree was conferred;

(3) Prior to August 2005, the applicant received an LL.M or S.J.D. degree from a law school that was approved by the American Bar Association at the time the degree was conferred.

(4) The applicant holds an LL.B. or J.D. degree from a law school that was approved for licensure purposes in another state of the United States or the District of Columbia and was licensed in such state or district.

History Note: *Authority G.S. 84-24;*
Adopted March 3, 1999;
Amendments Approved by the Supreme Court: September 22, 2016; March 5, 2015; February 27, 2003.

SECTION .0200 - RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0201 PURPOSE

The rules in this subchapter are adopted for the following purposes: to support the development of experiential legal education programs at North Carolina's law schools in order that the law schools may provide their students with supervised practical training of varying kinds during the period of their formal legal education; to enable law students to obtain supervised practical training while serving as certified law students for government agencies; and to assist law schools in providing substantial opportunities for student participation and experiential education in pro bono service.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2008; September 25, 2019; April 21, 2021.

27 NCAC 01C .0202 DEFINITIONS

The following definitions shall apply to the terms used in this section:

(a) Clinical legal education program - Experiential educational program that engages students in "real world" legal matters through supervised practice experience. Under the supervision of a faculty member or site supervisor who is accountable to the law school, students assume the role of a lawyer either as a protégé, lead counsel, or a member of a lawyer team.

(b) Eligible persons - Persons who are unable financially to pay for legal advice or services as determined by a standard established by a judge of the General Court of Justice, a legal services organization, government entity, or a clinical legal education program. "Eligible persons" may include minors who are not financially independent; students enrolled in secondary and higher education schools who are not financially independent; non-profit organizations serving low-income communities; and other organizations financially unable to pay for legal advice or services.

(c) Field placement - Practical training opportunities that place students in legal practice settings external to the law school. Students in a field placement represent clients or perform other lawyering roles under the supervision of practicing lawyers or other qualified legal professionals. Supervising attorneys provide direct feedback and guidance to the students. Site supervisors have administrative responsibility for the legal intern program at the field placement. Such practical training opportunities include the following:

(1) Externships - Courses within a law school's clinical legal education program in which the law school places students in legal practice settings external to the law school. Faculty have overall responsibility for assuring the educational value of the learning in the field.

(2) Government internships - Practical training opportunities in which students are placed in government agencies. No law school credit is earned for such placements. A government internship may be facilitated by the student's law school or obtained by the student independently. Although not required, faculty oversight is encouraged to ensure the educational value of the placement.

(3) Internships - Practical training opportunities in which students are placed in legal practice settings external to the law school. No law school credit is earned for such placements. An internship may be facilitated by the student's law school or obtained by the student independently. Some faculty oversight through the law school's clinical legal education program is required.

(d) Certified law student - A law student who is certified to work in conjunction with a supervising attorney to provide legal services to clients under the provisions of this subchapter.

(e) Government agencies - The federal or state government, any local government, or any agency, department, unit, or other entity of federal, state, or local government, specifically including a public defender's office or a district attorney's office.

(f) Law school - An ABA accredited law school or a law school actively seeking accreditation from the ABA and licensed by the Board of Governors of the University of North Carolina. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, legal interns may not practice, pursuant to these rules, with any clinic of the law school.

(g) Law school clinic - Courses within a law school's clinical legal education program that place students in a legal practice setting operated by the law school. Students in a law school clinic assume the role of a lawyer representing actual clients or performing other lawyering roles. Supervision of students is provided by faculty employed by the law school (full-time, part-time, adjunct) who are active members of the North Carolina State Bar or another bar as appropriate for the legal matters undertaken.
(h) Legal services organization - A nonprofit North Carolina organization organized to operate in accordance with N.C. Gen. Stat. § 84-5.1.
(i) Pro bono activity - An opportunity while in law school for students to provide legal services to those unable to pay, or otherwise under a disability or disadvantage, consistent with the objectives of Rule 6.1 of the Rules of Professional Conduct.
(j) Rules of Professional Conduct - The Rules of Professional Conduct adopted by the Council of the North Carolina State Bar, approved by the North Carolina Supreme Court, and in effect at the time of application of the rules in this subchapter.
(k) Site supervisor - The attorney at a student practice placement who assumes administrative responsibility for the certified law student program at the placement and provides the statements to the State Bar and the certified law student's law school required by Rule .0205(b) of this subchapter. A site supervisor may also be a supervising attorney at a student practice placement.
(l) Supervising attorney - An active member of the North Carolina State Bar, or an attorney who is licensed in another jurisdiction as appropriate for the legal work to be undertaken, who has practiced law as a full-time occupation for at least two years, and who supervises one or more certified law students pursuant to the requirements of the rules in this subchapter.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; September 25, 2019; April 21, 2021; December 14, 2021.

27 NCAC 01C .0203 ELIGIBILITY

To engage in activities permitted by these rules, a law student must satisfy the following requirements:

(a) be enrolled as a J.D. or LL.M. student in a law school approved by the Council of the North Carolina State Bar;

(b) be certified in writing by a representative of his or her law school, authorized by the dean of the law school to provide such certification, as being of good character with requisite legal ability and legal education to perform as a certified law student, which education shall include satisfaction of the prerequisites for participation in the clinic, externship, or other student practice placement;

(c) be introduced by an attorney admitted to practice in the tribunal or agency to every judicial official who will preside over a matter in which the student will appear, and, pursuant to Rule .0206(c) of this subchapter, obtain the tribunal's or agency's consent to appear subject to any limitations imposed by the presiding judicial official; such introductions do not have to occur in open court and the consent of the judicial official may be oral or written;

(d) neither ask for nor receive any compensation or remuneration of any kind from any eligible person to whom he or she renders services, but this shall not prevent an attorney, legal services organization, law school, or government agency from paying compensation to the law student or charging or collecting a fee for legal services performed by such law student; and

(e) attest in writing that he or she has read the North Carolina Rules of Professional Conduct and is familiar with the opinions interpretive thereof.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2008; September 25, 2019; April 21, 2021.

27 NCAC 01C .0204 FORM AND DURATION OF CERTIFICATION

Upon receipt of the written materials required by Rule .0203(b) and (e) and Rule .0205(b), the North Carolina State Bar shall certify that the law student may serve as a certified law student. The certification shall be subject to the following limitations:

(a) Duration. The certification shall be effective for 18 consecutive months or until the announcement of the results of the first bar examination following the certified law student's graduation whichever is earlier. If the certified law student passes the bar examination, the certification shall remain in effect until the

certified law student is sworn-in by a court and admitted to the bar. For the duration of the certification, the certification shall be transferrable from one student practice placement or law school clinic to another student practice placement or law school clinic, provided that (i) all student practice placements are approved by the law school prior to the certified law student's graduation, and (ii) the supervision and filing requirements in Rule .0205 of this subchapter are at all times satisfied.

(b) Withdrawal of Certification. The certification shall be withdrawn by the State Bar, without hearing or a showing of cause, upon receipt of

(1) notice from a representative of the certified law student's law school, authorized to act by the dean of the law school, that the student has not graduated but is no longer enrolled;

(2) notice from a representative of the certified law student's law school, authorized to act by the dean of the law school, that the student is no longer in good standing at the law school;

(3) notice from a supervising attorney that the supervising attorney is no longer supervising the certified law student and that no other qualified attorney has assumed the supervision of the student; or

(4) notice from a judge before whom the certified law student has appeared that the certification should be withdrawn.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; September 25, 2019; April 21, 2021.

27 NCAC 01C .0205 SUPERVISION

(a) Supervision Requirements. A supervising attorney shall:

(1) for a law school clinic, concurrently supervise an unlimited number of certified law students if the supervising attorney is a full-time, part-time, or adjunct member of a law school's faculty or staff whose primary responsibility is supervising certified law students in a law school clinic and, further provided, the number of certified law students concurrently supervised is not so large as to compromise the effective and beneficial practical training of the certified law students or the competent representation of clients;

(2) for a student practice placement, concurrently supervise no more than two certified law students; however, a greater number of certified law students may be concurrently supervised by a single supervising attorney if (i) an appropriate faculty member of each certified law student's law school determines, in his or her reasoned discretion, that the effective and beneficial practical training of the certified law students will not be compromised, and (ii) the supervising attorney determines that the competent representation of clients will not be compromised;

(3) assume personal and professional responsibility for any work undertaken by a certified law student while under his or her supervision;

(4) assist and counsel with a certified law student in the activities permitted by these rules and review such activities with the certified law student, all to the extent required for the proper practical training of the student and the competent representation of the client;

(5) read, approve, and personally sign any pleadings or other papers prepared by a certified law student prior to the filing thereof, and read and approve any documents prepared by a certified law student for execution by a client or third party prior to the execution thereof; and

(6) for externships and internships (other than placements at government agencies), ensure that any activities by the certified law student that are authorized by Rule .0206 are limited to representations of eligible persons.

(b) Filing Requirements.

(1) Prior to commencing supervision, a supervising attorney in a law school clinic shall provide a signed statement to the North Carolina State Bar (i) assuming responsibility for the supervision of identified certified law students, (ii) stating the period during which the supervising attorney expects to supervise the activities of the identified certified law students, and (iii) certifying that the supervising attorney will adequately supervise the certified law students in accordance with these rules.

(2) Prior to the commencement of a student practice placement for a certified law student, the site supervisor shall provide a signed statement to the North Carolina State Bar and to the certified law student's law school (i) assuming responsibility for the administration of the field placement in compliance with these rules, (ii) identifying the participating certified law student and stating the period during which the certified

law student is expected to participate in the program at the placement, (iii) identifying the supervising attorney at the placement, and (iv) certifying that the supervising attorney will adequately supervise the certified law student in accordance with these rules.

(3) A supervising attorney in a law school clinic and a site supervisor for a certified law student program at a student practice placement shall notify the North Carolina State Bar in writing promptly whenever the supervision of a certified law student concludes prior to the designated period of supervision.

(c) Responsibilities of Law School Clinic in Absence of Certified Law Student. During any period when a certified law student is not available to provide representation due to law school seasonal breaks, graduation, or other reason, the supervising attorney shall maintain the status quo of a client matter and shall take action as necessary to protect the interests of the client until the certified law student is available or a new certified law student is assigned to the matter. During law school seasonal breaks, or other periods when a certified law student is not available, if a law school clinic or a supervising attorney is presented with an inquiry from an eligible person or a legal matter that may be appropriate for representation by a certified law student, the representation may be undertaken by a supervising attorney to preserve the matter for subsequent representation by a certified law student. Communications by a supervising attorney with a prospective client to determine whether the prospective client is eligible for clinic representation may include providing immediate legal advice or information even if it is subsequently determined that the matter is not appropriate for clinic representation.

(d) Independent Legal Practice. Nothing in these rules prohibits a supervising attorney in a law school clinic from providing legal services to third parties outside of the scope of the supervising attorney's employment by the law school operating the law school clinic.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; September 24, 2015; September 25, 2019; April 21, 2021.

27 NCAC 01C .0206 ACTIVITIES

(a) A properly certified law student may engage in the activities provided in this rule under the supervision of an attorney qualified and acting in accordance with the provisions of Rule .0205 of this subchapter.

(b) Without the presence of the supervising attorney, a certified law student may give advice to a client, including a government agency, on legal matters provided that the certified law student gives a clear prior explanation that the certified law student is not an attorney and the supervising attorney has given the certified law student permission to render legal advice in the subject area involved.

(c) A certified law student may represent an eligible person, the state in criminal prosecutions, a criminal defendant who is represented by the public defender, or a government agency in any proceeding before a federal, state, or local tribunal, including an administrative agency, if prior consent is obtained from the tribunal or agency upon application of the supervising attorney. Each appearance before the tribunal or agency shall be subject to any limitations imposed by the tribunal or agency including, but not limited to, the requirement that the supervising attorney physically accompany the certified law student.

(d) In all cases under this rule in which a certified law student makes an appearance before a tribunal or agency on behalf of a client who is an individual, the certified law student shall have the written consent in advance of the client. The client shall be given a clear explanation, prior to the giving of his or her consent, that the certified law student is not an attorney. This consent shall be filed with the tribunal and made a part of the record in the case. In all cases in which a certified law student makes an appearance before a tribunal or agency on behalf a government agency, the consent of the government agency shall be presumed if the certified law student is participating in a law school externship program or an internship program of the government agency. A statement advising the court of the certified law student's participation in an externship or internship program at the government agency shall be filed with the tribunal and made a part of the record in the case.

(e) In all cases under this rule in which a certified law student is permitted to make an appearance before a tribunal or agency, subject to any limitations imposed by the tribunal, the certified law student may engage in all activities appropriate to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; April 21, 2021.

27 NCAC 01C .0207 USE OF STUDENT'S NAME

(a) A certified law student's name may properly

(1) be printed or typed on briefs, pleadings, and other similar documents on which the certified law student has worked with or under the direction of the supervising attorney, provided the certified law student is clearly identified as a student certified under these rules, and provided further that the certified law student shall not sign his or her name to such briefs, pleadings, or other similar documents;

(2) be signed to letters written on the letterhead of the supervising attorney, legal aid clinic, or government agency, provided there appears below the certified law student's signature a clear identification that the student is certified under these rules. An appropriate designation is "Certified Law Student under the Supervision of [supervising attorney]", and

(3) be printed on a business card, provided the name of the supervising attorney also appears on the business card and there appears below the certified law student's name a clear statement that the student is certified under these rules. An appropriate designation is "Certified Law Student under the Supervision of [supervising attorney]."

(b) A student's name may not appear on the letterhead of a supervising attorney, legal aid clinic, or government agency.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2008; October 7, 2010; April 21, 2021.

27 NCAC 01C .0208 STUDENT PRACTICE PLACEMENTS

(a) A law student participating in a student practice placement at an organization, entity, law firm, or government agency shall be certified if the law student will (i) provide legal advice or services in matters governed by North Carolina law to eligible persons outside the organization, entity, law firm, or government agency where the student is placed, or (ii) appear before any North Carolina tribunal or agency on behalf of an eligible person or a government agency.

(b) Supervision of a certified law student enrolled in a student practice placement may be shared by two or more attorneys employed by the organization, entity, law firm, or government agency, provided one attorney acts as site supervisor, assuming administrative responsibility for the certified law student program at the placement and filing with the State Bar and the certified law student's law school the statements required by Rule .0205(b) of this subchapter. All supervising attorneys at a student practice placement shall comply with the requirements of Rule .0205(a).

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Rule entitled "Miscellaneous" repealed Eff. June 7, 2001;
Adopted Eff. September 25, 2019;
Amendments Approved by the Supreme Court: April 21, 2021.

27 NCAC 01C .0209 RELATIONSHIP OF LAW SCHOOL AND CLINICS; RESPONSIBILITY UPON DEPARTURE OF SUPERVISING ATTORNEY OR CLOSURE OF CLINIC

(a) Relationship to Other Clinics. The clinics that are a part of a clinical legal education program at a law school may each operate as an independent entity (the "independent clinic model") or they may operate collectively as one entity with each clinic acting as a department or division of the entity (the "unified clinic model"). In the independent clinic model, clinics function independently of each other, including the maintenance of separate offices and separate conflicts-checking and case management systems. In the unified clinic model, clinics may share offices as well as conflicts-checking and case management systems.

(b) Application of the Rules of Professional Conduct. For the purposes of applying the Rules of Professional Conduct, each law school clinic operated pursuant to the independent clinic model shall be considered one law firm and clinics operated pursuant to the unified clinic model shall collectively be considered one law firm.

(c) Relationship with Law School. The relationship between law school clinics and the law school in which they operate shall be managed in a manner consistent with the requirements of the Rules of Professional Conduct. Procedures shall be established by both the clinics and the law school that are reasonably adequate to protect confidential client information from disclosure including disclosure to the law school administration, non-participating law school faculty and staff, and non-participating students of the law school. The rule of imputed disqualification, as stated in Rule 1.10(a) of the Rules of

Professional Conduct, shall not apply to the law school administrators, non-participating law school faculty and staff, and non-participating law school students if reasonable efforts are made to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of clients. See Rule 1.6(c) of the Rules of Professional Conduct.

(d) Responsibility for Maintenance of Client Files. Client files shall be maintained and safeguarded by a law school clinic in accordance with the Rules of Professional Conduct and the ethics opinions interpretative thereof. Closed client files shall be returned to the client or shall be safeguarded and maintained by a law school clinic until disposal is permitted under the Rules of Professional Conduct. See RPC 209.

(e) Engagement Letter. In addition to the consent agreement required by Rule .0206(d) of this section for any representation of an individual client in a matter before a tribunal, a written engagement letter or memorandum of understanding with each client is recommended. The writing should state the general nature of the legal services to be provided and explain the roles and responsibilities of the clinic, the supervising attorney, and the certified law student. See Rule 1.5, cmt. [2] of the Rules of Professional Conduct ("A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.")

(f) Responsibility upon Departure of Supervising Attorney. Upon the departure of a supervising attorney from a law school clinic, the administration of the law school and of the clinic shall promptly identify a replacement supervising attorney for any active case in which no other supervising attorney is participating. In such cases, the departing attorney and the clinic administration shall protect the interests of all affected clients by taking appropriate steps to preserve the status quo of the legal matters of affected clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. If the departing attorney will not continue the representation after departure from the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation. Affected clients shall be notified and advised that (i) they have the right to counsel of choice (which may include the departing attorney if the departing attorney intends to engage in legal practice outside of the law school clinic); (ii) their file will be transferred to the new supervising attorney in the absence of other instructions from the client; and (iii) they may instruct the clinic to mail or deliver the file to the client or to transfer the file to legal counsel outside of the clinic. If instructed by a client, a file shall be promptly returned to the client or transferred to authorized legal counsel outside of the clinic.

(g) Responsibility upon Closure of a Law School Clinic. If a law school clinic is closed for any reason, the supervising attorney, with support from the law school, shall take appropriate steps to preserve the status quo of the legal matters of clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. The administration of the law school and of the clinic shall promptly notify all affected clients that (i) they have the right to counsel of choice (which may include the supervising attorney if the supervising attorney will engage in legal practice after closure of the clinic); (ii) the file will be mailed to or delivered to the client and the supervising attorney will withdraw from representation in the absence of other instructions from the client; and (iii) they may instruct the clinic to transfer the file to authorized legal counsel outside of the clinic (which may include the supervising attorney). If the supervising attorney will not continue the representation after closure of the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Rule entitled "Dean's Certificate" repealed Eff. June 7, 2001;
Adopted Eff. September 25, 2019;
Amendments Approved by the Supreme Court: April 21, 2021.

27 NCAC 01C .0210 PRO BONO ACTIVITIES

(a) Pro Bono Activities for Law Students. Pro bono activities for law students may be facilitated by a law school acting under the auspices of a clinical legal education program or another program or department of the law school. As used in this rule, "auspices" means administrative or programmatic support or supervision.

(b) Student Certification Not Required. Regardless of whether the pro bono activity is provided under the auspices of a clinical legal education program or another program or department of a law school, a law student participating in a pro bono activity made available by a law school is not required to be certified if

(1) the law student will not perform any legal service; or

(2) all of the following conditions are satisfied: (i) the student will perform specifically delegated substantive legal services for third parties (clients) under the direct supervision of an attorney who is an active member of the North Carolina State Bar or licensed in another jurisdiction as appropriate to the legal services to be undertaken (the responsible attorney); (ii) the legal services shall not include representation of clients

before a tribunal or agency; (iii) the responsible attorney is personally and professionally responsible for the representation of the clients and for the law student's work product; and (iv) the role of the law student as an assistant to the responsible attorney is clearly explained to each client in advance of the performance of any legal service for the client by the law student.

(c) Law School Faculty and Staff Providing Pro Bono Services Under Auspices of a Clinical Legal Education Program. Any member of the law school's faculty or staff who is an active member of the North Carolina State Bar or licensed in another jurisdiction as appropriate to the legal work to be undertaken may serve as the responsible attorney for a pro bono activity if the activity is provided to eligible persons under the auspices of the law school's clinical legal education program and the responsible attorney complies with the relevant supervision requirements set forth in Rule .0205(a)(2)-(5) of this subchapter.

(d) Responsibility for Client File. Unless otherwise specified in this rule, if a client file is generated by a pro bono activity, it shall be maintained and safeguarded by the responsible attorney in compliance with the Rules of Professional Conduct and the ethics opinions interpretative thereof. If the pro bono activity is provided under the auspices of a clinical legal education program and the responsible attorney is a member of the law school's faculty or staff, the client file shall be maintained and safeguarded by the clinical legal education program in compliance with the Rules of Professional Conduct and the Rule .0209(d). If the pro bono activity is sponsored by a legal services organization or government agency, the legal services organization or government agency shall maintain and safeguard the client file. If the pro bono activity is sponsored by more than one legal services organization or government agency, the co-sponsors shall determine which entity shall maintain and safeguard the client file and shall so inform the client.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Rule entitled "Withdrawal of Dean's Certificate" repealed Eff. June 7, 2001;
Adopted Eff. September 25, 2019;
Amendments Approved by the Supreme Court: April 21, 2021.

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 and 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.

27 NCAC 01D .0104 LEGAL ETHICS OPINIONS AND DECISIONS

(a) Requests for legal ethics opinions or ethics decisions shall be made in writing and submitted to the executive director or assistant executive director who, after determining that a request is in compliance with Rule .0102 of this Subchapter, shall transmit the request to the chairperson of the committee.

(b) If a legal ethics opinion or ethics decision is requested concerning contemplated or actual conduct of another attorney, the chairperson shall notify that attorney and provide him or her with the opportunity to be heard, along with the person who requested the opinion, under such guidelines as may be established by the committee. The chairperson shall notify any additional person or group he or she deems appropriate and provide them an opportunity to be heard.

(c) Upon initial consideration of the request, by vote of a majority of the members of the committee present at the meeting, the committee shall prepare a written proposed response to the inquiry and shall determine whether to issue the response as a proposed ethics decision or a proposed formal ethics opinion. Prior to the next regularly scheduled meeting of the committee, all proposed formal ethics opinions shall be published and all proposed ethics decisions shall be circulated to the members of the council.

(d) Prior to the next regularly scheduled meeting of the committee, any interested person or group may submit a written request to reconsider a proposed formal ethics opinion or a proposed ethics decision and may ask to be heard by the committee. The committee, under such guidelines as it may adopt, may allow or deny such request.

(e) Upon reconsideration of a proposed formal ethics opinion or proposed ethics decision, the committee may, by vote of not less than a majority of the duly appointed members of the committee, revise the proposed formal ethics opinion or proposed ethics decision. Prior to the next regularly scheduled meeting of the committee, all revised proposed formal ethics opinions shall be published and all revised proposed ethics decisions shall be circulated to the members of the council.

(f) Upon completion of the process, the committee shall determine, by a vote of not less than a majority of the duly appointed members of the committee, whether to transmit a proposed formal ethics opinion or proposed ethics decision to the council with a recommendation to adopt.

(g) Any interested person or group may request to be heard by the council prior to a vote on the adoption of a proposed formal ethics opinion or ethics decision. Whether permitted to appear before the council or not, the person or group has the right to file a written brief with the council under such rules as may be established by the council.

(h) The council's action on a proposed formal ethics opinion or ethics decision shall be determined by a vote of the majority of the council present and voting. Notice of such action shall be provided to interested persons by the method deemed most appropriate by the chairperson.

(i) A formal ethics opinion or ethics decision may be reconsidered or withdrawn by the council pursuant to rules which it may establish from time to time.

(j) To vote, a member of the committee must be physically present at a meeting.

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

27 NCAC 01D .0105 PROCEDURES FOR MEETINGS OF THE ETHICS COMMITTEE

(a) Consent Agenda. The agenda for a meeting of the committee shall include a consent agenda consisting of those proposed formal ethics opinions, proposed ethics decisions, and ethics advisories (collectively "proposed opinions") published, circulated, or mailed during the preceding quarter that the chairperson, vice-chair, and staff counsel agree do not warrant discussion by the full committee.

(b) Vote on Consent Agenda. The consent agenda shall be considered at the beginning of the meeting of the committee following the consideration of administrative matters. Any committee member may make a non-debatable motion to remove an item from the consent agenda for separate discussion and vote. The motion must receive an affirmative vote of one-third of all of the duly appointed members of the committee in order for an item to be removed from the consent agenda. The items remaining upon the consent agenda shall be considered together upon a non-debatable motion to approve the remaining items on the consent agenda. The motion must pass by a vote of not less than a majority of the duly appointed members of the committee pursuant to Rule .0104(f) of this Subchapter. All items on a consent agenda so approved shall be transmitted to the council with a recommendation to adopt.

History Note: *Authority G.S. 84-23;*
Adopted Eff. March 11, 2010.

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 my 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; September 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 that 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 ADMINITRATION 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 conductive 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 x Total Approved CLE Hours (6) x Number of NC Attendees (100) = 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 x Total Approved CLE hours (3.0) = 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, accreditable 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 ($l,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 subspecialties 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.

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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 (l80) 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.

27 NCAC 01D .3106 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 .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.

SUBCHAPTER 1E - REGULATIONS FOR ORGANIZATIONS PRACTICING LAW

SECTION .0100 - REGULATIONS FOR PROFESSIONAL CORPORATIONS AND PROFESSIONAL LIMITED LIABILITY COMPANIES PRACTICING LAW

27 NCAC 01E .0101 AUTHORITY, SCOPE, AND DEFINITIONS

(a) "Authority" Chapter 55B of the General Statutes of North Carolina, being "the Professional Corporation Act," particularly Section 55B-12, and Chapter 57C, being the "North Carolina Limited Liability Company Act," particularly Section 57C-2-01(c), authorizes the Council of the North Carolina State Bar (the council) to adopt regulations for professional corporations and professional limited liability companies practicing law. These regulations are adopted by the council pursuant to that authority.
(b) "Statutory Law" These regulations only supplement the basic statutory law governing professional corporations (Chapter 55B) and professional limited liability companies (Chapter 57C) and shall be interpreted in harmony with those statutes and with other statutes and laws governing corporations and limited liability companies generally.
(c) "Definitions" All terms used in these regulations shall have the meanings set forth below or shall be as defined in the Professional Corporation Act or the North Carolina Limited Liability Company Act as appropriate.

(1) "Council" shall mean the Council of the North Carolina State Bar.
(2) "Licensee" shall mean any natural person who is duly licensed to practice law in North Carolina.
(3) "Professional limited liability company or companies" shall mean any professional limited liability company or companies organized for the purpose of practicing law in North Carolina.
(4) "Professional corporations" shall mean any professional corporation or corporations organized for the purpose of practicing law in North Carolina.
(5) "Secretary" shall mean the secretary of the North Carolina State Bar.

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

27 NCAC 01E .0102 NAME OF PROFESSIONAL CORPORATION OR PROFESSIONAL LIMITED LIABILITY COMPANY

(a) "Name of Professional Corporation" The name of every professional corporation shall contain the surname of one or more of its shareholders or of one or more persons who were associated with its immediate corporate, individual, partnership, or professional limited liability company predecessor in the practice of law and shall not contain any other name, word, or character (other than punctuation marks and conjunctions) except as required or permitted by Rules .0102(a)(1), (2) and (5) in this Rule. The following additional requirements shall apply to the name of a professional corporation:

(1) "Corporate Designation" The name of a professional corporation shall end with the following words:
    (A) "Professional Association" or the abbreviation "P.A."; or
    (B) "Professional Corporation" or the abbreviation "P.C."
(2) "Deceased or Retired Shareholder" The surname of any shareholder of a professional corporation may be retained in the corporate name after such person's death, retirement or inactivity due to age or disability, even though such person may have disposed of his or her shares of stock in the professional corporation;
(3) "Disqualified Shareholder" If a shareholder in a professional corporation whose surname appears in the corporate name becomes legally disqualified to render professional services in North Carolina or, if the

shareholder is not licensed in North Carolina, in any other jurisdiction in which the shareholder is licensed, the name of the professional corporation shall be promptly changed to eliminate the name of such shareholder, and such shareholder shall promptly dispose of his or her shares of stock in the corporation;

(4) "Shareholder Becomes Judge or Official" If a shareholder in a professional corporation whose surname appears in the corporate name becomes a judge or other adjudicatory officer or holds any other office which disqualifies such shareholder to practice law, the name of the professional corporation shall be promptly changed to eliminate the name of such shareholder and such person shall promptly dispose of his or her shares of stock in the corporation;

(5) "Trade Name Allowed" A professional corporation shall not use any name other than its corporate name, except to the extent a trade name or other name is required or permitted by statute, rule of court or the Rules of Professional Conduct.

(b) "Name of Professional Limited Liability Company" The name of every professional limited liability company shall contain the surname of one or more of its members or one or more persons who were associated with its immediate corporate, individual, partnership, or professional limited liability company predecessor in the practice of law and shall not contain any other name, word or character (other than punctuation marks and conjunctions) except as required or permitted by Rules .0102(b)(1), (2) and (5) below. The following requirements shall apply to the name of a professional limited liability company:

(1) "Professional Limited Liability Company Designation" The name of a professional limited liability company shall end with the words "Professional Limited Liability Company" or the abbreviations "P.L.L.C." or "PLLC";

(2) "Deceased or Retired Member" The surname of any member of a professional limited liability company may be retained in the limited liability company name after such person's death, retirement, or inactivity due to age or disability, even though such person may have disposed of his or her interest in the professional limited liability company;

(3) "Disqualified Member" If a member of a professional limited liability company whose surname appears in the name of such professional limited liability company becomes legally disqualified to render professional services in North Carolina or, if the member is not licensed in North Carolina, in any other jurisdiction in which the member is licensed, the name of the professional limited liability company shall be promptly changed to eliminate the name of such member, and such member shall promptly dispose of his or her interest in the professional limited liability company;

(4) "Member Becomes Judge or Official" If a member of a professional limited liability company whose surname appears in the professional limited liability company name becomes a judge or other adjudicatory official or holds any other office which disqualifies such person to practice law, the name of the professional limited liability company shall be promptly changed to eliminate the name of such member and such person shall promptly dispose of his or her interest in the professional limited liability company;

(5) "Trade Name Allowed" A professional limited liability company shall not use any name other than its limited liability company name, except to the extent a trade name or other name is required or permitted by statute, rule of court, or the Rules of Professional Conduct.

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

27 NCAC 01E .0103 REGISTRATION WITH THE NORTH CAROLINA STATE BAR

(a) Registration of Professional Corporation - At least one of the incorporators of a professional corporation shall be an attorney at law duly licensed to practice in North Carolina. The incorporators shall comply with the following requirements for registration of a professional corporation with the North Carolina State Bar:

(1) Filing with State Bar - Prior to filing the articles of incorporation with the secretary of state, the incorporators of a professional corporation shall file the following with the secretary of the North Carolina State Bar:

(A) the original articles of incorporation;

(B) an additional executed copy of the articles of incorporation;

(C) a conformed copy of the articles of incorporation;

(D) a registration fee of fifty dollars;

(E) an application for certificate of registration for a professional corporation (Form PC-1; see Section .0106(a) of this subchapter) verified by all incorporators, setting forth
(i) the name and address of each person who will be an original shareholder or an employee who will practice law for the corporation in North Carolina;
(ii) the name and address of at least one person who is an incorporator;
(iii) the name and address of at least one person who will be an original director; and
(iv) the name and address of at least one person who will be an original officer, and stating that all such persons are duly licensed to practice law in North Carolina. The application shall also
(a) set forth the name, address, and license information of each original shareholder who is not licensed to practice law in North Carolina but who shall perform services on behalf of the corporation in another jurisdiction in which the corporation maintains an office; and
(b) certify that all such persons are duly licensed to practice law in the appropriate jurisdiction. The application shall include a representation that the corporation will be conducted in compliance with the Professional Corporation Act and these regulations; and

(F) a certification for professional corporation by the Council of the North Carolina State Bar (Form PC-2; see Rule .0106(b) of this subchapter), a copy of which shall be attached to the original, the executed copy, and the conformed copy of the articles of incorporation, to be executed by the secretary in accordance with Rule .0103(a)(2) below.

(2) Certificates Issued by Secretary and Council - The secretary shall review the articles of incorporation for compliance with the laws relating to professional corporations and these regulations. If the secretary determines that all persons who will be original shareholders are active members in good standing with the North Carolina State Bar, or duly licensed to practice law in another jurisdiction in which the corporation shall maintain an office, and that the articles of incorporation conform with the laws relating to professional corporations and these regulations, the secretary shall take the following actions:
(A) execute the certification for professional corporation by the Council of the North Carolina State Bar (Form PC-2; see Rule .0106(b) of this subchapter) attached to the original, the executed copy, and the conformed copy of the articles of incorporation and return the original and the conformed copies of the articles of incorporation, together with the attached certificates, to the incorporators for filing with the secretary of state;
(B) retain the executed copy of the articles of incorporation together with the application (Form PC-1) and the certification of council (Form PC-2) in the office of the North Carolina State Bar as a permanent record;
(C) issue a certificate of registration for a professional corporation (Form PC-3; see Rule .0106(c) of this subchapter) to the professional corporation to become effective upon the effective date of the articles of incorporation after said articles are filed with the secretary of state.

(b) Registration of a Professional Limited Liability Company - At least one of the persons executing the articles of organization of a professional limited liability company shall be an attorney at law duly licensed to practice law in North Carolina. The persons executing the articles of organization shall comply with the following requirements for registration with the North Carolina State Bar:

(1) Filing with State Bar - Prior to filing the articles of organization with the secretary of state, the persons executing the articles of organization of a professional limited liability company shall file the following with the secretary of the North Carolina State Bar:
(A) the original articles of organization;
(B) an additional executed copy of the articles of organization;
(C) a conformed copy of the articles of organization;
(D) a registration fee of $50;
(E) an application for certificate of registration for a professional limited liability company (Form PLLC-1; see Rule .0106(f) of this subchapter) verified by all of the persons executing the articles of organization, setting forth
(i) the name and address of each original member or employee who will practice law for the professional limited liability company in North Carolina;
(ii) the name and address of at least one person executing the articles of organization; and

(iii) the name and address of at least one person who will be an original manager, and stating that all such persons are duly licensed to practice law in North Carolina. The application shall also

(a) set forth the name, address, and license information of each original member who is not licensed to practice law in North Carolina but who shall perform services on behalf of the professional limited liability company in another jurisdiction in which the professional limited liability company maintains an office; and

(b) certify that all such persons are duly licensed to practice law in the appropriate jurisdiction. The application shall include a representation that the professional limited liability company will be conducted in compliance with the North Carolina Limited Liability Company Act and these regulations;

(F) a certification for professional limited liability company by the Council of the North Carolina State Bar, (Form PLLC-2; see Rule .0106(g) of this subchapter), a copy of which shall be attached to the original, the executed copy, and the conformed copy of the articles of organization, to be executed by the secretary in accordance with Rule .0103(b)(2) below.

(2) Certificates Issued by the Secretary - The secretary shall review the articles of organization for compliance with the laws relating to professional limited liability companies and these regulations. If the secretary determines that all of the persons who will be original members are active members in good standing with the North Carolina State Bar, or duly licensed in another jurisdiction in which the professional limited liability company shall maintain an office, and the articles of organization conform with the laws relating to professional limited liability companies and these regulations, the secretary shall take the following actions:

(A) execute the certification for professional limited liability company by the Council of the North Carolina State Bar (Form PLLC-2) attached to the original, the executed copy and the conformed copy of the articles of organization and return the original and the conformed copy of the articles of organization, together with the attached certificates, to the persons executing the articles of organization for filing with the secretary of state;

(B) retain the executed copy of the articles of organization together with the application (Form PLLC-1) and the certification (Form PLLC-2) in the office of the North Carolina State Bar as a permanent record;

(C) issue a certificate of registration for a professional limited liability company (Form PLLC-3; see Rule .0106(h) of this subchapter) to the professional limited liability company to become effective upon the effective date of the articles of organization after said articles are filed with the secretary of state.

(c) Refund of Registration Fee - If the secretary is unable to make the findings required by Rules .0103(a)(2) or .0103(b)(2) above, the secretary shall refund the $50 registration fee.

(d) Expiration of Certificate of Registration - The initial certificate of registration for either a professional corporation or a professional limited liability company shall remain effective through June 30 following the date of registration.

(e) Renewal of Certificate of Registration - The certificate of registration for either a professional corporation or a professional limited liability company shall be renewed on or before July 1 of each year upon the following conditions:

(1) Renewal of Certificate of Registration for Professional Corporation - A professional corporation shall submit an application for renewal of certificate of registration for a professional corporation (Form PC-4; see Rule .0106(d) of this subchapter) to the secretary listing the names and addresses of all of the shareholders and employees of the corporation who practice law for the professional corporation in North Carolina and the name and address of at least one officer and one director of the professional corporation, and certifying that all such persons are duly licensed to practice law in the state of North Carolina and representing that the corporation has complied with these regulations and the provisions of the Professional Corporation Act. Such application shall also

(i) set forth the name, address, and license information of each shareholder who is not licensed to practice law in North Carolina but who performs services on behalf of the corporation in another jurisdiction in which the corporation maintains an office; and

(ii) certify that all such persons are duly licensed to practice law in the appropriate jurisdiction. Upon a finding by the secretary that all shareholders are active members in good standing with the North Carolina State Bar, or are duly licensed to practice law in another jurisdiction in which the corporation maintains an office, the secretary shall

renew the certificate of registration by making a notation in the records of the North Carolina State Bar;

(2) Renewal of Certificate of Registration for a Professional Limited Liability Company - A professional limited liability company shall submit an application for renewal of certificate of registration for a professional limited liability company (Form PLLC-4; see Rule .0106(i) of this subchapter) to the secretary listing the names and addresses of all of the members and employees of the professional limited liability company who practice law in North Carolina, and the name and address of at least one manager, and certifying that all such persons are duly licensed to practice law in the state of North Carolina, and representing that the professional limited liability company has complied with these regulations and the provisions of the North Carolina Limited Liability Company Act. Such application shall also

(i) set forth the name, address, and license information of each member who is not licensed to practice law in North Carolina but who performs services on behalf of the professional limited liability company in another jurisdiction in which the professional limited liability company maintains an office; and

(ii) certify that all such persons are duly licensed to practice law in the appropriate jurisdiction. Upon a finding by the secretary that all members are active members in good standing with the North Carolina State Bar, or are duly licensed to practice law in another jurisdiction in which the professional limited liability company maintains an office, the secretary shall renew the certificate of registration by making a notation in the records of the North Carolina State Bar;

(3) Renewal Fee - An application for renewal of a certificate of registration for either a professional corporation or a professional limited liability company shall be accompanied by a renewal fee of $25;

(4) Refund of Renewal Fee - If the secretary is unable to make the findings required by Rules .0103(e)(1) or .0103(e)(2) above, the secretary shall refund the $25 registration fee;

(5) Failure to Apply for Renewal of Certificate of Registration - In the event a professional corporation or a professional limited liability company shall fail to submit the appropriate application for renewal of certificate of registration, together with the renewal fee, to the North Carolina State Bar within 30 days following the expiration date of its certificate of registration, the certificate of registration for the delinquent professional corporation or professional limited liability company shall be suspended and the secretary of state will be notified of the suspension of said certificate of registration;

(6) Reinstatement of Suspended Certificate of Registration - Upon (a) the submission to the North Carolina State Bar of the appropriate application for renewal of certificate of registration, together with all past due renewal fees and late fees; and (b) a finding by the secretary that the representations in the application are correct, a suspended certificate of registration of a professional corporation or professional limited liability company shall be reinstated by the secretary by making a notation in the records of the North Carolina State Bar.

(7) Inactive Status Pending Dissolution - If a professional corporation or professional limited liability company notifies the State Bar in writing or, in response to a notice to show cause issued pursuant to Rule .0103(e)(5) of this subchapter, a delinquent professional corporation or professional limited liability company shows that the organization is no longer practicing law and is winding down the operations and financial activities of the organization, no renewal fee or late fee shall be owed and the organization shall be moved to inactive status for a period of not more than one year. If, at the end of that period, a copy of the articles of dissolution has not been filed with the State Bar, the secretary of the State Bar shall send a notice to show cause letter and shall pursue suspension of the certificate of registration as set forth in Rule. .0103(e)(5) of this subchapter.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 1997;
Amendments Approved by the Supreme Court: March 16, 2017; October 1, 2003.

27 NCAC 01E .0104 MANAGEMENT AND FINANCIAL MATTERS

(a) "Management" At least one director and one officer of a professional corporation and at least one manager of a professional limited liability company shall be active members in good standing with the North Carolina State Bar.

(b) "Authority Over Professional Matters:" No person affiliated with a professional corporation or a professional limited liability company, other than a licensee, shall exercise any authority whatsoever over the rendering of professional services in North Carolina or in matters of North Carolina law.
(c) "No Income to Disqualified Person" The income of a professional corporation or of a professional limited liability company attributable to the practice of law during the time that a shareholder of the professional corporation or a member of a professional limited liability company is legally disqualified to render professional services in North Carolina or, if the shareholder or member is not licensed in North Carolina, in any other jurisdiction in which the shareholder or member is licensed or after a shareholder or a member becomes a judge, other adjudicatory officer, or the holder of any other office, as specified in Rule .0102(a)(4) or .0102(b)(4) of this subchapter, shall not in any manner accrue to the benefit of such shareholder, or his or her shares, or to such member.
(d) "Stock of a Professional Corporation" A professional corporation may acquire and hold its own stock.
(e) "Acquisition of Shares of Deceased or Disqualified Shareholder" Subject to the provisions of G.S. 55B-7, a professional corporation may make such agreement with its shareholders or its shareholders may make such agreement between themselves as they may deem just for the acquisition of the shares of a deceased or retiring shareholder or a shareholder who becomes disqualified to own shares under the Professional Corporation Act or under these regulations.
(f) "Stock Certificate Legend" There shall be prominently displayed on the face of all certificates of stock in a professional corporation a legend that any transfer of the shares represented by such certificate is subject to the provisions of the Professional Corporation Act and these regulations.
(g) "Transfer of Stock of Professional Corporation" When stock of a professional corporation is transferred to a licensee, the professional corporation shall request that the secretary issue a stock transfer certificate (Form PC-5; see Rule .0106(e) of this subchapter) as required by G.S. 55B-6. The secretary is authorized to issue the certificate which shall be permanently attached to the stub of the transferee's stock certificate in the stock register of the professional corporation. The fee for such certificate shall be in an amount determined by the council and shall be charged for each transferee listed on the stock transfer certificate.
(h) "Stock Register of Professional Corporation" The stock register of a professional corporation shall be kept at the principal office of the corporation and shall be subject to inspection by the secretary or his or her delegate during business hours at the principal office of the corporation.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 1997; September 25, 2020.

27 NCAC 01E .0105 GENERAL AND ADMINISTRATIVE PROVISIONS
(a) "Administration of Regulations" These regulations shall be administered by the secretary, subject to the review and supervision of the council. The council may from time to time appoint such standing or special committees as it may deem proper to deal with any matter affecting the administration of these regulations. It shall be the duty of the secretary to bring to the attention of the council or its appropriate committee any violation of the law or of these regulations.
(b) "Appeal to Council" If the secretary shall decline to execute any certificate required by Rule .0103(a)(2), Rule .0103(b)(2), or Rule .0104(g) of this subchapter, or to renew the same when properly requested, or shall refuse to take any other action requested in writing by a professional corporation or a professional limited liability company, the aggrieved party may request in writing that the council review such action. Upon receipt of such a request, the council shall provide a formal hearing for the aggrieved party through a committee of its members.
(c) "Articles of Amendment, Merger, and Dissolution" A copy of the following documents, duly certified by the secretary of state, shall be filed with the secretary within 10 days after filing with the secretary of state:

(1) all amendments to the articles of incorporation of a professional corporation or to the articles of organization of a professional limited liability company;
(2) all articles of merger to which a professional corporation or a professional limited liability company is a party;
(3) all articles of dissolution dissolving a professional corporation or a professional limited liability company;
(4) any other documents filed with the secretary of state changing the corporate structure of a professional corporation or the organizational structure of a professional limited liability company.

(d) "Filing Fee" Except as otherwise provided in these regulations, all reports or papers required by law or by these regulations to be filed with the secretary shall be accompanied by a filing fee in an amount determined by the council.
(e) "Accounting for Filing Fees" All fees provided for in these regulations shall be the property of the North Carolina State Bar and shall be deposited by the secretary to its account, and such account shall be separately stated on all financial reports made by the secretary to the council and on all financial reports made by the council.

(f) "Records of State Bar" The secretary shall keep a file for each professional corporation and each professional limited liability company which shall contain the executed articles of incorporation or organization, all amendments thereto, and all other documents relating to the affairs of the corporation or professional limited liability company.
(g) "Additional Information" A professional corporation or a professional limited liability corporation shall furnish to the secretary such information and documents relating to the administration of these regulations as the secretary or the council may reasonably request.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 25, 2020.

27 NCAC 01E .0106 FORMS
(a) "Form PC" 1:

Application for Certificate of Registration for a Professional Corporation

The undersigned, being all of the incorporators of _____, a professional corporation to be incorporated under the laws of the state of North Carolina for the purpose of practicing law, hereby certify to the Council of the North Carolina State Bar:

1. At least one person who is an incorporator, at least one person who will be an original officer, and at least one person who will be an original director, and all persons who, to the best knowledge and belief of the undersigned, will be original shareholders and employees who will practice law for said professional corporation are duly licensed to practice law in the state of North Carolina. The names and addresses of such persons are:

Name and Position Address

(incorporator, officer, director, shareholder, employee)

_____ _____
_____ _____
_____ _____

2. Each original shareholder who is not licensed to practice law in North Carolina but who will perform services on behalf of the corporation in another jurisdiction in which the corporation maintains an office is duly licensed to practice law in that jurisdiction. The name, address, and license information of each such person are:

Name, Address, Jurisdiction of Licensure, License Number

_____
_____
_____

3. The jurisdictions other than North Carolina in which the corporation will maintain an office are:

Name of Jurisdiction and Address of Office(s)

_____
_____
_____

4. The undersigned represent that the professional corporation will be conducted in compliance with the Professional Corporations Act and with the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law.

5. Application is hereby made for a Certificate of Registration to be effective upon the effective date of the professional corporation's articles of incorporation after said articles are filed with the secretary of state.

6. Attached hereto is the registration fee of $50.

This the _____ day of _____, 19___.

_____
Incorporator

_____
Incorporator

_____
Incorporator

[Signatures of all incorporators.]

NORTH CAROLINA

_____ COUNTY

I hereby certify that _____, _____, _____, _____, and _____, being all of the incorporators of _____, a professional corporation, personally appeared before me this day and stated that they have read the foregoing Application for Certificate of Registration for a Professional Corporation and that the statements contained therein are true.

Witness my hand and notarial seal, this _____ day of _____, 19____.

_____
Notary Public

My commission expires:

_____

(b) Form PC" 2:

Certification for Professional Corporation by Council of the North Carolina State Bar

The incorporators of _____, a professional corporation, have certified to the Council of the North Carolina State Bar the names and addresses of all persons who will be original owners of said professional corporation's shares.

Based upon that certification and my examination of the roll of attorneys licensed to practice law in the state of North Carolina, I hereby certify that the ownership of the shares of stock is in compliance with the requirements of G.S. 55B-4(2) and G.S. 55B-6.

This certificate is executed under the authority of the Council of the North Carolina State Bar, this _____ day of _____, 19____.

_____
Secretary of the North Carolina State Bar

[This certificate is required by G.S. 55B-4(4) and must be attached to the original articles of incorporation when filed with the secretary of state. See Rule .0103(a)(2) of this subchapter.]

(c) Form PC" 3:

Certificate of Registration for a Professional Corporation

It appears that _____, a professional corporation, has met all of the requirements of G.S. 55B-4, G.S. 55B-6 and the Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law of the North Carolina State Bar.

By the authority of the Council of the North Carolina State Bar, I hereby issue this Certificate of Registration for a Professional Corporation pursuant to the provisions of G.S. 55B-10 and the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law.

This registration is effective upon the effective date of the articles of incorporation of said professional corporation, after said articles are filed with the secretary of state, and expires on June 30, 19____.

This the _____ day of _____, 19____.

_____

Secretary of the North Carolina State Bar

(d) Form PC" 4:

Application for Renewal of Certificate of Registration for Professional Corporation

Application is hereby made for renewal of the Certificate of Registration for Professional Corporation of _____, a professional corporation.

In support of this application, the undersigned hereby certify to the Council of the North Carolina State Bar:

1. At least one of the officers and one of the directors, and all of the shareholders and employees of said professional corporation who practice law for said professional corporation in North Carolina are duly licensed to practice law in the state of North Carolina. The names and addresses of such persons are:

Name and Position	Address
(incorporator, officer, director, shareholder, employee)	
_____	_____
_____	_____
_____	_____

2. Each shareholder who is not licensed to practice law in North Carolina but who performs services on behalf of the corporation in another jurisdiction in which the corporation maintains an office is duly licensed to practice law in that jurisdiction. The name, address, and license information of each such person are:

Name, Address, Jurisdiction of Licensure, License Number

_____

_____

_____

3. The jurisdictions other than North Carolina in which the corporation maintains an office are:

Name of Jurisdiction and Address of Office(s)

_____

_____

_____

4. At all times since the issuance of its Certificate of Registration for Professional Corporation, said professional corporation has complied with the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law and with the Professional Corporations Act.

5. Attached hereto is the renewal fee of $25.

This the _____ day of _____, 19___.

_____
(Professional Corporation)

By:_____
President (or Chief Executive)

NORTH CAROLINA

_____ COUNTY

I hereby certify that _____, _____, _____, _____, and _____, being all of the incorporators of _____, a professional corporation, personally appeared before me this day and stated that they have read the foregoing Application for Certificate of Registration for a Professional Corporation and that the statements contained therein are true.

Witness my hand and notarial seal, this _____ day of _____, 19____.

_____
Notary Public

My commission expires:

_____

(e) Form PC" 5:

North Carolina State Bar Stock Transfer Certificate

I hereby certify that _____ (transferee) is duly licensed to practice law in the State of North Carolina and as of this date may be a transferee of shares of stock in a professional corporation formed to practice law in the state of North Carolina.

This certificate is executed under the authority of the Council of the North Carolina State Bar, this _____ day of _____, 19_____.

_____
Secretary of the North Carolina State Bar

[This certificate is required by G.S. 55B-6 and must be attached to the transferee's stock certificate. See Rule .0104(g) of this subchapter.]

(f) Form PLLC" 1:

Application for Certificate of Registration for a Professional Limited Liability Company

The undersigned, being all of the persons executing the articles of organization of _____, a professional limited liability company to be organized under the laws of the state of North Carolina for the purpose of practicing law, hereby certify to the Council of the North Carolina State Bar:

1. At least one person executing the articles of organization, at least one person who will be an original manager, and all persons who, to the best knowledge and belief of the undersigned, will be original members and employees who will practice law for said professional limited liability company in North Carolina are duly licensed to practice law in the state of North Carolina. The names and addresses of all such persons are:

Name and Position | Address

(signer of articles, manager, member, employee)

_____ _____
_____ _____
_____ _____

2. Each original member who is not licensed to practice law in North Carolina but who will perform services on behalf of the professional limited liability company in another jurisdiction in which the professional limited liability company maintains an office is duly licensed to practice law in that jurisdiction. The names, addresses, and license information of each such person are:

Name, Address, Jurisdiction of Licensure, License Number

_____
_____
_____

3. The jurisdictions other than North Carolina in which the professional limited liability company will maintain an office are:

Name of Jurisdiction and Address of Office(s)

_____
_____
_____

4. The undersigned represent that the professional limited liability company will be conducted in compliance with the North Carolina Limited Liability Company Act and with the North Carolina state Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law.

5. Application is hereby made for a Certificate of Registration to be effective upon the effective date of the professional limited liability company's articles of organization after said articles are filed with the secretary of state.

6. Attached hereto is the registration fee of $50.

This the _____ day of _____, 19___.

_____
_____
_____

(Signatures of all persons executing articles of organization.)

NORTH CAROLINA

_____ COUNTY

I hereby certify that _____, _____, _____, _____, and _____, being all of the incorporators of _____, a professional corporation, personally appeared before me this day and stated that they have read the foregoing Application for Certificate of Registration for a Professional Corporation and that the statements contained therein are true.

Witness my hand and notarial seal, this _____ day of _____, 19____.

_____
Notary Public

My commission expires:

_____

(g) Form PLLC" 2:

Certification for Professional Limited Liability Company by Council of the North Carolina State Bar

All of the persons executing the articles of organization of _____, a professional limited liability company, have certified to the Council of the North Carolina State Bar the names and addresses of all persons who will be original members of said professional limited liability company.

Based upon that certification and my examination of the roll of attorneys licensed to practice law in the state of North Carolina, I hereby certify that the membership interest is in compliance with the requirements of G.S. 55C-2-01(c), and, by reference, G.S. 55B-4(2) and G.S. 55B-6.

This certificate is executed under the authority of the Council of the North Carolina State Bar, this _____ day of _____, 19____.

_____

Secretary of the North Carolina State Bar

[This certificate is required by G.S. 55B-4(4) and G.S. 57C-2-01 and must be attached to the original articles of organization when filed with the secretary of state. See Rule .0103(b)(2) of this subchapter.]

(h) Form PLLC" 3:

Certificate of Registration for a Professional Limited Liability Company

It appears that _____, a professional limited liability company, has met all of the requirements of G.S. 57C-2-01 and the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law.

By the authority of the Council of the North Carolina State Bar, I hereby issue this Certificate of Registration for a Professional Limited Liability Company pursuant to the provisions of G.S. 55B-10, G.S. 57C-2-01 and the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law.

This registration is effective upon the effective date of the articles of organization of said professional limited liability company, after said articles are filed with the secretary of state, and expires on June 30, 19____.

This the _____ day of _____, 19____.

_____

Secretary of the North Carolina State Bar

(i) Form PLLC" 4:

Application for Renewal of Certificate of Registration for Professional Limited Liability Company

Application is hereby made for renewal of the Certificate of Registration for Professional Limited Liability Company of _____, a professional limited liability company.

In support of this application, the undersigned hereby certify to the Council of the North Carolina State Bar:

1. At least one of the managers, and all of the members and employees of said professional limited liability company who practice law for said professional limited liability company in North Carolina are duly licensed to practice law in the State of North Carolina. The names and addresses of all such persons are:

Name and Position — Address

(manager, member, employee)

_____ _____

_____ _____

_____ _____

2. Each member who is not licensed to practice law in North Carolina but who performs services on behalf of the professional limited liability company in another jurisdiction in which the professional limited liability company maintains an office is duly licensed to practice law in that jurisdiction. The names, addresses, and license information of each such person are:

Name, Address, Jurisdiction of Licensure, License Number

_____

_____

_____

3. The jurisdictions other than North Carolina in which the professional limited liability company maintains an office are:

Name of Jurisdiction and Address of Office(s)

_____

_____

_____

4. At all times since the issuance of its Certificate of Registration for Professional Limited Liability Company, said professional limited liability company has complied with the North Carolina State Bar's Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law and with the provisions of the North Carolina Limited Liability Company Act.

5. Attached hereto is the renewal fee of $25.

This the _____ day of _____, 19___.

_____
(Professional Limited Liability Company)

NORTH CAROLINA

_____ COUNTY

I hereby certify that _____, _____, _____, _____, and _____, being all of the incorporators of _____, a professional corporation, personally appeared before me this day and stated that they have read the foregoing Application for Certificate of Registration for a Professional Corporation and that the statements contained therein are true.

Witness my hand and notarial seal, this _____ day of _____, 19____.

_____
Notary Public

My commission expires:

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

SECTION .0200 – REGISTRATION OF INTERSTATE AND INTERNATIONAL LAW FIRMS

27 NCAC 01E .0201 REGISTRATION REQUIREMENT

No law firm or professional organization that (1) maintains offices in North Carolina and one or more other jurisdictions, or (2) files for a certificate of authority to transact business in North Carolina from the North Carolina Secretary of State, may do business in North Carolina without first obtaining a certificate of registration from the North Carolina State Bar provided, however, that no law firm or professional organization shall be required to obtain a certificate of registration if all attorneys associated with the law firm or professional organization, or any law firm or professional organization that is in partnership with said law firm or professional organization, are licensed to practice law in North Carolina.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 2014; March 5, 1998.

27 NCAC 01E .0202 CONDITIONS OF REGISTRATION

The secretary of the North Carolina State Bar shall issue such a certificate upon satisfaction of the following conditions precedent:

(1) There shall be filed with the secretary of the North Carolina State Bar a registration statement disclosing:
  (a) all names used to identify the filing law firm or professional organization;
  (b) addresses of all offices maintained by the filing law firm or professional organization;
  (c) the name and address of any law firm or professional organization with which the filing law firm or professional organization is in partnership and the name and address of such partnership;
  (d) the name and address of each attorney who is a partner, shareholder, member or employee of the filing law firm or professional organization or who is a partner, shareholder, member or employee of a law firm or professional organization with which the filing law firm or professional organization is in partnership;
  (e) the relationship of each attorney identified in Rule .0202(1)(d) of this Rule to the filing law firm or professional organization;
  (f) the states to which each attorney identified in Rule .0202(1)(d) of this Rule is admitted to practice law.

(2) There shall be filed with the registration statement a notarized statement of the filing law firm or professional organization by a member who is licensed in North Carolina certifying that each attorney identified in Rule .0202(1)(d) of this Rule who is not licensed to practice law in North Carolina is a member in good standing of each state bar to which the attorney has been admitted.

(3) There shall be filed with the registration statement a notarized statement of the filing law firm or professional organization affirming that each attorney identified in Rule .0202(1)(d) above who is not licensed to practice law in North Carolina will govern his or her personal and professional conduct with respect to legal matters arising from North Carolina in accordance with the Rules of Professional Conduct of the North Carolina State Bar.

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

27 NCAC 01E .0203 REGISTRATION FEE

There shall be submitted with each registration statement and supporting documentation a registration fee as an administrative cost which shall be in an amount determined by the council.

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

Amended Eff. September 25, 2020.

27 NCAC 01E .0204 CERTIFICATE OF REGISTRATION

A certificate of registration shall remain effective until January 1 following the date of filing and may be renewed annually by the secretary of the North Carolina State Bar upon the filing of an updated registration statement which satisfies the requirements set forth above and the submission of the registration fee.

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

27 NCAC 01E .0205 EFFECT OF REGISTRATION

This Rule shall not be construed to confer the right to practice law in North Carolina upon any lawyer not licensed to practice law in North Carolina.

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

27 NCAC 01E .0206 NON-RENEWAL OF REGISTRATION

If a law firm or professional organization registered under these rules no longer meets the criteria for registration, it shall notify the State Bar in writing. If such written notice is not received by the State Bar on or before December 31 of the year in which registration is no longer required, the registration fee for the next calendar year, as set forth in Rule .0203 of this Subchapter, shall be owed.

History Note: *Authority G.S. 84-23;*
Eff. October 1, 2003.

SECTION .0300 - RULES CONCERNING PREPAID LEGAL SERVICES PLANS

On 18 October 1991, the North Carolina State Bar Council established nine rules regarding prepaid legal services plans. In 1994, those rules were codified into the North Carolina Administrative Code at 27 N.C.A.C. Ch. 1E, Section .0300. In 2007, and again in 2020, the rules were revised and renumbered, and several new rules were adopted.

27 NCAC 01E .0301 DEFINITIONS

The following words and phrases when used in this subchapter shall have the meanings given to them in this rule:
(a) Counsel – the counsel of the North Carolina State Bar appointed by the Council of the North Carolina State Bar.
(b) Plan Owner – the person or entity not authorized to engage in the practice of law that operates or is seeking to operate a plan in accordance with these Rules.
(c) Prepaid Legal Services Plan or Plan – any arrangement by which a person or entity, not authorized to engage in the practice of law, in exchange for any valuable consideration, offers to arrange the provision of specified legal services that are paid for in advance of any immediate need for the specified legal services ("covered services"). In addition to covered services, a plan may arrange the provision of specified legal services at fees that are less than what a non-member of the plan would normally pay. The North Carolina legal services arranged by a plan must be provided by a North Carolina licensed attorney who is not an employee, director, or owner of the plan. A plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: February 5, 2002;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0303 on September 25, 2020.

27 NCAC 01E .0302 STATE BAR JURISDICTION

The North Carolina State Bar retains jurisdiction over North Carolina licensed attorneys who participate in plans, whose conduct is subject to the rules and regulations of the State Bar.

History Note: *Authority G.S. 84-23; 84-23.1;*

Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0311 on September 25, 2020.

27 NCAC 01E .0303 ROLE OF AUTHORIZED PRACTICE COMMITTEE

The Authorized Practice Committee ("committee"), as a duly authorized standing committee of the North Carolina State Bar Council, shall oversee the registration of plans in accordance with these rules. The committee shall also establish reasonable deadlines, rules and procedures regarding the initial and annual registrations, amendments to registrations, and the revocation of registrations of plans.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; October 7, 2010; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0304(c) on September 25, 2020.

27 NCAC 01E .0304 INDEX OF REGISTERED PLANS

The North Carolina State Bar shall maintain an index of the plans registered pursuant to these rules. All documents filed pursuant to these rules shall be available for public inspection during regular business hours.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0309 on September 25, 2020.

27 NCAC 01E .0305 REGISTRATION REQUIREMENT

A plan shall be registered with the North Carolina State Bar before operating in North Carolina. Registration shall be evidenced by a certificate of registration issued by the State Bar. No plan may operate in any manner that violates the North Carolina statutes regarding the unauthorized practice of law. No plan may operate in North Carolina unless at least one licensed North Carolina attorney has agreed to provide the legal services arranged by the plan at all times during the operation of the plan. No licensed North Carolina attorney shall participate in a plan in this state unless the plan has registered with the State Bar and has complied with the rules set forth below.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0302 on September 25, 2020.

27 NCAC 01E .0306 REGISTRATION FEES

The initial and annual registration fees for each plan shall be determined by the council and shall be non-refundable.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; March 8, 2012; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0308 on September 25, 2020.

27 NCAC 01E .0307 REGISTRATION PROCEDURES

To register a plan, the plan owner shall complete the initial registration statement form contained in Rule .0310 and file it with the secretary of the North Carolina State Bar.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; October 7, 2010; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0304(a) on September 25, 2020.

27 NCAC 01E .0308 INITIAL REGISTRATION DETERMINATION

Counsel shall review the plan's initial registration statement. If the plan satisfies the requirements for registration, the secretary shall issue a certificate of registration to the plan owner. If the plan does not satisfy the requirements for registration, counsel shall inform the plan owner that the plan will not be registered and shall explain the deficiencies. Upon notice that the plan will not be registered, the plan owner may resubmit one amended initial registration statement or request a hearing before the committee pursuant to Rule .0317 below. Counsel shall provide a report to the committee each quarter identifying the plans that submitted initial registration statements and whether each plan was registered.

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: August 23, 2007;
Amendments Approved by the Supreme Court: October 7, 2010; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0305 on September 25, 2020.

27 NCAC 01E .0309 REGISTRATION DOES NOT CONSTITUTE APPROVAL

The registration of any plan under these rules shall not be construed to indicate approval, disapproval, or an endorsement of the plan by the North Carolina State Bar. Any plan that advertises or otherwise represents that it is registered with the State Bar shall include a clear and conspicuous statement within the advertisement or communication that registration with the State Bar does not constitute approval or an endorsement of the plan by the State Bar.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: February 5, 2002; August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0301 and .0310 on September 25, 2020.

27 NCAC 01E .0310 INITIAL REGISTRATION STATEMENT FORM

Initial Registration Statement Form for Prepaid Legal Services Plan

Any person or entity seeking to operate a prepaid legal services plan shall register the plan with the North Carolina State Bar on the initial registration statement form provided by the State Bar. Each plan must be registered prior to its operation in North Carolina.

The plan owner shall complete this form and file it with the secretary of the State Bar. The plan owner must provide complete responses to each of the following items. The plan will not be registered if any item is left incomplete.

1. Name of Plan:
    a. Owner of Plan
        i. Name:
        ii. Title:

2. Principal North Carolina Address for Plan:
    a. Address:
    b. City:
    c. State:
    d. Zip Code:

3. Contact Information for Plan Representative
    a. Name:
    b. Address:
    c. City:
    d. State:
    e. Zip Code:
    f. Telephone Number:
    g. Email Address:

4. Is the plan offered by a person or entity not authorized to engage in the practice of law? [Yes] [No]

5. Does the plan, in exchange for any valuable consideration, offer to arrange the provision of specified legal services that are paid for in advance of any immediate need for the specified legal service ("covered services")? [Yes] [No]

6. Are the legal services the plan offers to arrange provided by North Carolina licensed attorneys who are not employees, directors, or owners of the plan? [Yes] [No]
a. Attach a list of the names, addresses, bar numbers, and telephone numbers of all North Carolina licensed attorneys who have agreed to participate in the plan. This list should be alphabetized by attorney last name.

7. Do the covered services the plan offers to arrange extend beyond the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee? [Yes] [No]

8. Has the plan owner signing below read and gained an understanding of the administrative rules applicable to prepaid legal services plans as adopted by the State Bar Council? [Yes] [No]

9. Does the plan owner signing below agree to comply with the administrative rules applicable to prepaid legal services plans as adopted by the State Bar Council and accept responsibility for the plan's compliance with those administrative rules? [Yes] [No]

10. Has the plan owner signing below read and gained an understanding of the law governing the unauthorized practice of law as set out in N.C. Gen. Stat. § 84-2.1, 4, and 5? [Yes] [No]

11. Is a check for the initial registration fee made payable to the State Bar enclosed with this statement? [Yes] [No]

12. After reading the foregoing form and the list of all North Carolina licensed attorneys who have agreed to participate in the plan in its entirety, does the plan owner signing below certify that all statements made in this form and the list of all North Carolina licensed attorneys who have agreed to participate in the plan are true and correct to the best of his or her knowledge? [Yes] [No]

_____
Date

_____
Signature of Plan Owner

_____
Typed Name of Plan Owner

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; October 7, 2010; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0304(b) on September 25, 2020.

27 NCAC 01E .0311 ANNUAL REGISTRATION RENEWAL

After its initial registration, a plan may continue to operate so long as it timely files the proscribed registration renewal form and its operation is consistent with its registration statement. The plan owner shall file the registration renewal form contained in Rule .0312 with the secretary of the North Carolina State Bar and pay the annual registration fee on or before December 1 of each year. If a plan fails to file the registration renewal form and pay the annual registration fee by December 1, counsel may request the committee at its next quarterly meeting to instruct the secretary of the State Bar to serve upon the plan owner a notice to show cause why the plan's registration should not be revoked as provided in Rule .0316.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0307 on September 25, 2020.

27 NCAC 01E .0312 REGISTRATION RENEWAL FORM

Registration Renewal Form for Prepaid Legal Services Plan

Each prepaid legal services plan registered to operate in North Carolina shall renew its registration each year. If a plan fails to file the registration renewal form and pay the annual registration fee by December 1, counsel may request the Authorized Practice Committee at its next quarterly meeting to instruct the secretary of the State Bar to serve upon the plan's owner a notice to show cause why the plan's registration should not be revoked.

1. Current Registration Information
    a. Plan Name:
    b. Plan Number:

2. Is the plan still offered by a person or entity not authorized to engage in the practice of law? [Yes] [No]

3. Does the plan, in exchange for any valuable consideration, still offer to arrange the provision of specified legal services that are paid for in advance of any immediate need for the specified legal service ("covered services")? [Yes] [No]

4. Are the legal services the plan offers to arrange still provided by North Carolina licensed attorneys who are not employees, directors, or owners of the plan? [Yes] [No]

5. Do the covered services the plan offers to arrange still extend beyond the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee? [Yes] [No]

6. Attach a list of the names, addresses, bar numbers, and telephone numbers of all North Carolina licensed attorneys who provide or offer to provide the legal services arranged by the plan. This list should be alphabetized by attorney last name.

7. If there have been any amendments to the plan since its initial registration statement or since it renewed its registration last year that are not indicated herein, please attach copies of the registration amendment forms filed with the State Bar and the letter from the State Bar reporting that such forms were registered to this report and indicate in the box provided whether any amendments are attached.

8. Is a check for the non-refundable annual registration fee payable to the State Bar enclosed with this report? [Yes] [No]

9. Are there any changes the owner signing below wishes to make to the plan? [Yes] [No]
    a. If "No," please skip to item 15. If "Yes," only complete the items below that the plan owner wishes to change. Please note that any desired changes must be indicated here and that the plan owner must complete and file a separate registration amendment form.

10. New Name of Plan:

11. New Owner of Plan
    a. Name:
    b. Title:

12. New Principal North Carolina Address for Plan
    a. Address:
    b. City:
    c. State:
    d. Zip Code:

13. New Contact Information for Plan Representative
    a. Name:
    b. Address:
    c. City:
    d. State:
    e. Zip Code:
    f. Telephone Number:

g. Email Address:

14. Does the plan owner signing below understand that the amendments to this plan may not be implemented until the registration amendment form is registered with the State Bar in accordance with 27 N.C.A.C. 1E, §§ .0313 through .0315 of the North Carolina State Bar Regulations for Organizations Practicing Law? [Yes] [No]

15. Does the plan owner signing below certify that the information contained herein is true and correct to the best of his or her knowledge? [Yes] [No]

_____
Date

_____
Signature of Plan Owner

_____
Typed Name of Plan Owner

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: September 25, 2020.

27 NCAC 01E .0313 REGISTRATION AMENDMENTS

(a) A plan owner shall file an amendment to its registration statement ("registration amendment") to document any change in the information provided in its initial registration statement or in its last registration renewal form. A plan owner shall file the registration amendment form contained in Rule .0315 with the secretary of the North Carolina State Bar prior to any change that requires the plan owner to file an amendment. An amendment to a plan shall not be implemented until the registration amendment is registered in accordance with Rule .0314.

(b) A plan owner shall not be required to file a registration amendment form each time there is a change in licensed North Carolina attorneys who have agreed to provide the legal services arranged by the plan. A plan owner shall provide a current list of licensed North Carolina attorneys who agree to provide the legal services arranged by the plan with each registration renewal form as set forth in Rule .0312.

History Note: *Authority G.S. 84-23; 84-23.1;*
Readopted Eff. Dec 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2007; September 25, 2020;
Rule was transferred from 27 NCAC 01E .0306 on September 25, 2020.

27 NCAC 01E .0314 DETERMINATION OF REGISTRATION AMENDMENTS

Counsel shall review a plan's registration amendment. If counsel determines that the plan will continue to satisfy the requirements for registration, counsel shall inform the plan owner that the plan's registration amendment will be registered. If counsel determines that the plan will not continue to satisfy the requirements for registration, counsel shall inform the plan owner that the registration amendment will not be registered and shall explain the deficiencies. Counsel shall provide a report to the committee each quarter identifying the plans that submitted registration amendments and whether each registration amendment was registered.

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: September 25, 2020.

27 NCAC 01E .0315 REGISTRATION AMENDMENT FORM

Registration Amendment Form for Prepaid Legal Services Plan

A prepaid legal services plan shall file a registration amendment form with the secretary of the North Carolina State Bar no later than 30 days after a change in the information provided by the plan in its initial registration statement or in its last registration renewal form. Changes to the operation of the plan or to the governing documents of the plan that are inconsistent with the information contained in the plan's initial registration statement or in the plan's last registration renewal form may not be implemented until they are registered with the State Bar.

The plan owner shall provide complete responses to items 2 – 5 if he or she would like to amend the plan's current registration information. There is no need to complete items 2 – 5 if they have not changed. The plan owner shall provide complete responses to item 1 and items 6 – 11.

1. Current Registration Information
    a. Plan Name:
    b. Plan Number:

2. New Name of Plan:

3. New Owner of Plan
    a. Name:
    b. Title:

4. New Principal North Carolina Address for Plan
    a. Address:
    b. City:
    c. State:
    d. Zip Code:

5. New Contact Information for Plan Representative
    a. Name:
    b. Address:
    c. City:
    d. State:
    e. Zip Code:
    f. Telephone Number:
    g. Email Address:

6. Is the plan still offered by a person or entity not authorized to engage in the practice of law? [Yes] [No]

7. Does the plan, in exchange for any valuable consideration, still offer to arrange the provision of specified legal services that are paid for in advance of any immediate need for the specified legal service ("covered services")? [Yes] [No]

8. Are the legal services the plan offers to arrange still provided by North Carolina licensed attorneys who are not employees, directors, or owners of the plan? [Yes] [No]

9. Do the covered services the plan offers to arrange still extend beyond the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee? [Yes] [No]

10. After reading the foregoing form in its entirety, does the plan owner signing below certify that all statements made in this form are true and correct to the best of his or her knowledge? [Yes] [No]

11. Does the plan owner signing below understand that the amendments to this plan may not be implemented until the registration amendment form is registered with the North Carolina State Bar in accordance with 27 N.C.A.C. 1E §§ .0313 through .0315 of the North Carolina State Bar Regulations for Organizations Practicing Law? [Yes] [No]

_____
Date

_____
Signature of Plan Owner

_____
Typed Name of Plan Owner

History Note: *Authority G.S. 84-23; 84-23.1;*

Adopted by the Supreme Court: September 25, 2020.

27 NCAC 01E .0316 REVOCATION OF REGISTRATION

Whenever it appears that a plan: (1) no longer meets the definition of a prepaid legal services plan; (2) is marketed or operates in a manner that is not consistent with the representations made in the initial registration statement, the registration amendment form, or with the most recent registration renewal form filed with the North Carolina State Bar; (3) is marketed or operates in a manner that constitutes the unauthorized practice of law; (4) is marketed or operates in a manner that violates state or federal laws or regulations, including the rules and regulations of the State Bar; or (5) has failed to pay the annual registration fee, the committee may instruct the secretary of the State Bar to serve upon the plan owner a notice to show cause why the plan's registration should not be revoked. The notice shall specify the plan's apparent deficiency and allow the plan owner to file with the secretary a written response within 30 days of service. If the plan owner fails to file a timely written response, the secretary shall issue an order revoking the plan's registration and shall serve the order upon the plan owner. If a timely written response is filed, the secretary shall schedule a hearing, in accordance with Rule .0317 below, before the committee and shall so notify the plan owner. The secretary may waive such hearing based upon a stipulation by the plan owner and counsel that the plan's apparent deficiency has been cured. All notices to show cause and orders required to be served herein shall be served: (1) by certified mail at the address last provided to the State Bar by the plan owner; (2) in accordance with any other provisions of Rule 4 of the North Carolina Rules of Civil Procedure; or (3) by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process. The State Bar shall not register the registration renewal form of any plan for which the secretary has issued a notice to show cause under this section, but the plan may continue to operate under the prior registration statement until resolution of the show cause notice by the council.

History Note: *Authority G.S. 84-23; 84-23.1*
Adopted by the Supreme Court: August 23, 2007;
Amendments Approved by the Supreme Court: September 25, 2020;
Rule was transferred from 27 NCAC 01E .0312 on September 25, 2020.

27 NCAC 01E .0317 HEARING BEFORE THE AUTHORIZED PRACTICE COMMITTEE

The chair of the Authorized Practice Committee shall preside at any hearing concerning the registration of a prepaid legal services plan. The chair shall cause a record of the proceedings to be made. Strict compliance with the North Carolina Rules of Evidence is not required, but the North Carolina Rules of Evidence may be used to guide the committee in the conduct of an orderly hearing. The counsel shall represent the State Bar and may offer witnesses and documentary evidence, may cross-examine adverse witnesses, and may argue the State Bar's position. The plan owner may appear and may be represented by counsel, may offer witnesses and documentary evidence, may cross-examine adverse witnesses, and may argue the plan owner's position. The burden of proof shall be upon the plan owner to establish that the plan meets the definition of a prepaid legal services plan, that all registration fees have been paid, and that the plan has operated and does operate in a manner consistent with all applicable law, with these rules, and with all representations made in its then current registration statement. If the plan owner meets its burden of proof, the initial registration statement, the registration amendment form, or the registration renewal form in question shall be registered. If the plan owner fails to meet its burden of proof, the committee shall recommend to the council that the plan's initial registration statement, registration amendment form, or registration renewal form be denied or revoked.

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: August 23, 2007;
Amendments Approved by the Supreme Court: September 25, 2020;
Rule was transferred from 27 NCAC 01E .0313 on September 25, 2020.

27 NCAC 01E .0318 ACTION BY THE COUNCIL

Upon the recommendation of the Authorized Practice Committee, the council may enter an order denying or revoking the registration of a plan. The order shall be effective when entered by the council. A copy of the order shall be served upon the plan owner as prescribed in Rule .0316 above.

History Note: *Authority G.S. 84-23; 84-23.1;*
Adopted by the Supreme Court: August 23, 2007;
Amendments Approved by the Supreme Court: September 25, 2020;
Rule was transferred from 27 NCAC 01E .0314 on September 25, 2020.

SECTION .0400 - RULES FOR ARBITRATION OF INTERNAL LAW FIRM DISPUTES

27 NCAC 01E .0401 PURPOSE

Subject to these rules, the North Carolina State Bar will administer a voluntary binding arbitration program for resolution of disputed issues between lawyers arising out of the dissolution of law firms or disputes within law firms. The purpose of this arbitration procedure is to provide a mechanism for resolving economic disputes between lawyers arising out of the operation or dissolution of law firms.

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

27 NCAC 01E .0402 SUBMISSION TO ARBITRATION

The program is voluntary. The procedure shall be instituted by a written submission to arbitration agreement, executed by all the parties to the dispute, in a form and manner as provided by the executive director of the North Carolina State Bar.

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

27 NCAC 01E .0403 JURISDICTION

The procedure may be used for the resolution of any dispute if all of the following conditions are met:

(1) the disputed issues submitted to arbitration hereunder shall be solely between or among lawyers who are members of the same law firm;

(2) the dispute arises out of an economic relationship between or among lawyers concerning the operation, dissolution, or proposed dissolution of the law firm of which they are members;

(3) at least one of the parties to such dispute resides or maintains an office for the practice of law in the state of North Carolina and is a member of the North Carolina State Bar;

(4) all parties agree in a written submission to arbitration agreement to submit the issues in dispute to binding arbitration under these rules and procedures.

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

27 NCAC 01E .0404 ADMINISTRATION

The North Carolina State Bar is the administrator of the arbitration program, through its executive director and his designees, to carry out all administrative functions, including those specified in Rules .0406 through .0410 of this subchapter.

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

27 NCAC 01E .0405 UNIFORM ARBITRATION ACT

Except as modified herein, all arbitration procedures will be governed by Article 45A of Chapter 1 of the General Statutes of North Carolina (Uniform Arbitration Act). Said Uniform Arbitration Act and any amendments thereto are hereby incorporated by reference and constitute a part of these rules.

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

27 NCAC 01E .0406 LIST OF ARBITRATORS

The North Carolina State Bar shall establish a list of arbitrators, consisting of attorneys or retired judges, who have been members of the North Carolina State Bar for at least 10 years and who have indicated a willingness to serve. The parties shall, in their submission to arbitration agreement, elect to have one or three arbitrators. The administrator shall thereafter provide each party with the list of arbitrators.

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

Readopted Eff. December 8, 1994.

27 NCAC 01E .0407 SELECTION OF ARBITRATORS

If three arbitrators are to be selected, then

(1) each party to the dispute shall, within 10 days after receipt of notice from the administrator, select one arbitrator on the approved list who shall be contacted by the administrator concerning his or her ability to serve and dates of availability. The two arbitrators so chosen shall execute an oath and appointment of arbitrator certificate provided by the administrator. Within 15 days after certification, the two arbitrators shall choose a third from the administrator's approved list, who shall also execute an oath and appointment certificate. Failure of the two arbitrators to choose a third within the allotted time shall constitute a consent to have the third arbitrator chosen by the administrator;

(2) if the opposing parties cannot, because of the number of parties involved, settle upon two arbitrators who are to choose the third as set forth above, then the administrator shall notify the parties and appoint all three arbitrators from the approved list.

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

27 NCAC 01E .0408 FEES AND EXPENSES

All expenses and the arbitrator(s') fees shall be paid by the parties. Arbitrator(s') compensation shall be at the same rate paid to retired judges who are assigned to temporary active service as provided in G.S. 7A-52 or any successor statutory provision. The administrator may require from each party an escrow deposit covering anticipated fees and expenses.

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

27 NCAC 01E .0409 CONFIDENTIALITY

It is the policy of the North Carolina State Bar to protect the confidentiality of all arbitration proceedings. The parties, the arbitrators, and the North Carolina State Bar shall keep all proceedings confidential, except that any final award shall be enforceable under Chapter 1, Article 45A.

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

27 NCAC 01E .0410 AUTHORITY TO ADOPT AMENDMENTS AND REGULATIONS

The North Carolina State Bar may, from time to time, adopt and amend procedures and regulations consistent with these rules and amend or supplement these rules or otherwise regulate the arbitration procedure.

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

SUBCHAPTER 1F - REGULATIONS FOR FOREIGN LEGAL CONSULTANTS

SECTION .0100 - FOREIGN LEGAL CONSULTANTS

27 NCAC 01F .0101 APPLICATIONS

All applications for certification as a foreign legal consultant must be made on forms supplied by the North Carolina State Bar and must be complete in every detail. Every supporting document required by the application form must be submitted with each application. The application form may be obtained by writing or by telephoning the Bar's offices.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0102 APPLICATION FORM

(a) The application for certification as a foreign legal consultant form requires an applicant to supply full and complete information under oath relating to the applicant's background, including family history, past and current residences, education, military service, past and present employment, citizenship, credit status, involvement in disciplinary, civil, or criminal proceedings, substance abuse, mental treatment and bar admission and discipline history.

(b) Every applicant must submit as part of the application:

(1) A certificate from the authority that has final jurisdiction regarding matters of professional discipline in the foreign country or jurisdiction in which the applicant is admitted to practice law, or the equivalent thereof. This certificate must be signed by a responsible official or one of the members of the executive body of the authority, imprinted with the official seal of the authority, if any, and must certify:

(A) The authority's jurisdiction in such matters;

(B) The applicant's admission to practice law, or the equivalent thereof, in the foreign country, the date of admission and the applicant's standing as an attorney or the equivalent thereof; and

(C) Whether any charge or complaint has ever been filed with the authority against the applicant and if so, the substance of and adjudication or resolution of each charge or complaint.

(2) A letter of recommendation from one of the members of the executive body of this authority or from one of the judges of the highest law court or court of general original jurisdiction of the foreign country, certifying the applicant's professional qualifications, and a certificate from the clerk of this authority or the clerk of the highest law court or court of general original jurisdiction, attesting to the genuineness of the applicant's signature;

(3) A letter of recommendation from at least two attorneys, or the equivalent thereof, admitted in and practicing law in the foreign country, stating the length of time, when, and under what circumstances they have known the applicant and their appraisal of the applicant's moral character;

(4) Two sets of clear fingerprints;

(5) Two executed informational Authorization and Release forms;

(6) A birth certificate;

(7) Copies of all applications to take a bar examination or an attorney's examination or for admission to the practice of law that the applicant has filed in any state or territory of the U.S., or the District of Columbia or in any foreign country;

(8) Certified copies of any legal proceedings in which the applicant has been a party;

(9) Two recent 2-inch by 3-inch photographs of the applicant showing a front view of the applicant's head and shoulders; and

(10) Any other relevant documents or information as may be required by the North Carolina State Bar.

(c) The application must be filed in duplicate. The duplicate may be a photocopy of the original.

(d) The application and all required attachments shall be in English or accompanied by duly authenticated English translations.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0103 REQUIREMENTS FOR APPLICANTS

As a prerequisite to being certified as a foreign legal consultant, an applicant shall:

(1) Possess the qualifications of character and general fitness requisite for an attorney and counselor at law and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Rule .0104 of this Section at the time the certificate is issued;

(2) Have been admitted to practice as an attorney, or the equivalent thereof, in a foreign country for at least five years as of the date of application for a certificate of registration;

(3) Certify in writing that he or she intends to practice in the State as a foreign legal consultant and intends to maintain an office in the State for this practice;

(4) Be at least 21 years of age;

(5) Have been actively and substantially engaged in the practice of law or a profession or occupation that requires admission to the practice of law, or the equivalent thereof, in the foreign country in which the applicant holds a license for at least five of the seven years immediately preceding the date of application for a certificate of registration and is in good standing as an attorney, or the equivalent thereof, in that country;

(6) Have filed an application as prescribed in Rule .0102 of this Section;
(7) Be at all times in good professional standing and entitled to practice in every state or territory of the U.S. or in the District of Columbia, in which the applicant has been licensed to practice law, and in every foreign country in which the applicant is admitted to the practice of law or the equivalent thereof and is not under any pending charges of misconduct. The applicant may be inactive and in good standing in any foreign country or in any state or territory of the U.S. or in the District of Columbia; and
(8) Satisfy the Bar that the foreign country in which the applicant is licensed will admit North Carolina attorneys to practice as foreign legal consultants or the equivalent thereof.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0104 BURDEN OF PROVING MORAL CHARACTER AND GENERAL FITNESS
Every applicant shall have the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law and is possessed of good moral character and is entitled to the high regard and confidence of the public.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0105 FAILURE TO DISCLOSE
No one shall be issued a certificate of registration as a foreign legal consultant in this state:
(1) Who fails to disclose fully to the Bar, whether requested to do so or not, the facts relating to any disciplinary proceedings or charges as to the applicant's professional conduct, whether same have been terminated or not, in this or any other state, or any federal court or other jurisdiction or foreign country, or
(2) Who fails to disclose fully to the Bar, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings, charges or investigations involving the applicant, whether the same have been terminated or not in this or any other state, or any federal court or other jurisdiction or foreign country.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0106 INVESTIGATION BY COUNSEL
The counsel will conduct any necessary investigation regarding the application and will advise the Administrative Committee of the North Carolina State Bar of the findings of any such investigation.

History Note: *Authority G.S. 84A-1 to 84A-8;*
Adopted Eff. March 7, 1996;
Amended Eff. February 3, 2000.

27 NCAC 01F .0107 RECOMMENDATION OF ADMINISTRATIVE COMMITTEE
(a) Upon receipt of all completed application forms, attachments, filing fees and information required by the Bar, and completion of the Bar's investigation, the committee shall make a written recommendation to the council respecting whether an applicant for certification as a foreign legal consultant has met the requirements of G.S. 84A-1 and these rules. Prior to making a written recommendation, the committee may request further information from the applicant or other sources and may require the applicant to appear before it upon reasonable notice. The committee's written recommendation shall include a statement of the reason(s) for the committee's decision.
(b) A copy of the committee's recommendation shall be served upon the applicant pursuant to Rule 4 of the N.C. Rules of Civil Procedure.

History Note: *Authority G.S. 84A-1 to 84A-8;*
Adopted Eff. March 7, 1996;
Amended Eff. February 3, 2000.

27 NCAC 01F .0108 APPEAL FROM COMMITTEE DECISION

(a) The applicant will have 30 days from the date of service of the committee's recommendation in which to serve a written request for a hearing upon the secretary pursuant to Rule 4 of the N.C. Rules of Civil Procedure.
(b) If the applicant does not request a hearing in a timely fashion, the committee will forward its recommendation to the council. The council will consider the application and the recommendation of the committee and will make a final written recommendation to the N.C. Supreme Court, as set out in 27 NCAC 01F .0110(f) of this Subchapter.

History Note: *Authority G.S. 84A-1 to 84A-8;*
Adopted Eff. March 7, 1996;
Amended Eff. February 3, 2000.

27 NCAC 01F .0109 HEARING PROCEDURE

(a) Notice, Time & Place of Hearing
- (1) The chair of the committee shall fix the time and place of hearing within 30 days after the applicant's request for a hearing is served upon the secretary. The hearing shall be held as soon as practicable after the request is filed.
- (2) The notice of the hearing shall include the date, time and place of the hearing and shall be served upon the applicant at least 10 days before the hearing date.

(b) Hearing Panel:
- (1) The chair of the committee shall appoint a hearing panel composed of three members of the committee to consider the application and make a written recommendation to the council.
- (2) The chair 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 which arises during the hearing; preside at the deliberations of the panel, sign the written determinations of the panel and report the panel's determination to the council.

(c) Proceedings before the Hearing Panel:
- (1) A majority of the panel members is necessary to decide the application.
- (2) Following the hearing on the contested application, the panel will make a written recommendation to the council on behalf of the committee regarding whether the application should be granted. The recommendation shall include appropriate findings of fact and conclusions of law.
- (3) The applicant will have the burden of proving that he or she has met all the requirements of 27 NCAC 01F .0102-.0104 of this Subchapter.
- (4) At the hearing, the applicant and State Bar counsel will have the right:
  - (A) to appear personally and be heard
  - (B) to call and examine witnesses
  - (C) to offer exhibits
  - (D) to cross-examine witnesses
- (5) In addition, the applicant will have the right to be represented by counsel.
- (6) The hearing will be conducted in accordance with the North Carolina Rules of Civil Procedure for nonjury trials insofar as practicable and by the Rules of Evidence applicable in superior court, unless otherwise provided by this subchapter or the parties agree otherwise.
- (7) The hearing shall be reported by a certified court reporter. The applicant will pay the costs associated with obtaining the court reporter's services for the hearing. The applicant shall pay the costs of the transcript and shall arrange for the preparation of the transcript with the court reporter. The applicant may also be taxed with all other costs of the hearing, but the costs shall not include any compensation to the members of the hearing panel.
- (8) The written recommendation of the hearing panel shall be served upon the applicant and the counsel within 14 days of the date of the hearing.

History Note: *Authority G.S. 84A-1 to 84A-8;*
Adopted Eff. March 7, 1996;
Amended Eff. February 3, 2000.

27 NCAC 01F .0110 REVIEW AND ORDER OF COUNCIL

(a) Review by Council. The applicant shall compile a record of the proceedings before the hearing panel, including a legible copy of the complete transcript, all exhibits introduced into evidence at the hearing, all pleadings and all motions and orders,

unless the applicant and counsel agree in writing to shorten the record. Any agreement regarding the record shall be included in the record transmitted to the council.
(b) Transmission of Record to Council. The applicant 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 N.C. State Bar for good cause shown. The applicant shall transmit a copy of the record to each member of the council, at the applicant's expense, no later than 30 days before the council meeting at which the application is to be considered.
(c) Costs. The applicant shall bear all of the costs of transcribing, copying, and transmitting the record to the members of the council.
(d) Dismissal for Failure to Apply. If the applicant fails to comply fully with any provisions of this Rule, the counsel may file a motion with the secretary to dismiss the application.
(e) Appearance before the Council. In his or her discretion, the president of the State Bar may permit the counsel for the State Bar and the applicant 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.
(f) Order by Council. The council will review the recommendation of the hearing panel and the record and will determine whether the applicant has met all of the requirements of Rules .0102 - .0104 of this Section. The council will make a written recommendation to the N.C. Supreme Court regarding whether the application should be granted. The council's recommendation will contain a statement of the reasons for the recommendation and shall attach to it the application.
(g) Costs. The council may tax the costs attributable to the proceeding against the applicant.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0111 APPLICATION FEES; REFUNDS; RETURNED CHECKS
(a) Every application and every reapplication for certification as a foreign legal consultant shall be accompanied by a fee of two hundred dollars ($200.00) paid in U.S. currency.
(b) No part of the fee will be refunded.
(c) Failure to pay the application fees required by these Rules shall cause the application to be deemed not filed. If the check payable for the application fee is not honored upon presentment for any reason other than error of the bank, the application will be deemed not filed. All checks presented to the Bar for any fees which are not honored upon presentment will be returned to the applicant, who shall pay the Bar in cash, cashier's check, certified check or money order any fees payable to the Bar, along with a twenty dollar ($20.00) additional fee for processing the dishonored check.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0112 PERMANENT RECORD
All information furnished to the Bar by an applicant shall be deemed material, and all such information shall be and become a permanent record of the Bar. Records, papers and other documents containing information collected or compiled by the North Carolina State Bar and its members or employees as a result of any investigation, application, inquiry or interview conducted in connection with an application for certificate of registration are not public records within the meaning of G.S. 132.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

27 NCAC 01F .0113 DENIAL; RE-APPLICATION
No new application or petition for reconsideration of a previous application from an applicant who has been denied a certificate of registration as a foreign legal consultant shall be considered by the Bar within a period of three years next after the date of such denial unless, for good cause shown, permission for reapplication or petition for a reconsideration is granted by the Bar.

History Note: *Authority G.S. 84-4;*
Eff. March 7, 1996.

SECTION .0100 THE PLAN FOR CERTIFICATION OF PARALEGALS

27 NCAC 01G .0101 PURPOSE

The purpose of this plan for certification of paralegals (plan) is to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0102 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 Paralegal Certification (board), which board shall have jurisdiction over the certification of paralegals in North Carolina.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0103 OPERATIONAL RESPONSIBILITY

The responsibility for operating the paralegal certification 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;*
Eff. October 6, 2004.

27 NCAC 01G .0104 SIZE AND COMPOSITION OF BOARD

The board shall have nine members, five of whom must be lawyers in good standing and authorized to practice law in the state of North Carolina. One of the members who is a lawyer shall be a program director at a qualified paralegal studies program. Four members of the board shall be paralegals certified under the plan, provided, however, that the paralegals appointed to the inaugural board shall be exempt from this requirement during their initial and successive terms but each such member shall be eligible, during the shorter of such initial term or the alternative qualification period, for certification by the board upon the board's determination that the member meets the requirements for certification in Rule .0119(b).

History Note: *Authority G.S. 84-23;*
Adopted Eff. October 6, 2004;
Amended Eff. March 2, 2006.

27 NCAC 01G .0105 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

(a) Appointment. The council shall appoint the members of the board, provided, however, after the appointment of the initial members of the board, each paralegal member appointed for an initial term shall be selected by the council from two nominees determined by a vote by mail or online of all active certified paralegals in an election conducted by the board.

(b) Procedure for Nomination of Candidates for Paralegal Members.

(1) Composition of Nominating Committee. At least 60 days prior to a meeting of the council at which one or more paralegal members of the board are subject to appointment for a full three year term, the board shall appoint a nominating committee comprised of certified paralegals as follows:

(i) A representative selected by the North Carolina Paralegal Association;

(ii) A representative selected by the North Carolina Bar Association Paralegal Division;

(iii) A representative selected by the North Carolina Advocates for Justice Legal Assistants Division;

(iv) Three representatives from three local or regional paralegal organizations to be selected by the board; and

(v) An independent paralegal (not employed by a law firm, government entity, or legal department) to be selected by the board.

(2) Selection of Candidates. The nominating committee shall meet within 30 days of its appointment to select five certified paralegals as candidates for each paralegal member vacancy on the board for inclusion on the ballot to be mailed to all active certified paralegals.

(3) Vote of Certified Paralegals. At least 30 days prior to the meeting of the council at which a paralegal member appointment to the board will be made, a ballot shall be mailed or a notice of online voting shall be emailed or mailed to all active certified paralegals at each certified paralegal's physical or email address of record on file with the North Carolina State Bar. The ballot or notice shall be accompanied by written instructions, and shall state how many paralegal member positions on the board are subject to appointment, the names of the candidates selected by the nominating committee for each such position, and when and where the ballot should be returned. If balloting will be online, the notice shall explain how to access the ballot on the State Bar's paralegal website and the method for voting online. Write-in candidates shall be permitted and the instructions shall so state. Each ballot sent by mail shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. Online balloting shall be by secure log-in to the State Bar's paralegal website using the certified paralegal's identification number and personal password. Any certified paralegal who does not have an email address on file with the State Bar shall be mailed a ballot. The board shall maintain appropriate records respecting how many ballots or notices are sent to prospective voters in each election as well as how many ballots are returned. Only original ballots will be accepted by mail. Ballots received after the deadline stated on the ballot or the email notice will not be counted. The names of the two candidates receiving the most votes for each open paralegal member position shall be the nominees submitted to the council.

(c) Time of Appointment. 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 at the quarterly meeting of the council occurring on the anniversary of the appointment of the initial board.

(d) Vacancies. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council, subject to the requirements of Rule .0105(a)1, 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.

(e) Removal. 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;*
Adopted Eff. October 6, 2004;
Amended Eff. March 6, 2014; August 25, 2011; March 11, 2010; March 8, 2007.

27 NCAC 01G .0106 TERM OF OFFICE

Subject to Rule .0107 of this Subchapter, each member of 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 council appoints the member.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0107 STAGGERED TERMS

The members of the board shall be appointed to staggered terms such that three members are appointed in each year. Of the initial board, three members (one lawyer and two paralegals) shall be appointed to terms of one year; three members (two lawyers and one paralegal) shall be appointed to terms of two years; and three members (two lawyers and one paralegal) shall be appointed to terms of three years. Thereafter, three members (lawyers or paralegals as necessary to fill expired terms) shall be appointed in each year for full three year terms.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0108 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. Each certified paralegal member shall be eligible for reappointment by the council at the end of

his or her term without appointment of a nominating committee or vote of all active paralegals as would be otherwise required by Rule .0105 of this subchapter. Thereafter, no person may be reappointed without having been off of the board for at least three years.

History Note: *Authority G.S. 84-23;*
Adopted Eff. October 6, 2004;
Amended Eff. March 6, 2014.

27 NCAC 01G .0109 APPOINTMENT OF CHAIRPERSON

The council shall appoint the chairperson of the board from among the lawyer members of the board. The term of the 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;*
Eff. October 6, 2004.

27 NCAC 01G .0110 APPOINTMENT OF VICE-CHAIRPERSON

The council shall appoint the vice-chairperson of the board from among the members of the board. The term of the 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;*
Eff. October 6, 2004.

27 NCAC 01G .0111 SOURCE OF FUNDS

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

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0112 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 expenditures there from 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;*
Eff. October 6, 2004.

27 NCAC 01G .0113 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. Notice of meeting shall be given at least one day 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 five or more of the members serving at the time of the meeting.

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

Eff. October 6, 2004.

27 NCAC 01G .0114 ANNUAL REPORT

The board shall prepare a report of its activities for the preceding year and shall present the same at the annual meeting of the council.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0115 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 certification of paralegals and shall have the power and duty

(1) to administer the plan of certification for paralegals;
(2) to appoint, supervise, act on the recommendations of, and consult with committees as appointed by the board or the chairperson;
(3) to certify paralegals or deny, suspend or revoke the certification of paralegals;
(4) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;
(5) to propose and request the council to make amendments to this plan whenever appropriate;
(6) to cooperate with other boards or agencies in enforcing standards of professional conduct;
(7) to evaluate and approve continuing legal education courses for the purpose of meeting the continuing legal education requirements established by the board for the certification of paralegals;
(8) to cooperate with other organizations, boards and agencies engaged in the recognition, education or regulation of paralegals; and
(9) to set fees, with the approval of the council, and to, in appropriate circumstances, waive such fees.

History Note: *Authority G.S. 84-23;*
Adopted Eff. October 6, 2004;
Amended Eff. March 2, 2006.

27 NCAC 01G .0116 RETAINED JURISDICTION OF THE COUNCIL

The council retains jurisdiction with respect to the following matters:

(1) amending this plan;
(2) hearing appeals taken from actions of the board;
(3) establishing or approving fees to be charged in connection with the plan;
(4) regulating the conduct of lawyers in the supervision of paralegals; and
(5) determining whether to pursue injunctive relief as authorized by G. S. 84-37 against persons acting in violation of this plan.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004.

27 NCAC 01G .0117 CONFERRED AND LIMITATIONS IMPOSED

The board in the implementation of this plan shall not alter the following privileges and responsibilities of lawyers and their non-lawyer assistants.

(1) No rule shall be adopted which shall in any way limit the right of a lawyer to delegate tasks to a non-lawyer assistant or to employ any person to assist him or her in the practice of law.
(2) No person shall be required to be certified as a paralegal to be employed by a lawyer to assist the lawyer in the practice of law.
(3) All requirements for and all benefits to be derived from certification as a paralegal are individual and may not be fulfilled by nor attributed to the law firm or other organization or entity employing the paralegal.
(4) Any person certified as a paralegal under this plan shall be entitled to represent that he or she is a "North Carolina Certified Paralegal (NCCP)", a "North Carolina State Bar Certified Paralegal (NCSB/CP)" or a "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification."

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

Eff. October 6, 2004.

27 NCAC 01G .0118 CERTIFICATION COMMITTEE

(a) The board shall establish a separate certification committee. The certification committee shall be composed of seven members appointed by the board. At least two members of the committee shall be lawyers, licensed and currently in good standing to practice law in this state, and two members of the committee shall be certified paralegals. The remaining members of the committee shall be either lawyers, licensed and currently in good standing to practice law in this state, or certified paralegals. The paralegals appointed to the inaugural committee shall be exempt from the certification requirement during their initial term but each such member shall be eligible, during the shorter of such initial term or the alternative qualification period, for certification by the board upon the board's determination that the committee member meets the requirements for certification in Rule .0119(b).

(b) The chair of the Board of Paralegal Certification shall appoint one member of the committee to serve for a one-year term as chair of the committee and one member of the committee to serve for a one-year term as vice chair of the committee. The chair and vice chair may be reappointed to multiple terms in these positions.

(c) 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 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 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 the committee to a third three-year term if the board determines that the reappointment is in the best interest of the program. Meetings of the certification committee shall be held at regular intervals at such times, places and upon such notices as the committee may from time to time prescribe or upon direction of the board.

(d) The committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan by advising the board as to standards for certification of individuals as paralegals. The committee shall be charged with actively administering the plan as follows:

(1) upon request of the board, make recommendations to the board for certification, continued certification, denial, suspension, or revocation of certification of paralegals and for procedures with respect thereto;

(2) draft and regularly revise the certification examination and

(3) perform such other duties and make such other recommendations as may be delegated to or requested by the board.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court October 6, 2004;
Amendments Approved by the Supreme Court: March 2, 2006; March 6, 2014; September 20, 2018.

27 NCAC 01G .0119 STANDARDS FOR CERTIFICATION OF PARALEGALS

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) Education. The applicant must have earned one of the following:

(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program;

(B) a certificate from a qualified paralegal studies program and an associate's or bachelor's degree in any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education (an accredited US institution) or an equivalent degree from a foreign educational institution if the degree is determined to be equivalent to a degree from an accredited US institution by an organization that is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credentials Evaluators (AICE); or

(C) a juris doctorate degree from a law school accredited by the American Bar Association.

(2) National Certification. If an applicant has obtained and thereafter maintains in active status at all times prior to application (i) the designation Certified Legal Assistant (CLA)/Certified Paralegal (CP) from the National Association of Legal Assistants; (ii) the designation PACE-Registered Paralegal (RP)/Certified Registered Paralegal (CRP) from the National Federation of Paralegal Associations; or (iii) another national paralegal credential approved by the board, the applicant is not required to satisfy the educational standard in paragraph (a)(1).

(3) Examination. The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability. The board shall assure that the contents and grading of the examinations are designed to produce a uniform minimum level of competence among the certified paralegals.

(b) Notwithstanding an applicant's satisfaction of the standards set forth in Rule .0119(a), no individual may be certified as a paralegal if:

(1) the individual's certification or license as a paralegal in any state is under suspension or revocation;

(2) the individual's license to practice law in any state is under suspension or revocation;

(3) the individual

(A) was convicted of a criminal act that reflects adversely on the individual's honesty, trustworthiness, or fitness as a paralegal;

(B) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) engaged in the unauthorized practice of law; or

(D) has had a nonlegal state or federal occupational or professional license suspended or revoked for misconduct; however, the board may certify an applicant whose application discloses conduct described in Rule .0119(c)(3) if, after consideration of mitigating factors, including remorse, reformation of character, and the passage of time, the board determines that the individual is honest, trustworthy, and fit to be a certified paralegal; or

(4) the individual is not a legal resident of the United States.

(c) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications, examinations and examination 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.

(d) Qualified Paralegal Studies Program. A qualified paralegal studies program is a program of paralegal or legal assistant studies that is an institutional member of the Southern Association of Colleges and Schools or other regional or national accrediting agency recognized by the United States Department of Education, and is either

(1) approved by the American Bar Association;

(2) an institutional member of the American Association for Paralegal Education; or

(3) offers at least the equivalent of 18 semester credits of coursework in paralegal studies as prescribed by the American Bar Association Guidelines for the Approval of Paralegal Education including the equivalent of one semester credit in legal ethics.

(e) Designation as a Qualified Paralegal Studies Program. The board shall determine whether a paralegal studies program is a qualified paralegal studies program upon submission by the program of an application to the board provided, however, a paralegal studies program is not required to submit an application for qualification as long as the program satisfies the requirements of Rule .0119(e)(1) or (2).

(1) A program designated by the board as a qualified paralegal studies program shall renew its application for designation every five years.

(2) An applicant for certification who lists on a certification application a paralegal studies program that does not satisfy the requirements of Rule .0119(e)(1) or (2) or that has not been designated by the board as a qualified paralegal studies program shall be responsible for obtaining a completed application for designation from the program or shall submit the information required on the application for determination that the program is a qualified paralegal studies program.

(3) Designation of a paralegal studies program as a qualified paralegal studies program under this section does not constitute an approval or an endorsement of the program by the board or the North Carolina State Bar.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court October 6, 2004;
Amendments Approved by the Supreme Court: March 2, 2006; March 8, 2007; February 5, 2009; March 11, 2010; March 6, 2014; March 5, 2015; June 9, 2016; April 5, 2018.

27 NCAC 01G .0120 STANDARDS FOR CONTINUED CERTIFICATION OF PARALEGALS

(a) The period of certification as a paralegal shall be one year. During such period the board may require evidence from the paralegal of his or her continued qualification for certification as a paralegal, and the paralegal must consent to inquiry by the board regarding the paralegal's continued competence and qualification to be certified. Application for and approval of continued certification shall be required annually prior to the end of each certification period. To qualify for continued

certification as a paralegal, an applicant must demonstrate participation in not less than six hours of credit in board approved continuing legal education, or its equivalent, during the year within which the application for continued certification is made.
(b) Upon written request of the paralegal, the board may for good cause shown waive strict compliance by such paralegal with the criteria relating to continuing legal education, as those requirements are set forth in Rule .0120(a).
(c) A late fee of twenty-five dollars ($25.00) will be charged to any certified paralegal who fails to file the renewal application within 45 days of the due date; provided, however, a renewal application will not be accepted more than 90 days after the due date. Failure to renew shall result in lapse of certification.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004;
Amended Eff. October 8, 2009.

27 NCAC 01G .0121 LAPSE, SUSPENSION OR REVOCATION OF CERTIFICATION
(a) The board may suspend or revoke its certification of a paralegal, after hearing before the board on appropriate notice, upon a finding that

(1) the certification was made contrary to the rules and regulations of the board;
(2) the individual certified as a paralegal made a false representation, omission or misstatement of material fact to the board;
(3) the individual certified as a paralegal failed to abide by all rules and regulations promulgated by the board;
(4) the individual certified as a paralegal failed to pay the fees required;
(5) the individual certified as a paralegal no longer meets the standards established by the board for the certification of paralegals;
(6) the individual is not eligible for certification on account of one or more of the grounds set forth in Rule .0119(c); or
(7) the individual violated the confidentiality agreement relative to the questions on the certification examination.

(b) An individual certified as a paralegal has a duty to inform the board promptly of any fact or circumstance described in Rule .0121(a).
(c) If an individual's certification lapses, or if the board revokes a certification, the individual cannot again be certified as a paralegal unless he or she so qualifies upon application made as if for initial certification and upon such other conditions as the board may prescribe. If the board suspends certification of an individual as a paralegal, such certification cannot be reinstated except upon the individual's application and compliance with such conditions and requirements as the board may prescribe.

History Note: *Authority G.S. 84-23;*
Eff. October 6, 2004;
Amended Eff. March 6, 2008.

27 NCAC 01G .0122 RIGHT TO REVIEW AND APPEAL TO COUNCIL
(a) Lapsed Certification. An individual whose certification has lapsed pursuant to Rule .0120(c) of this subchapter for failure to complete all of the requirements for renewal within the prescribed time limit shall have the right to request reinstatement for good cause shown. A request for reinstatement shall be in writing, must state the personal circumstances prohibiting or substantially impeding satisfaction of the requirements for renewal within the prescribed time limit, and must be made within 90 days of the date notice of lapse is mailed to the individual. The request for reinstatement shall be reviewed on the written record and ruled upon by the board. There shall be no other right to review by the board or appeal to the council under this rule.
(b) Denial of Certification or Continued Certification. An individual who is denied certification or continued certification as a paralegal or whose certification is suspended or revoked shall have the right to a review before the board pursuant to the procedures set forth below and, thereafter, the right to appeal the board's ruling thereon to the council under such rules and regulations as the council may prescribe.

(1) Notification of the Decision of the Board. Following the meeting at which the board denies certification for failure to meet the standards for certification, including failing the examination, denies continued certification, or suspends or revokes certification, the executive director shall promptly notify the individual in writing of the decision of the board. The notification shall specify the reason for the decision of the board and shall inform the individual of his or her right to request a review before the board.

(2) Request for Review by the Board. Except as provided in paragraph (e) of this rule, within 30 days of the mailing of the notice from the executive director described in paragraph (b) of this rule, the individual may request review by the board. The request shall be in writing and state the reasons for which the individual believes the prior decision of the board should be reconsidered and withdrawn. The request shall state whether the board's review shall be on the written record or at a hearing.

(3) Review by the Board. A three-member panel of the board shall be appointed by the chair of the board to reconsider the board's decision and take action by a majority of the panel. At least one member of the panel shall be a lawyer member of the board and at least one member of the panel shall be a paralegal member of the board. The decision of the panel shall constitute the final decision of the board.

(A) Review on the Record. If requested, the panel shall review the entire written record including the individual's application, all supporting documentation, and any written materials submitted by the individual within 30 days of mailing the request for review. The panel shall make its decision within sixty (60) days of receipt of the written request for review from the individual.

(B) Review Hearing. If requested, the panel shall hold a hearing at a time and location that is convenient for the panel members and the individual provided the hearing occurs within sixty (60) days of receipt of the written request for review from the individual. The hearing shall be informal. The Rules of Evidence and the Rules of Civil Procedure shall not apply. The individual may be represented by a lawyer at the hearing, may offer witnesses and exhibits, and may question witnesses for the board. The panel may ask witnesses to appear and may consider exhibits on its own request. Witnesses shall not be sworn. The hearing shall not be reported unless the applicant pays the costs of the transcript and arranges for the preparation of the transcript with the court reporter.

(C) Decision of the Panel. The individual shall be notified in writing of the decision of the panel and, if unfavorable, the right to appeal the decision to the council under such rules and regulations as the council may prescribe. To exercise this right, the individual must file an appeal to the council in writing within 30 days of the mailing of the notice of the decision of the panel.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court October 6, 2004;
Amendments Approved by the Supreme Court: March 8, 2007; February 5, 2009; March 8, 2013; August 27, 2013; September 20, 2018.

27 NCAC 01G .0123 INACTIVE STATUS UPON DEMONSTRATION OF HARDSHIP

(a) Inactive Status. The board shall transfer a certified paralegal to inactive status upon receipt of a petition, on a form approved by the board, demonstrating hardship as defined in Paragraph (b) of this Rule and upon payment of any fees owed to the board at the time of the petition unless waived by the board.

(1) The period of inactive status shall be one year from the designated renewal date.

(2) On or before the expiration of inactive status, a paralegal on inactive status must file a petition for (continued) inactive status or seek reinstatement to active status by filing a renewal application pursuant to Rule .0120 of this Subchapter. Failure to petition for continued inactive status or renewal shall result in lapse of certification.

(3) A paralegal may be inactive for not more than a total of five consecutive years.

(4) During a period of inactive status, a paralegal is not required to pay the renewal fee or to complete continuing legal education.

(5) During a period of inactive status, a paralegal shall not be entitled to represent that he or she is a North Carolina certified paralegal or to use any of the designations set forth in Rule .0117(4) of this Subchapter.

(b) Hardship. The following conditions shall qualify as hardship justifying a transfer to inactive status:

(1) Financial inability to pay the annual renewal fee and to pay for continuing legal education courses due to unemployment or underemployment of the paralegal for a period of three months or more;

(2) Disability or serious illness for a period of three months or more;

(3) Active military service; and

(4) Transfer of the paralegal's active duty military spouse to a location outside of North Carolina.

(c) Reinstatement before Expiration of Inactive Status. To be reinstated as a certified paralegal, the paralegal must petition the board for reinstatement by filing a renewal application prior to the expiration of the inactive status period and must pay the annual renewal fee. If the paralegal was inactive for a period of two consecutive calendar years or more during the year prior

to the filing of the petition, the paralegal must complete 12 hours of credit in board-approved continuing paralegal education, or its equivalent. Of the 12 hours, at least 2 hours shall be devoted to the areas of professional responsibility or professionalism, or any combination thereof.
(d) Certification after Expiration of Inactive Status Period. If the inactive status period expires before the paralegal petitions for reinstatement, certification shall lapse, and the paralegal cannot again be certified unless the paralegal qualified upon application made as if for initial certification.

History Note: *Authority G.S. 84-23;*
Eff. August 24, 2012.

SECTION .0200 – RULES GOVERNING CONTINUING PARALEGAL EDUCATION

27 NCAC 01G .0201 CONTINUING PARALEGAL EDUCATION (CPE)

(a) Each active certified paralegal subject to these rules shall complete 6 hours of approved continuing education during each year of certification.
(b) Of the 6 hours, at least 1 hour shall be devoted to the areas of professional responsibility or professionalism or any combination thereof.

(1) A professional responsibility course or segment of a course shall be devoted to (1) the substance, the underlying rationale, and the practical application of the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the court, the public, and other lawyers, and the paralegal's role in assisting the lawyer to fulfill those obligations; (3) the effects of substance abuse and chemical dependency, or debilitating mental condition on a lawyer's or a paralegal's professional responsibilities; or (4) the effects of stress on a paralegal's professional responsibilities.

(2) A professionalism course or segment of a course shall be devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct that transcend the requirements of the Rules of Professional Conduct. Such courses address principles of competence and dedication to the service of clients, civility, improvement of the justice system, advancement of the rule of law, and service to the community.

History Note: *Authority G.S. 84-23;*
Adopted Eff. August 18, 2005;
Amended Eff. March 6, 2014.

27 NCAC 01G .0202 ACCREDITATION STANDARDS

The Board of Paralegal Certification shall approve continuing education activities in compliance with the following standards and provisions.
(a) An approved activity shall have significant intellectual or practical content and the primary objective of increasing the participant's professional competence and proficiency as a paralegal.
(b) An approved activity shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of paralegals.
(c) A certified paralegal may receive credit for continuing education activities in which live instruction or recorded material is used. Recorded material includes videotaped or satellite transmitted programs, and programs on CD-ROM, DVD, or other similar electronic or digital replay formats. A minimum of three certified paralegals must register to attend the presentation of a replayed prerecorded program. This requirement does not apply to participation from a remote location in the presentation of a live broadcast by telephone, satellite, or video conferencing equipment.
(d) A certified paralegal may receive credit for participation in a course online. An on-line course is an educational seminar available on a provider's website reached via the internet. To be accredited, a computer-based CPE course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and/or other participants.
(e) Continuing education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity 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 course is presented. These may include written materials printed from a computer presentation, computer website, or CD-ROM. A written agenda or outline for a presentation 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) Any continuing legal education activity approved for lawyers by the North Carolina State Bar's Board of Continuing Legal Education meets these standards.

(h) In-house continuing legal education and self-study shall not qualify for continuing paralegal education (CPE) credit.

(i) A certified paralegal may receive credit for completion of a course offered by an ABA accredited law school with respect to which academic credit may be earned. No more than 6 CPE hours in any year may be earned by attending such courses. Credit shall be awarded as follows: 3.5 hours of CPE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 hours of CPE credit for every semester hour of credit assigned to the course by the educational institution.

History Note: *Authority G.S. 84-23;*
Adopted Eff. August 18, 2005;
Amended Eff. March 8, 2013; March 11, 2010; March 2, 2006.

27 NCAC 01G .0203 GENERAL COURSE APPROVAL

(a) Approval – Continuing education activities, not otherwise approved or accredited by the North Carolina State Bar Board of Continuing Legal Education, may be approved upon the written application of a sponsor, or of a certified paralegal on an individual program basis. An application for continuing paralegal education (CPE) approval shall meet the following requirements:

(1) If advance approval is requested by a sponsor, the application and supporting documentation (*i.e.*, the agenda with timeline, speaker information and a description of the written materials) shall be submitted at least 45 days prior to the date on which the course or program is scheduled. If advance approval is requested by a certified paralegal, the application need not include a complete set of supporting documentation.

(2) If more than five certified paralegals request approval of a particular program, either in advance of the date on which the course or program is scheduled or subsequent to that date, the program will not be accredited unless the sponsor applies for approval of the program and pays the accreditation fee set forth in Rule .0204.

(3) In all other cases, the application and supporting documentation shall be submitted not later than 45 days after the date the course or program was presented.

(4) The application shall be submitted on a form furnished by the Board of Paralegal Certification.

(5) The application shall contain all information requested on the form.

(6) The application shall be accompanied by a course 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.

(7) The application shall include a detailed calculation of the total continuing paralegal education (CPE) hours and the hours of professional responsibility for the program.

(8) If the sponsor has not received notice of accreditation within 15 days prior to the scheduled date of the program, the sponsor should contact the Board of Paralegal Certification via telephone or e-mail.

(b) Announcement. Sponsors who have advance approval for courses from the Board of Paralegal Certification may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the North Carolina State Bar Board of Paralegal Certification for continuing paralegal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility. This course is not sponsored by the Board of Paralegal Certification.

History Note: *Authority G.S. 84-23;*
Adopted Eff. August 18, 2005;
Amended Eff. August 27, 2013.

27 NCAC 01G .0204 FEES

Accredited Program Fee - Sponsors seeking accreditation for a particular program (whether or not the sponsor itself is accredited by the North Carolina State Bar Board of Continuing Legal Education), that has not already been approved or accredited by the North Carolina State Bar Board of Continuing Legal Education, shall pay a non-refundable fee of $75. However, no fee shall be charged for any program that is offered without charge to attendees. All programs must be approved

in accordance with Rule .0203(1). An accredited program may be advertised by the sponsor in accordance with Rule .0203(2).

History Note: *Authority G.S. 84-23;*
Eff. August 18, 2005;
Amended Eff. June 9, 2016.

27 NCAC 01G .0205 COMPUTATION OF HOURS OF INSTRUCTION

(a) Hours of continuing paralegal education (CPE) 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. The following will be excluded:

(1) introductory remarks;
(2) breaks;
(3) business meetings.

(c) Teaching – Continuing paralegal education (CPE) credit may be earned for teaching an approved continuing education activity. Three CPE credits will be awarded for each thirty (30) minutes of presentation. Repeat live presentations will qualify for one-half of the credit available for the initial presentation. No credit will be awarded for video replays.

(d) Teaching at a Qualified Paralegal Studies Program – Continuing paralegal education (CPE) credit may be earned for teaching a course at a qualified paralegal studies program, which program shall be qualified pursuant to Rule .0119(a) of this subchapter. Two CPE credits will be awarded for each semester credit (or its equivalent) awarded to the course.

History Note: *Authority G.S. 84-23;*
Eff. August 18, 2005.

SUBCHAPTER 01H – REGISTRATION OF ATTORNEYS APPEARING PRO HAC VICE

SECTION .0100 - REGISTRATION PROCEDURE

27 NCAC 01H .0101 REGISTRATION

(a) Whenever an out-of-state attorney (the admittee) is admitted to practice pro hac vice pursuant to G.S. 84-4.1, it shall be the responsibility of the member of the North Carolina State Bar who is associated in the matter (the responsible attorney) to file with the secretary a complete registration statement verified by the admittee. This registration statement must be submitted within 30 days of the court's order admitting the admittee upon a form approved by the Council of the North Carolina State Bar.

(b) Failure of the responsible attorney to file the registration statement in a timely fashion shall be grounds for administrative suspension from the practice of law in North Carolina pursuant to the procedures set forth in Rule .0903 of subchapter D of these rules.

(c) Whenever it appears that a registration statement required by paragraph (a) above has not been filed in a timely fashion, notice of such apparent failure shall be sent by the secretary to the court in which the admittee was admitted pro hac vice for such action as the court deems appropriate.

History Note: *Authority G.S. 84-23;*
Adopted Eff. March 2, 2006.

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

27 NCAC 02 RULE 0.1 PREAMBLE: A LAWYER'S PROFESSIONAL RESPONSIBILITIES

(a) A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

(b) As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

(c) In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.* , Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 8.4.

(d) In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

(e) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold the legal process.

(f) As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(g) A lawyer should render public interest legal service and provide civic leadership. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(h) The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay, and as leaders of their communities, states, and nation, lawyers use their education and experience to improve society. It is the basic responsibility of each lawyer to provide community service, community leadership, and public interest legal services without fee, or at a substantially reduced fee, in such areas as poverty law, civil rights, public rights law, charitable organization representation, and the administration of justice.

(i) The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. Personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in, or otherwise support, the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, the profession and government instituted additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs were developed, and programs will be developed by the profession and the government. Every lawyer should support all proper efforts to meet this need for legal services.

(j) Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.
(k) A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and, at the same time, assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.
(l) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.
(m) Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel with courtesy and respect. The legal dispute of the client must never become the lawyer's personal dispute with opposing counsel. A lawyer, moreover, should provide zealous but honorable representation without resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves behave with dignity. A lawyer's word to another lawyer should be the lawyer's bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster civility among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties.
(n) The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.
(o) To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for the abuse of legal authority is more readily challenged by a self-regulated profession.
(p) The legal profession's relative autonomy carries with it a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.
(q) Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. November 16, 2006; February 27, 2003.

27 NCAC 02 RULE 0.2 SCOPE
(a) The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms “shall” or “shall not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act, or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary, and partly constitutive and descriptive in that they define a lawyer’s professional role. Many of the Comments use the

term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.
(b) The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.
(c) Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.
(d) Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.
(e) Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These rules do not abrogate any such authority.
(f) Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.
(g) Violation of a Rule should not give rise itself to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a Rule.
(h) The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative. Research notes were prepared to compare counterparts in the original Rules of Professional Conduct (adopted 1985, as amended) and to provide selected references to other authorities. The notes have not been adopted, do not constitute part of the Rules, and are not intended to affect the application or interpretation of the Rules and Comments.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 5, 2004; February 27, 2003.

27 NCAC 02 RULE 1.00 TERMINOLOGY
(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
(b) "Confidential information" denotes information described in Rule 1.6.

(c) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See Paragraph (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
(d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation, government entity, or other organization.
(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of North Carolina and has a purpose to deceive.
(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances.
(g) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
(h) "Principal" denotes a member of a partnership for the practice of law, a shareholder in a law firm organized as a professional corporation, a member of an association authorized to practice law, or a lawyer having management authority over the legal department of a company, organization, or government entity.
(i) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
(j) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
(k) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
(l) "Screened" denotes the isolation of a lawyer from any participation in a professional matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.
(m) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. The term encompasses any proceeding conducted in the course of a trial or litigation, or conducted pursuant to the tribunal's rules of civil or criminal procedure or other relevant rules of the tribunal, such as a deposition, arbitration, or mediation. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, may render a binding legal judgment directly affecting a party's interests in a particular matter.
(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, and any data embedded therein (commonly referred to as metadata), including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within Paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be

uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

[5] When used in these rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of North Carolina and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see Paragraphs (o) and (c). Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see Paragraph (o).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

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

Eff. July 24, 1997;
Amendments Approved by the Supreme Court: September 22, 2016; March 5, 2015; October 2, 2014; March 1, 2003.

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.01 COMPETENCE

A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to, or consultation or association with, another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that which is reasonably necessary under the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into, and analysis of, the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined, in part, by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity or consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* Rule 1.2(c).

Retaining or Contracting with Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer’s own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers’ services will contribute to the competent and ethical representation of the client. *See also* Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee division), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer’s own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. *See* Rule 1.2. When making allocations of responsibility in a matter pending

before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

Distinguishing Professional Negligence

[9] An error by a lawyer may constitute professional malpractice under the applicable standard of care and subject the lawyer to civil liability. However, conduct that constitutes a breach of the civil standard of care owed to a client giving rise to liability for professional malpractice does not necessarily constitute a violation of the ethical duty to represent a client competently. A lawyer who makes a good-faith effort to be prepared and to be thorough will not generally be subject to professional discipline, although he or she may be subject to a claim for malpractice. For example, a single error or omission made in good faith, absent aggravating circumstances, such as an error while performing a public records search, is not usually indicative of a violation of the duty to represent a client competently.

[10] Repeated failure to perform legal services competently is a violation of this rule. A pattern of incompetent behavior demonstrates that a lawyer cannot or will not acquire the knowledge and skills necessary for minimally competent practice. For example, a lawyer who repeatedly provides legal services that are inadequate or who repeatedly provides legal services that are unnecessary is not fulfilling his or her duty to be competent. This pattern of behavior does not have to be the result of a dishonest or sinister motive, nor does it have to result in damages to a client giving rise to a civil claim for malpractice in order to cast doubt on the lawyer's ability to fulfill his or her professional responsibilities.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. October 2, 2014; March 1, 2003.

27 NCAC 02 RULE 1.02 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(1) A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(2) A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(3) In the representation of a client, a lawyer may exercise his or her professional judgment to waive or fail to assert a right or position of the client.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are

to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. Lawyers are encouraged to treat opposing counsel with courtesy and to cooperate with opposing counsel when it will not prevent or unduly hinder the pursuit of the objective of the representation. To this end, a lawyer may waive a right or fail to assert a position of a client without first obtaining the client's consent. For example, a lawyer may consent to an extension of time for the opposing party to file pleadings or discovery without obtaining the client's consent.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, a specification of the scope of representation will normally be a necessary part of any written communication of the rate or basis of the lawyer's fee. See Rule 1.0(f) for the definition of "informed consent."

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud

might be committed with impunity. There is also a distinction between giving a client legitimate advice about asset protection and assisting in the illegal or fraudulent conveyance of assets.
[11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. See Rule 4.1.
[12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.
[13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.
[14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.3 DILIGENCE
A lawyer shall act with reasonable diligence and promptness in representing a client.
Comment
[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.
[2] A lawyer's work load must be controlled so that each matter can be handled competently.
[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions. In extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.
[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf . 27 N.C.A.C. 1B, .0122 (providing for court appointment of a lawyer to inventory files and take other protective action to protect the interests of the clients of a lawyer who has disappeared or is deceased or disabled).

Distinguishing Professional Negligence

[6] Conduct that may constitute professional malpractice does not necessarily constitute a violation of the ethical duty to represent a client diligently. Generally speaking, a single instance of unaggravated negligence does not warrant discipline. For example, missing a statute of limitations may form the basis for a claim of professional malpractice. However, where the failure to file the complaint in a timely manner is due to inadvertence or a simple mistake such as mislaying the papers or miscalculating the date upon which the statute of limitations will run, absent some other aggravating factor, such an incident will not generally constitute a violation of this rule.

[7] Conduct warranting the imposition of professional discipline under the rule is characterized by the element of intent manifested when a lawyer knowingly or recklessly disregards his or her obligations. Breach of the duty of diligence sufficient to warrant professional discipline occurs when a lawyer consistently fails to carry out the obligations that the lawyer has assumed for his or her clients. A pattern of delay, procrastination, carelessness, and forgetfulness regarding client matters indicates a knowing or reckless disregard for the lawyer's professional duties. For example, a lawyer who habitually misses filing deadlines and court dates is not taking his or her professional responsibilities seriously. A pattern of negligent conduct is not excused by a burdensome case load or inadequate office procedures.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; September 28, 2017.

27 NCAC 02 RULE 1.04 COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the

lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should address with the client how the lawyer and the client will communicate, and should respond to or acknowledge client communications in a reasonable and timely manner.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(f).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. October 2, 2014; March 1, 2003.

27 NCAC 02 RULE 1.05 FEES

(a) A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee or charge or collect a clearly excessive amount for expenses. The factors to be considered in determining whether a fee is clearly excessive include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
(d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) a contingent fee for representing a defendant in a criminal case; however, a lawyer may charge and collect a contingent fee for representation in a criminal or civil asset forfeiture proceeding if not otherwise prohibited by law; or
- (2) a contingent fee in a civil case in which such a fee is prohibited by law.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

(f) Any lawyer having a dispute with a client regarding a fee for legal services must:
- (1) make reasonable efforts to advise his or her client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee; and
- (2) participate in good faith in the fee dispute resolution process if the client submits a proper request.

(g) A lawyer shall not enter into an arrangement for, charge, or collect anything of value for responding to an inquiry by a disciplinary authority regarding allegations of professional misconduct by the lawyer, for responding to a Client Security Fund claim alleging wrongful conduct by the lawyer, or for responding to and participating in the resolution of a petition for resolution of a disputed fee filed against the lawyer.

COMMENT

Appropriate Fees and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are not clearly excessive under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must not be clearly excessive. A lawyer may seek reimbursement for expenses for in-house services, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, an understanding will have ordinarily evolved concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, a written understanding as to fees and expenses should be promptly established. Generally, furnishing the client with a simple memorandum or copy of the lawyer's customary fee arrangements will suffice, provided that the writing states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.
[3] Contingent fees, like any other fees, are subject to the standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is clearly excessive, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee.

Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). This does not apply when the advance payment is a true retainer to reserve services rather than an advance to secure the payment of fees yet to be earned. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, provided this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] Once a fee agreement has been reached between attorney and client, the attorney has an ethical obligation to fulfill the contract and represent the client's best interests regardless of whether the lawyer has struck an unfavorable bargain. An attorney may seek to renegotiate the fee agreement in light of changed circumstances or for other good cause, but the attorney may not abandon or threaten to abandon the client to cut the attorney's losses or to coerce an additional or higher fee. Any fee contract made or remade during the existence of the attorney-client relationship must be reasonable and freely and fairly made by the client having full knowledge of all material circumstances incident to the agreement. If a dispute later arises concerning the fee, the burden of proving reasonableness and fairness will be upon the lawyer.

[6] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[7] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. A lawyer may divide a fee with an out-of-state lawyer who refers a matter to the lawyer if the conditions of paragraph (e) are satisfied. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[10] Participation in the fee dispute resolution program of the North Carolina State Bar is mandatory when a client requests resolution of a disputed fee. Before filing an action to collect a disputed fee, the client must be advised of the fee dispute resolution program. Notification must occur not only when there is a specific issue in dispute, but also when the client simply fails to pay. However, when the client expressly acknowledges liability for the specific amount of the bill and states that he or she cannot presently pay the bill, the fee is not disputed and notification of the client is not required. In making reasonable efforts to advise the client of the existence of the fee dispute resolution program, it is preferable to address a written communication to the client at the client's last known address. If the address of the client is unknown,

the lawyer should use reasonable efforts to acquire the current address of the client. Notification is not required in those instances where the State Bar does not have jurisdiction over the fee dispute as set forth in 27 N.C.A.C. 1D, .0702.
[11] If fee dispute resolution is requested by a client, the lawyer must participate in the resolution process in good faith. The State Bar program of fee dispute resolution uses mediation to resolve fee disputes as an alternative to litigation. The lawyer must cooperate with the person who is charged with investigating the dispute and with the person(s) appointed to mediate the dispute. Further information on the fee dispute resolution program can be found at 27 N.C.A.C. 1D, .0700, et. seq. The lawyer should fully set forth his or her position and support that position by appropriate documentation.
[12] A lawyer may petition a tribunal for a legal fee if allowed by applicable law or, subject to the requirements for fee dispute resolution set forth in Rule 1.5(f), may bring an action against a client to collect a fee. The tribunal's determination of the merit of the petition or the claim is reached by an application of law to fact and not by the application of this Rule. Therefore, a tribunal's reduction or denial of a petition or claim for a fee is not evidence that the fee request violates this Rule and is not admissible in a disciplinary proceeding brought under this Rule.
[13] Lawyers have a professional obligation to respond to inquiries by disciplinary authorities regarding allegations of their own professional misconduct, to respond to Client Security Fund claims alleging wrongful conduct by the lawyer, and to respond to and participate in good faith in the fee dispute resolution process. It is improper for a lawyer to charge a client for the time expended on these professional obligations because they are not legal services that a lawyer provides to a client, but rather they advance the interests of the public and the profession.

History Note: *Authority G.S. 84-23;*
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Amendments Approved by the Supreme Court: May 4, 2000; February 27, 2003; April 21, 2021.

27 NCAC 02 RULE 1.06 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
(b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:

(1) to comply with the Rules of Professional Conduct, the law or court order;
(2) to prevent the commission of a crime by the client;
(3) to prevent reasonably certain death or bodily harm;
(4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used;
(5) to secure legal advice about the lawyer's compliance with these Rules;
(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
(7) to comply with the rules of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court; or
(8) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
(d) The duty of confidentiality described in this Rule encompasses information received by a lawyer then acting as an agent of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court regarding another lawyer or judge seeking assistance or to whom assistance is being offered. For the purposes of this Rule, "client" refers to lawyers seeking assistance from lawyers' or judges' assistance programs approved by the North Carolina State Bar or the North Carolina Supreme Court.

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client acquired during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information acquired during a lawyer's prior representation of a former client, and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of

such information to the disadvantage of clients and former clients and Rule 8.6 for a lawyer's duty to disclose information to rectify a wrongful conviction.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information acquired during the representation. See Rule 1.0(f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information acquired during the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information acquired during the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information acquired during the representation of their clients, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends to commit a crime. Paragraph (b)(2) recognizes that a lawyer should be allowed to make a disclosure to avoid sacrificing the interests of the potential victim in favor of preserving the client's confidences when the client's purpose is wrongful. Similarly, paragraph (b)(3) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] A lawyer may have been innocently involved in past conduct by a client that was criminal or fraudulent. Even if the involvement was innocent, however, the fact remains that the lawyer's professional services were made the instrument of the client's crime or fraud. The lawyer, therefore, has a legitimate interest in being able to rectify the consequences of such conduct, and has the professional right, although not a professional duty, to rectify the situation. Exercising that right may require revealing information acquired during the representation. Paragraph (b)(4) gives the lawyer professional discretion to reveal such information to the extent necessary to accomplish rectification.

[8] Although paragraph (b)(2) does not require the lawyer to reveal the client's anticipated misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent.See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

[9] Paragraph (b)(4) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information acquired during the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(4) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[10] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[11] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[12] A lawyer entitled to a fee is permitted by paragraph (b)(6) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[13] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information acquired during the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(1) permits the lawyer to make such disclosures as are necessary to comply with the law.

[14] Paragraph (b)(1) also permits compliance with a court order requiring a lawyer to disclose information relating to a client's representation. If a lawyer is called as a witness to give testimony concerning a client or is otherwise ordered to reveal information relating to the client's representation, however, the lawyer must, absent informed consent of the client to do otherwise, assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal. See Rule 1.4. Unless review is sought, however, paragraph (b)(1) permits the lawyer to comply with the court's order.

[15] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[16] Paragraph (b) permits but does not require the disclosure of information acquired during a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(7). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. When practical, the lawyer should first seek to persuade the client to take suitable action, making it unnecessary for the lawyer to make any disclosure. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Detection of Conflicts of Interest

[17] Paragraph (b)(8) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [8]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[18] Any information disclosed pursuant to paragraph (b)(8) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(8) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(8). Paragraph (b)(8) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation. See Comment [5].

Acting Competently to Preserve Confidentiality

[19] Paragraph (c) requires a lawyer to act competently to safeguard information acquired during the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information acquired during the professional relationship with a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule, or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information to comply with other law—such as state and federal laws that govern data privacy, or that impose notification requirements upon the loss of, or unauthorized access to, electronic information—is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[20] When transmitting a communication that includes information acquired during the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the client's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[21] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Lawyer's Assistance Program

[22] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek help through such programs. Conversely,

without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in harm to their professional careers and injury to their clients and the public. The rule, therefore, requires that any information received by a lawyer on behalf of an approved lawyers' or judges' assistance program be regarded as confidential and protected from disclosure to the same extent as information received by a lawyer in any conventional client-lawyer relationship.

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27 NCAC 02 RULE 1.07 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(f) and (c).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. *See also* Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). *See* Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. *See* Rule 1.9. *See also* Comments [5] and [29] to this Rule.

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on

the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The withdrawing lawyer must seek court approval where necessary and take steps to minimize harm to the clients. *See* Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. *See* Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client may be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent a seller of commercial real estate, a real estate developer and a commercial lender is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself preclude the representation or require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent.

The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.
[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.19.

Interest of Person Paying for a Lawyer's Service
[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations
[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.
[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).
[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.
[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(n)), such representation may be precluded by paragraph (b)(1).

Informed Consent
[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).
[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing
[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(c). See also Rule 1.0(o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or

transmit it within a reasonable time thereafter. See Rule 1.0(c). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. See Comment [15]. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope

of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).
[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients
[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.
[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.08 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES
(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest directly adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses, provided the requirements of Rule 1.8(a) are satisfied; and

(2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.

While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i), that applies to any one of them shall apply to all of them.

Comment

Note: *See* Rule 1.19 for the prohibition on client-lawyer sexual relationships.

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the

lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception

allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule permits a lawyer to acquire a lien to secure the lawyer's fee or expenses provided the requirements of Rule 1.7 are satisfied. Specifically, the lawyer must reasonably believe that the representation will not be adversely affected after taking into account the possibility that the acquisition of a proprietary interest in the client's cause of action or any res involved therein may cloud the lawyer's judgment and impair the lawyer's ability to function as an advocate. The lawyer must also disclose the risks involved prior to obtaining the client's consent. Prior to initiating a foreclosure on property subject to a lien securing a legal fee, the lawyer must notify the client of the right to require the lawyer to participate in the mandatory fee dispute resolution program. See Rule 1.5(f).
[17] The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Imputation of Prohibitions
[18] Under paragraph (j), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client.

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Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.09 DUTIES TO FORMER CLIENTS
(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a

subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one or more of the clients in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent or the continued representation of the client(s) is not materially adverse to the interests of the former clients. *See* Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the information learned by the lawyer to establish a substantial risk that the lawyer has information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Whether information is "generally known" depends in part upon how the information was obtained and in part upon the former client's reasonable expectations. The mere fact that information is accessible through the public record or has become known to some other persons, does not necessarily deprive the information of its confidential nature. If the information is known or readily available to a relevant sector of the public, such as the parties involved in the matter, then the information is probably considered "generally known." See Restatement (Third) of The Law of Governing Lawyers, 111 cmt. d.
[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(f). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

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27 NCAC 02 RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE
(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter; and
(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Comment

Definition of "Firm"
[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification
[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.

[7] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] Rule 1.10(d) removes imputation with the informed consent of the affected client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(f).

[10] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[11] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 2 RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(B) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. *See* Rule 1.0(f) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10, however, is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) impose additional obligations on a lawyer who has served or is currently serving as an officer or employee of the government. They apply in situations where a lawyer is not adverse to a former client and are designed to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the

special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. *See* Rule 1.13 Comment [6].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. *See* Rule 1.0(l) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement nor do they specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. When disclosure is likely significantly to injure the client, a reasonable delay may be justified.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

History Note: *Authority G.S. 84-23;*
Adopted Eff. July 24, 1997;
Amended Eff. October 6, 2004; February 27, 2003.

27 NCAC 02 RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. *See* Rule 1.0(f) and (c). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. *See* Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. When disclosure is likely to significantly injure the client, a reasonable delay may be justified.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee. or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may reveal such information outside the organization to the extent permitted by Rule 1.6 and may resign in accordance with Rule 1.16.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under these Rules, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Rule apply equally to unincorporated associations. "Other constituents" as used in this Rule means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization may be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is a violation of the law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(g), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rule 1.6, 1.8, 1.16, 3.3, or 4.1. If the lawyer reasonably believes that disclosure of information protected by Rule 1.6 is necessary to prevent the commission of a crime by an organizational client, for example, disclosure is permitted by Rule 1.6(b)(2). If the lawyer's services are being or have been used by an organizational client to further a crime or fraud by the organization, Rule 1.6(b)(4) permits the lawyer to disclose confidential information to prevent, mitigate, or rectify the consequences of such

conduct. In such circumstances, Rule 1.2(d) may be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee, or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) and (c), or who withdraws in circumstances that require or permit the lawyer to take action under these Rules, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder, director, employee, member, or other constituent.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

History Note: *Authority G.S. 84-23;*
Adopted July 24, 1997;
Amended Effective March 2, 2006; March 1, 2003.

27 NCAC 02 RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See* Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.
[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition
[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance
[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.
[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.15-1 DEFINITIONS
For purposes of this Rule 1.15, the following definitions apply:
(a) "Bank" denotes a bank savings and loan association, or credit union chartered under North Carolina or federal law.
(b) "Client" denotes a person, firm, or other entity for whom a lawyer performs, or is engaged to perform, any legal services.
(c) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.

(d) "Demand deposit" denotes any account from which deposited funds can be withdrawn at any time without notice to the depository institution.
(e) "Electronic transfer" denotes a paperless transfer of funds.
(f) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.
(g) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.
(h) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.
(i) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers.
(j) "General trust account" denotes any trust account other than a dedicated trust account.
(k) "Item" denotes any means or method by which funds are credited to or debited from an account; for example: a check, substitute check, remotely created check, draft, withdrawal order, automated clearinghouse (ACH) or electronic transfer, electronic or wire funds transfer, electronic image of an item and/or information in electronic form describing an item, or instructions given in person or by telephone, mail, or computer.
(l) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.
(m) "Professional fiduciary services" denotes compensated services (other than legal services) rendered by a lawyer as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.
(n) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of trust funds.
(o) "Trust funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.

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27 NCAC 02 RULE 1.15-2 GENERAL RULES
(a) Entrusted Property. All entrusted property shall be identified, held, and maintained separate from the property of the lawyer, and shall be deposited, disbursed, and distributed only in accordance with this Rule 1.15.
(b) Deposit of Trust Funds. All trust funds received by or placed under the control of a lawyer shall be promptly deposited in either a general trust account or a dedicated trust account of the lawyer. Trust funds placed in a general account are those which, in the lawyer's good faith judgment, are nominal or short-term. General trust accounts are to be administered in accordance with the Rules of Professional Conduct and the provisions of 27 NCAC Chapter 1, Subchapter D, Sections .1300.
(c) Deposit of Fiduciary Funds. All fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in a fiduciary account or a general trust account of the lawyer.
(d) Safekeeping of Other Entrusted Property. A lawyer may also hold entrusted property other than fiduciary funds (such as securities) in a fiduciary account. All entrusted property received by a lawyer that is not deposited in a trust account or fiduciary account (such as a stock certificate) shall be promptly identified, labeled as property of the person or entity for whom it is to be held, and placed in a safe deposit box or other suitable place of safekeeping. The lawyer shall disclose the location of the property to the client or other person for whom it is held. Any safe deposit box or other place of safekeeping shall be located in this state, unless the lawyer has been otherwise authorized in writing by the client or other person for whom it is held.
(e) Location of Accounts. All trust accounts shall be maintained at a bank in North Carolina or a bank with branch offices in North Carolina except that, with the written consent of the client, a dedicated trust account may be maintained at a bank that does not have offices in North Carolina or at a financial institution other than a bank in or outside of North Carolina. A lawyer may maintain a fiduciary account at any bank or other financial institution in or outside of North Carolina selected by the lawyer in the exercise of the lawyer's fiduciary responsibility.
(f) Funds in Accounts. A trust or fiduciary account may only hold entrusted property. Third party funds that are not received by or placed under the control of the lawyer in connection with the performance of legal services or professional

fiduciary services may not be deposited or maintained in a trust or fiduciary account. Additionally, no funds belonging to a the lawyer shall be deposited or maintained in a trust account or fiduciary account of the lawyer except:

(1) funds sufficient to open or maintain an account, pay any bank service charges, or pay any tax levied on the account; or

(2) funds belonging in part to a client or other third party and in part currently or conditionally to the lawyer.

(g) Mixed Funds Deposited Intact. When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer shall withdraw the amounts to which the lawyer is or becomes entitled. If the lawyer's entitlement is disputed, the disputed amounts shall remain in the trust account or fiduciary account until the dispute is resolved.

(h) Items Payable to Lawyer. Any item drawn on a trust account or fiduciary account for the payment of the lawyer's fees or expenses shall be made payable to the lawyer and shall indicate on the item by client name, file number, or other identifying information the client from whose balance the item is drawn. Any item that does not include this information may not be used to withdraw funds from a trust account or a fiduciary account for payment of the lawyer's fees or expenses.

(i) No Bearer Items. No item shall be drawn on a trust account or fiduciary account made payable to cash or bearer and no cash shall be withdrawn from a trust account or fiduciary account by any means.

(j) Debit Cards Prohibited. Use of a debit card to withdraw funds from a general or dedicated trust account or a fiduciary account is prohibited.

(k) No Benefit to Lawyer or Third Party. A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

(l) Bank Directive. Every lawyer maintaining a trust account or fiduciary account with demand deposit at a bank or other financial institution shall file with the bank or other financial institution a written directive requiring the bank or other financial institution to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds. No trust account or fiduciary account shall be maintained in a bank or other financial institution that does not agree to make such reports.

(m) Notification of Receipt. A lawyer shall promptly notify his or her client of the receipt of any entrusted property belonging in whole or in part to the client.

(n) Delivery of Client Property. A lawyer shall promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client and to which the client is currently entitled.

(o) Property Received as Security. Any entrusted property or document of title delivered to a lawyer as security for the payment of a fee or other obligation to the lawyer shall be held in trust in accordance with this Rule 1.15 and shall be clearly identified as property held as security and not as a completed transfer of beneficial ownership to the lawyer. This provision does not apply to property received by a lawyer on account of fees or other amounts owed to the lawyer at the time of receipt; however, such transfers are subject to the rules governing legal fees or business transactions between a lawyer and client.

(p) Duty to Report Misappropriation. A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the Trust Account Compliance Counsel (TACC) in the North Carolina State Bar Office of Counsel. Discovery of intentional theft or fraud must be reported to the TACC immediately. When an accounting or bank error results in an unintentional and inadvertent use of one client's trust funds to pay the obligations of another client, the event must be reported unless the misapplication is discovered and rectified on or before the next quarterly reconciliation required by Rule 1.15-3(d)(1). This rule requires disclosure of information otherwise protected by Rule 1.6 if necessary to report the misappropriation or misapplication.

(q) Interest on Deposited Funds. Under no circumstances shall the lawyer be entitled to any interest earned on funds deposited in a trust account or fiduciary account. Except as authorized by Rule .1316 of subchapter 1D of the Rules and Regulations of the North Carolina State Bar, any interest earned on a trust account or fiduciary account, less any amounts deducted for bank service charges and taxes, shall belong to the client or other person or entity entitled to the corresponding principal amount.

(r) Abandoned Property. If entrusted property is unclaimed, the lawyer shall make due inquiry of his or her personnel, records and other sources of information in an effort to determine the identity and location of the owner of the property. If that effort is successful, the entrusted property shall be promptly transferred to the person or entity to whom it belongs. If the effort is unsuccessful and the provisions of G.S. 116B-53 are satisfied, the property shall be deemed abandoned,

and the lawyer shall comply with the requirements of Chapter 116B of the General Statutes concerning the escheat of abandoned property.

(s) Check Signing and Electronic Transfer Authority.

(1) Every trust account check must be signed by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer.

(2) Every electronic transfer from a trust account must be initiated by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer.

(3) Prior to exercising signature or electronic transfer authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature or transfer authority.

(4) Trust account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures other than "digital signatures" as defined in 21 CFR 11.3(b)(5).

History Note: *Authority G.S. 84-23;*
Adopted July 24, 1997;
Amended March 1, 2003; March 6, 2008; February 5, 2009; August 23, 2012; June 9, 2016; April 5, 2018.

27 NCAC 02 RULE 1.15-3 RECORDS AND ACCOUNTINGS

(a) Check Format. All general trust accounts, dedicated trust accounts, and fiduciary accounts must use business-size checks that contain an Auxiliary On-Us field in the MICR line of the check.

(b) Minimum Records for Accounts at Banks. The minimum records required for general trust accounts, dedicated trust accounts, and fiduciary accounts maintained at a bank shall consist of the following:

(1) all records listing the source and date of receipt of any funds deposited in the account including, but not limited to, bank receipts, deposit slips and wire and electronic transfer confirmations, and, in the case of a general trust account, all records also listing the name of the client or other person to whom the funds belong;

(2) all canceled checks or other items drawn on the account, or digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the client name, file number, or other identifying information of the client from whose balance each item is drawn, provided, that:

(A) digital images must be legible reproductions of the front and back of the original items with no more than six images per page and no images smaller than 1-3/16 x 3 inches; and

(B) the bank must maintain, for at least six years, the capacity to reproduce electronically additional or enlarged images of the original items or records related thereto upon request within a reasonable time.

(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds belong;

(4) all bank statements and other documents received from the bank with respect to the trust account, including, but not limited to notices of return or dishonor of any item drawn on the account against insufficient funds;

(5) in the case of a general trust account, a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity; and

(6) any other records required by law to be maintained for the trust account.

(c) Minimum Records for Accounts at Other Financial Institutions. The minimum records required for dedicated trust accounts and fiduciary accounts at financial institutions other than a bank shall consist of the following:

(1) all records listing the source and date of receipt of all funds deposited in the account including, but not limited to, depository receipts, deposit slips, and wire and electronic transfer confirmations;

(2) a copy of all checks or other items drawn on the account, or digital images thereof furnished by the depository, showing the amount, date, and recipient of the disbursement, provided, that the images satisfy the requirements set forth in Rule 1.15-3(b)(2);

(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the account (including electronic transfers or debits) or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement;

(4) all statements and other documents received from the depository with respect to the account, including, but not limited to notices of return or dishonor of any item drawn on the account for insufficient funds; and

(5) any other records required by law to be maintained for the account.

(d) Reconciliations of General Trust Accounts.

(1) Quarterly Reconciliations. For each general trust account, a reconciliation report shall be prepared at least quarterly. Each reconciliation report shall show all of the following balances and verify that they are identical:

(A) The balance that appears in the general ledger as of the reporting date;

(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and

(C) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.

(2) Monthly Reconciliations. Each month, the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance for the trust account.

(3) The lawyer shall review, sign, date, and retain a copy of the reconciliations of the general trust account for a period of six years in accordance with Rule 1.15-3(g).

(e) Accountings for Trust Funds. The lawyer shall render to the client a written accounting of the receipts and disbursements of all trust funds (i) upon the complete disbursement of the trust funds, (ii) at such other times as may be reasonably requested by the client, and (iii) at least annually if the funds are retained for a period of more than one year.

(f) Accountings for Fiduciary Property. Inventories and accountings of fiduciary funds and other entrusted property received in connection with professional fiduciary services shall be rendered to judicial officials or other persons as required by law. If an annual or more frequent accounting is not required by law, a written accounting of all transactions concerning the fiduciary funds and other entrusted property shall be rendered to the beneficial owners, or their representatives, at least annually and upon the termination of the lawyer's professional fiduciary services.

(g) Minimum Record Keeping Period. A lawyer shall maintain, in accordance with this Rule 1.15, complete and accurate records of all entrusted property received by the lawyer, which records shall be maintained for at least the six (6) year period immediately preceding the lawyer's most recent fiscal year end.

(h) Audit by State Bar. The financial records required by this Rule 1.15 shall be subject to audit for cause and to random audit by the North Carolina State Bar; and such records shall be produced for inspection and copying in North Carolina upon request by the State Bar.

(i) Reviews.

(1) Each month, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.

(2) Each quarter, for each general trust account and dedicated trust account, the lawyer shall review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.

(3) Each quarter, for each fiduciary account, the lawyer shall engage in a review as described in Rule 1.15-3(i)(2); however, if the lawyer manages more than ten fiduciary accounts, the lawyer may perform reviews on a random sample of at least ten fiduciary accounts in lieu of performing reviews on all such accounts.

(4) The lawyer shall take the necessary steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.

(5) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(j) Retention of Records in Electronic Format. Records required by Rule 1.15-3 may be created, updated, and maintained electronically, provided:

(1) the records otherwise comply with Rule 1.15-3, to wit: electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a "digital signature" as defined in 21 CFR 11.3(b)(5);

(2) printed and electronic copies of the records in industry-standard formats can be made on demand; and

(3) the records are regularly backed up by an appropriate storage device.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 6, 2004; March 6, 2008; June 9, 2016; April 5, 2018.

27 NCAC 02 RULE 1.15-4 TRUST ACCOUNT MANAGEMENT IN A MULTI-MEMBER FIRM

(a) Trust Account Oversight Officer (TAOO). Lawyers in a law firm of two or more lawyers may designate a partner in the firm to serve as the trust account oversight officer (TAOO) for any general trust account into which more than one firm lawyer deposits trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), shall agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4. More than one partner may be designated as a TAOO for a law firm.

(b) Limitations on Delegation. Designation of a TAOO does not relieve any lawyer in the law firm of responsibility for the following:

(1) oversight of the administration of any dedicated trust account or fiduciary account that is associated with a legal matter for which the lawyer is primary legal counsel or with the lawyer's performance of professional fiduciary services; and

(2) review of the disbursement sheets or statements of costs and receipts, client ledgers, and trust account balances for those legal matters for which the lawyer is primary legal counsel.

(c) Training of the TAOO.

(1) Within the six months prior to beginning service as a TAOO, a lawyer shall,

(A) read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar Trust Account Handbook;

(B) complete one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;

(C) complete two hours of training (live, online, or self-guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics; and

(D) become familiar with the law firm's accounting system for trust accounts.

(2) During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph (c)(1)(C).

(d) Designation and Annual Certification. The written agreement designating a lawyer as the TAOO described in paragraph (a) shall contain the following:

(1) A statement by the TAOO that the TAOO agrees to oversee the operation of the firm's general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in paragraph (e) of this rule;

(2) Identification of the trust accounts that the TAOO will oversee;

(3) An acknowledgement that the TAOO has completed the training described in paragraph (c)(1) and a description of that training;

(4) A statement certifying that the TAOO understands the law firm's accounting system for trust accounts; and

(5) An acknowledgement that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

Each year on the anniversary of the execution of the agreement, the TAOO and the managing lawyers shall execute a statement confirming the continuing designation of the lawyer as the TAOO, certifying compliance with the requirements of this rule, describing the training undertaken by the TAOO as required by paragraph (c)(2), and reciting the statements required by subparagraphs (d)(1), (2), (4), and (5). During the lawyer's tenure as TAOO and for six years thereafter, the agreement and all subsequent annual statements shall be maintained with the trust account records (see Rule 1.15-3(g)).

(e) Mandatory Oversight Measures. In addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm's trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).

History Note: *Authority G.S. 84-23;*
Eff. June 9, 2016.

27 NCAC 02 RULE 1.15 COMMENT TO RULE 1.15 AND ALL SUBPARTS

[1] The purpose of a lawyer's trust account or fiduciary account is to segregate the funds belonging to others from those belonging to the lawyer. Money received by a lawyer while providing legal services or otherwise serving as a fiduciary should never be used for personal purposes. Failure to place the funds of others in a trust or fiduciary account can subject the funds to claims of the lawyer's creditors or place the funds in the lawyer's estate in the event of the lawyer's death or disability.

Property Subject to these Rules

[2] Any property belonging to a client or other person or entity that is received by or placed under the control of a lawyer in connection with the lawyer's furnishing of legal services or professional fiduciary services must be handled and maintained in accordance with this Rule 1.15. The minimum records to be maintained for accounts in banks differ from the minimum records to be maintained for accounts in other financial institutions (where permitted), to accommodate brokerage accounts and other accounts with differing reporting practices.

Client Property

[3] Every lawyer who receives funds belonging to a client must maintain a trust account. The general rule is that every receipt of money from a client or for a client, which will be used or delivered on the client's behalf, is held in trust and should be placed in the trust account. All client money received by a lawyer, except that to which the lawyer is immediately entitled, must be deposited in a trust account, including funds for payment of future fees and expenses. Client funds must be promptly deposited into the trust account. Client funds must be deposited in a general trust account if there is no duty to invest on behalf of the client. Generally speaking, if a reasonably prudent person would conclude that the funds in question, either because they are nominal in amount or are to be held for a short time, could probably not earn sufficient interest to justify the cost of investing, the funds should be deposited in the general trust account. In determining whether there is a duty to invest, a lawyer shall exercise his or her professional judgment in good faith and shall consider the following:

a) The amount of the funds to be deposited;

b) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

c) The rates of interest or yield at financial institutions where the funds are to be deposited;

d) The cost of establishing and administering dedicated accounts for the client's benefit, including the service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

e) The capability of financial institutions, lawyers, or law firms to calculate and pay income to individual clients;

f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

When regularly reviewing the trust accounts, the lawyer shall determine whether changed circumstances require further action with respect to the funds of any client. The determination of whether a client's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment

[4] A law firm with offices in another state may send a North Carolina client's funds to a firm office in another state for centralized processing provided, however, the funds are promptly deposited into a trust account with a bank that has branch offices in North Carolina, and further provided, the funds are transported and held in a safe place until deposited

into the trust account. If this procedure is followed, client consent to the transfer of the funds to an out-of-state office of the firm is not required. However, all such client funds are subject to the requirements of these rules. Funds delivered to the lawyer by the client for payment of future fees or expenses should never be used by the lawyer for personal purposes or subjected to the potential claims of the lawyer's creditors.

[5] This rule does not prohibit a lawyer who receives an instrument belonging wholly to a client or a third party from delivering the instrument to the appropriate recipient without first depositing the instrument in the lawyer's trust account.

Property from Professional Fiduciary Service

[6] The phrase "professional fiduciary service," as used in this rule, is service by a lawyer in any one of the various fiduciary roles undertaken by a lawyer that is not, of itself, the practice of law, but is frequently undertaken in conjunction with the practice of law. This includes service as a trustee, guardian, personal representative of an estate, attorney-in-fact, and escrow agent, as well as service in other fiduciary roles "customary to the practice of law."

[7] Property held by a lawyer performing a professional fiduciary service must also be segregated from the lawyer's personal property, properly labeled, and maintained in accordance with the applicable provisions of this rule.

[8] When property is entrusted to a lawyer in connection with a lawyer's representation of a client, this rule applies whether or not the lawyer is compensated for the representation. However, the rule does not apply to property received in connection with a lawyer's uncompensated service as a fiduciary such as a trustee or personal representative of an estate. (Of course, the lawyer's conduct may be governed by the law applicable to fiduciary obligations in general, including a fiduciary's obligation to keep the principal's funds or property separate from the fiduciary's personal funds or property, to avoid self-dealing, and to account for the funds or property accurately and promptly).

[9] Compensation distinguishes professional fiduciary service from a fiduciary role that a lawyer undertakes as a family responsibility, as a courtesy to friends, or for charitable, religious or civic purposes. As used in this rule, "compensated services" means services for which the lawyer obtains or expects to obtain money or any other valuable consideration. The term does not refer to or include reimbursement for actual out-of-pocket expenses.

Property Excluded from Coverage of Rules

[10] This rule also does not apply when a lawyer is handling money for a business or for a religious, civic, or charitable organization as an officer, employee, or other official regardless of whether the lawyer is compensated for this service. Handling funds while serving in one of these roles does not constitute "professional fiduciary service," and such service is not "customary to the practice of law."

Burden of Proof

[11] When a lawyer is entrusted with property belonging to others and does not comply with these rules, the burden of proof is on the lawyer to establish the capacity in which the lawyer holds the funds and to demonstrate why these rules should not apply.

Prepaid Legal Fees

[12] Whether a fee that is prepaid by the client should be placed in the trust account depends upon the fee arrangement with the client. A retainer fee in its truest sense is a payment by the client for the reservation of the exclusive services of the lawyer, which is not used to pay for the legal services provided by the lawyer and, by agreement of the parties, is nonrefundable upon discharge of the lawyer. It is a payment to which the lawyer is immediately entitled and, therefore, should not be placed in the trust account. A "retainer," which is actually a deposit by the client of an advance payment of a fee to be billed on an hourly or some other basis, is not a payment to which the lawyer is immediately entitled. This is really a security deposit and should be placed in the trust account. As the lawyer earns the fee or bills against the deposit, the funds should be withdrawn from the account. Rule 1.16(d) requires the refund to the client of any part of a fee that is not earned by the lawyer at the time that the representation is terminated.

[13] Client or third-party funds on occasion pass through, or are originated by, intermediaries before deposit to a trust or fiduciary account. Such intermediaries include banks, credit card processors, litigation funding entities, and online marketing platforms. A lawyer may use an intermediary to collect a fee. However, the lawyer may not participate in or facilitate the collection of a fee by an intermediary that is unreliable or untrustworthy. Therefore, the lawyer has an obligation to make a reasonable investigation into the reliability, stability, and viability of an intermediary to determine whether reasonable measures are being taken to segregate and safeguard client funds against loss or theft and, should such funds be lost, that the intermediary has the resources to compensate the client. Absent other indicia of fraud (such as the use of non-industry standard methods for collection of credit card information), a lawyer's diligence obligation is satisfied if the intermediary collects client funds using a credit or debit card. Unearned fees, if collected by an intermediary, must be transferred to the lawyer's designated trust or fiduciary account within a reasonable period of time so as to minimize the risk of loss while the funds are in the possession of another, and to enable the collection of interest on the funds for the IOLTA program or the client as appropriate. See 27 N.C.A.C. 1B, Sect. .1300.

Abandoned Property

[14] Should a lawyer need technical assistance concerning the escheat of property to the State of North Carolina, the lawyer should contact the escheat officer at the Office of the North Carolina State Treasurer in Raleigh, North Carolina.

Disputed Funds

[15] A lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as the State Bar's program for fee dispute resolution. See Rule 1.5(f). The undisputed portion of the funds shall be promptly distributed.

[16] Third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claim is resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

Responsibility for Records and Accountings

[17] It is the lawyer's responsibility to assure that complete and accurate records of the receipt and disbursement of entrusted property are maintained in accordance with this rule. The required record retention period of six years set forth in this rule does not preclude the State Bar from seeking records for a period prior to the retention period and, if obtained, from pursuing a disciplinary action based thereon if such action is not prohibited by law or other rules of the State Bar.

[18] The rules permit the retention of records in electronic form. A storage device is appropriate for backing up electronic records if it reasonably assures that the records will be recoverable despite the failure or destruction of the original storage device on which the records are stored. For a discussion of storage methods not solely under the control of the lawyer, see 2011 FEO 6.

[19] Many businesses are now converting paper checks to automated clearinghouse (ACH) debits to decrease costs and increase operating efficiencies. When a check is converted, the check is taken either at the point-of-sale or through the mail for payment, the account information is captured from the check, and an electronic transaction is created for payment through the ACH system. The original physical check is typically destroyed by the converting entity (although an image of the check may be stored for a certain period of time). If a check drawn on a trust account is converted to ACH, the lawyer will not receive either the physical check or a check image. The transaction will appear on the lawyer's trust account statement as an ACH debit with limited information about the payment (e.g., dollar amount, date processed, originator of the ACH debit).

[20] To prevent conversion of a check to ACH without authorization, a lawyer is required to use checks with an "Auxiliary On-Us field." A check will not be eligible for conversion to ACH if it contains an Auxiliary On-Us field, which is an additional field that appears in the left-most position of the MICR (magnetic ink character recognition) line on a business size check. The lawyer should confirm with the lawyer's financial institution that the Auxiliary On-Us field is included on the lawyer's trust account checks. Including an Auxiliary On-Us field on the check will require using checks that are longer than six inches. As with the other information in the MICR line of a check, the routing, account and payment numbers, the financial institution issuing the check determines the content of the Auxiliary On-Us field.

[21] Authorized ACH debits that are electronic transfers of funds (in which no checks are involved) are allowed provided the lawyer maintains a record of the transaction as required by Rule 1.15-3(b)(3) and (c)(3). The record, whether consisting of the instructions or authorization to debit the account, a record or receipt from the register of deeds or a financial institution, or the lawyer's independent record of the transaction, must show the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also show the name of the client or other person to whom the funds belong.

[22] The lawyer is responsible for keeping a client, or any other person to whom the lawyer is accountable, advised of the status of entrusted property held by the lawyer. In addition, the lawyer must take steps to discover any unauthorized transactions involving trust funds as soon as possible. Therefore, it is essential that the lawyer regularly reconcile a general trust account. This means that, at least once a month, the lawyer must reconcile the current bank statement balance with the balance shown for the entire account in the lawyer's records, such as a check register or its equivalent, as of the date of the bank statement. At least once a quarter, the lawyer must reconcile the individual client balances shown on the lawyer's ledger with the current bank statement balance. Monthly reconciliation will help to uncover unauthorized ACH transactions promptly. The current bank balance is the balance obtained when subtracting outstanding checks and other withdrawals from the bank statement balance and adding outstanding deposits to the bank statement balance. With regard to trust funds held in any trust account, there is also an affirmative duty to produce a written accounting for the

client and to deliver it to the client, either at the conclusion of the transaction or periodically if funds are held for an appreciable period. Such accountings must be made at least annually or at more frequent intervals if reasonably requested by the client.

Bank Notice of Overdrafts

[23] A properly maintained trust account should not have any items presented against insufficient funds. However, even the best-maintained accounts are subject to inadvertent errors by the bank or the lawyer, which may be easily explained. The reporting requirement should not be burdensome and may help avoid a more serious problem.

Fraud Prevention Measures

[24] The mandatory monthly and quarterly reviews and oversight measures in Rule 1.15-3(i) facilitate early detection of internal theft and early detection and correction of errors. They are minimum fraud prevention measures necessary for the protection of funds on deposit in a firm trust or fiduciary account from theft by any person with access to the account. Internal theft from trust accounts by insiders at a law firm can only be timely detected if the records of the firm's trust accounts are routinely reviewed. For this reason, Rule 1.15-3(i)(1) requires monthly reviews of the bank statements and cancelled checks for all general, dedicated, and fiduciary accounts. In addition, Rule 1.15-3(i)(2) requires quarterly reviews of a random sample of three transactions for each trust account, dedicated trust account, and fiduciary account including examination of the statement of costs and receipts, client ledger, and cancelled checks for the transactions. Review of these documents will enable the lawyer to verify that the disbursements were made properly. Although not required by the rule, a larger sample than three transactions is advisable to increase the likelihood that internal theft will be detected.

[25] Another internal control to prevent fraud is found in Rule 1.15-2(s) which addresses the signature authority for trust account checks. The provision prohibits an employee who is responsible for performing the monthly or quarterly reconciliations for a trust account from being a signatory on a check for that account. Dividing the check signing and reconciliation responsibilities makes it more difficult for one employee to hide fraudulent transactions. Similarly, signature stamps, preprinted signature lines on checks, and electronic signatures are prohibited to prevent their use for fraudulent purposes.

[26] In addition to the recommendations in the North Carolina State Bar Trust Account Handbook (see the chapter on Safeguarding Funds from Embezzlement), the following fraud prevention measures are recommended:

(1) Enrolling the trust account in an automated fraud detection program;

(2) Implementation of security measures to prevent fraudulent wire transfers of funds;

(3) Actively maintaining end-user security at the law firm through safety practices such as strong password policies and procedures, the use of encryption and security software, and periodic consultation with an information technology security professional to advise firm employees; and

(4) Insuring that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm.

Lawyers should frequently evaluate whether additional fraud control measures are necessary and appropriate.

Duty to Report Misappropriation or Misapplication

[27] A lawyer is required by Rule 1.15-2(p) to report to the Trust Account Compliance Counsel of the North Carolina State Bar Office of Counsel if the lawyer knows or reasonably believes that entrusted property, including trust funds, has been misappropriated or misapplied. The rule requires the reporting of an unintentional misapplication of trust funds, such as the inadvertent use of one client's funds on deposit in a general trust account to pay the obligations of another client, unless the lawyer discovers and rectifies the error on or before the next scheduled quarterly reconciliation. A lawyer is required to report the conduct of lawyers and non-lawyers as well as the lawyer's own conduct. A report is required regardless of whether information leading to the discovery of the misappropriation or misapplication would otherwise be protected by Rule 1.6. If disclosure of confidential client information is necessary to comply with this rule, the lawyer's disclosure should be limited to the information that is necessary to enable the State Bar to investigate. See Rule 1.6, cmt. [15].

Designation of a Trust Account Oversight Officer

[28] In a firm with two or more lawyers, personal oversight of all of the activities in the general trust accounts by all of the lawyers in the firm is often impractical. Nevertheless, any lawyer in the firm who deposits into a general trust account funds entrusted to the lawyer by or on behalf of a client is professionally responsible for the administration of the trust account in compliance with Rule 1.15 regardless of whether the lawyer directly participates in the administration of the trust account. Moreover, Rule 5.1 requires all lawyers with managerial or supervisory authority over the other lawyers in a firm to make reasonable efforts to ensure that the other lawyers conform to the Rules of Professional Conduct. Rule 1.15-4 provides a procedure for delegation of the oversight of the routine administration of a general trust account to a firm partner, shareholder, or member (see Rule 1.0(h)) in a manner that is professionally responsible. By identifying,

training, and documenting the appointment of a trust account oversight officer (TAOO) for the law firm, the lawyers in a multiple-lawyer firm may responsibly delegate the routine administration of the firm's general trust accounts to a qualified lawyer. Delegation consistent with the requirements of Rule 1.15-4 is evidence of a lawyer's good faith effort to comply with Rule 5.1.

[29] Nevertheless, designation of a TAOO does not insulate from professional discipline a lawyer who personally engaged in dishonest or fraudulent conduct. Moreover, a lawyer having actual or constructive knowledge of dishonest or fraudulent conduct or the mismanagement of a trust account in violation of the Rules of Professional Conduct by any firm lawyer or employee remains subject to professional discipline if the lawyer fails to promptly take reasonable remedial action to avoid the consequences of such conduct including reporting the conduct as required by Rule 1.15-2(p) or Rule 8.3. See also Rule 5.1 and Rule 5.3.

Limitations on Delegation to TAOO

[30] Despite the designation of a TAOO pursuant to Rule 1.15-4, each lawyer in the firm remains professionally responsible for the trust account activity associated with the legal matters for which the lawyer provides representation. Therefore, for each legal matter for which the lawyer is primary counsel, the lawyer must review and approve any disbursement sheet or settlement statement, trust account entry in the client ledger, and trust account balance associated with the matter. Similarly, a lawyer who establishes a dedicated trust account or fiduciary account in connection with the representation of a client is professionally responsible for the administration of the dedicated trust account or fiduciary account in compliance with Rule 1.15.

Training for Service as a TAOO

[31] A qualified provider of the educational training programs for a TAOO described in Rule 1.15-4(c)(1)(C) need not be an accredited sponsor of continuing legal education programs (see 27 NCAC 1D, Rule .1520), but must be knowledgeable and reputable in the specific field and must offer educational materials as part of its usual course of business. Training may be completed via live presentations, online courses, or self-guided study. Self-guided study may consist of reading articles, presentation materials, or websites that have been created for the purpose of education in the areas of financial fraud, safeguarding funds from embezzlement, risk management for bank accounts, information security and on-line banking, or basic accounting.

History Note: *Authority G.S. 84-23;*
Amendments Approved by the Supreme Court: March 1, 2003; March 6, 2008; June 9, 2016; March 27, 2019.

27 NCAC 02 RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of law or the Rules of Professional Conduct;
(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client; or
(2) the client knowingly and freely assents to the termination of the representation; or
(3) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or
(4) the client insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or with which the lawyer has a fundamental disagreement; or
(5) the client has used the lawyer's services to perpetrate a crime or fraud; or
(6) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; or
(7) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(8) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or
(9) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* Rules 1.2(c) and 6.5. *See also* Rule 1.3, Comment [4].
Mandatory Withdrawal
[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.
[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge
[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.
[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.
[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal
[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Forfeiture by the client of a substantial financial investment in the representation may have such effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or imprudent or with which the lawyer has a fundamental disagreement.
[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal
[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client.
[10] The lawyer may never retain papers to secure a fee. Generally, anything in the file that would be helpful to successor counsel should be turned over. This includes papers and other things delivered to the discharged lawyer by the client such as original instruments, correspondence, and canceled checks. Copies of all correspondence received and generated by

the withdrawing or discharged lawyer should be released as well as legal instruments, pleadings, and briefs submitted by either side or prepared and ready for submission. The lawyer's personal notes and incomplete work product need not be released.

[11] A lawyer who represented an indigent on an appeal which has been concluded and who obtained a trial transcript furnished by the state for use in preparing the appeal, must turn over the transcript to the former client upon request, the transcript being property to which the former client is entitled.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 1.17 SALE OF A LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice, except the seller may continue to practice law with the purchaser and may provide legal representation at no charge to indigent persons or to members of the seller's family;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) Written notice is sent to each of the seller's clients regarding:

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel and to take possession of the client's files prior to the sale or at any time thereafter; and

(3) the fact that the client's consent to the transfer of the client's files and legal representation to the purchaser will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice.

(d) If the seller or the purchaser identifies a conflict of interest that prohibits the purchaser from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel.

(e) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file. In the event the court fails to grant a substitution of counsel in a matter, that matter shall not be included in the sale and the sale otherwise shall be unaffected.

(f) The fees charged clients shall not be increased by reason of the sale.

(g) The seller and purchaser may agree that the purchaser does not have to pay the entire sales price for the seller's law practice in one lump sum. The seller and purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating Rules 1.5(e) and 5.4(a). The seller, however, shall have no say regarding the purchaser's conduct of the law practice.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing principals of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as an independent contract lawyer or an employee for the practice. Permitting the seller to continue to work for the practice will assist in the smooth transition of cases and will provide mentoring to new lawyers. The requirement that the seller cease

private practice also does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business. Similarly, the Rule allows the seller to provide pro bono representation to indigent persons on his own initiative and to provide legal representation to family members without charge.

See also 98 Formal Ethics Opinion 6 (1998) (requirements in rule relative to sale of law practice to lawyer who is stranger to the firm do not apply to the sale of law practice to lawyer who is a current employee of firm).

[4] The Rule permits a sale attendant upon discontinuing the private practice of law from an office that is within a one-hundred (100) mile radius of the purchased practice. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another part of North Carolina or to another state.

Sale of Entire Practice or Entire Area of Practice

[5] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than the entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[6] Written notice of the proposed sale must be sent to all clients who are currently represented by the seller and to all former clients whose files will be transferred to the purchaser. Although it is not required by this rule, the placement of a notice of the proposed sale in a local newspaper of general circulation would supplement the effort to provide notice to clients as required by Paragraph (c) of the rule.

[7] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[8] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. *See* Rule 1.6(b)(8). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 30 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice. The notice to clients must advise clients that they have a right to retain a lawyer other than the purchaser. In addition, the notice must inform clients that their right to counsel of their choice continues after the sale even though they consent to the transfer of the representation to the purchaser.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(f) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

[13] After purchase, the law practice may retain the same name subject to the requirements of Rule 7.5. The seller's retirement or discontinuation of affiliation with the law practice must be indicated on letterhead and other communications as necessary to avoid misleading the public as to the seller's relationship to the law practice. If the seller

becomes an independent contract lawyer or employee of the practice, the letterhead and other communications must indicate that the seller is no longer the owner of the firm; an "of counsel" designation would be sufficient to do so.

Applicability of the Rule

[14] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[15] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[16] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amendments Approved by the Supreme Court: September 22, 2016; October 2, 2014; November 16, 2006; March 1, 2003.

Ethics Opinion Notes

98 Formal Ethics Opinion 6. Opinion rules that the requirements set forth in Rule 1.17 relative to the sale of a law practice to a lawyer who is a stranger to the firm do not apply to the sale of a law practice to lawyers who are current employees of the firm.

27 NCAC 02 RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(1) the disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. In such a situation, to avoid the creation of a duty to the person under this Rule, a lawyer has an affirmative obligation to warn the person that a communication with the lawyer will not create a client-lawyer relationship and information conveyed to the lawyer will not be confidential or privileged. *See also* Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person is communicating information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the

possibility of forming a client-lawyer relationship, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. *See* Rule 1.0(l) (requirements for screening procedures). Paragraph (d)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. When disclosure is likely to significantly injure the client, a reasonable delay may be justified.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, *see* Rule 1.15. For the special considerations when a prospective client has diminished capacity, see Rule 1.14.

History Note: *Authority G.S. 84-23;*
Eff. March 1, 2003;
Amended Eff. October 2, 2014.

27 NCAC 02 RULE 1.19 SEXUAL RELATIONS WITH CLIENTS PROHIBITED

(a) A lawyer shall not have sexual relations with a current client of the lawyer.

(b) Paragraph (a) shall not apply if a consensual sexual relationship existed between the lawyer and the client before the legal representation commenced.

(c) A lawyer shall not require or demand sexual relations with a client incident to or as a condition of any professional representation.

(d) For purposes of this rule, "sexual relations" means:

(1) Sexual intercourse; or

(2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.

(e) For purposes of this rule, "lawyer" means any lawyer who assists in the representation of the client but does not include other lawyers in a firm who provide no such assistance.

Comment

[1] Rule 1.7, the general rule on conflict of interest, has always prohibited a lawyer from representing a client when the lawyer's ability competently to represent the client may be impaired by the lawyer's other personal or professional commitments. Under the general rule on conflicts and the rule on prohibited transactions (Rule 1.8), relationships with clients, whether personal or financial, that affect a lawyer's ability to exercise his or her independent professional judgment on behalf of a client are closely scrutinized. The rules on conflict of interest have always prohibited the representation of a client if a sexual relationship with the client presents a significant danger to the lawyer's ability to represent the client adequately. The present rule clarifies that a sexual relationship with a client is damaging to the client-lawyer relationship and creates an impermissible conflict of interest that cannot be ameliorated by the consent of the client.

Exploitation of the Lawyer's Fiduciary Position

[2] The relationship between a lawyer and client is a fiduciary relationship in which the lawyer occupies the highest position of trust and confidence. The relationship is also inherently unequal. The client comes to a lawyer with a problem and puts his or her faith in the lawyer's special knowledge, skills, and ability to solve the client's problem. The same factors that led the client to place his or her trust and reliance in the lawyer also have the potential to place the lawyer in a position of dominance and the client in a position of vulnerability.

[3] A sexual relationship between a lawyer and a client may involve unfair exploitation of the lawyer's fiduciary position. Because of the dependence that so often characterizes the attorney-client relationship, there is a significant possibility that a sexual relationship with a client resulted from the exploitation of the lawyer's dominant position and influence. Moreover, if a lawyer permits the otherwise benign and even recommended client reliance and trust to become the catalyst for a sexual relationship with a client, the lawyer violates one of the most basic ethical obligations; i.e., not to use the trust of the client to the client's disadvantage. This same principle underlies the rules prohibiting the use of client confidences to the disadvantage of the client and the rules that seek to ensure that lawyers do not take financial advantage of their clients. See Rules 1.6 and 1.8.

Impairment of the Ability to Represent the Client Competently

[4] A lawyer must maintain his or her ability to represent a client dispassionately and without impairment to the exercise of independent professional judgment on behalf of the client. The existence of a sexual relationship between lawyer and client, under the circumstances proscribed by this rule, presents a significant danger that the lawyer's ability to represent the client competently may be adversely affected because of the lawyer's emotional involvement. This emotional involvement has the potential to undercut the objective detachment that is demanded for adequate representation. A sexual relationship also creates the risk that the lawyer will be subject to a conflict of interest. For example, a lawyer who is sexually involved with his or her client risks becoming an adverse witness to his or her own client in a divorce action where there are issues of adultery and child custody to resolve. Finally, a blurred line between the professional and personal relationship may make it difficult to predict to what extent client confidences will be protected by the attorney-client privilege in the law of evidence since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship.

No Prejudice to Client

[5] The prohibition upon representing a client with whom a sexual relationship develops applies regardless of the absence of a showing of prejudice to the client and regardless of whether the relationship is consensual.

Prior Consensual Relationship

[6] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are not present when the sexual relationship exists prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should be confident that his or her ability to represent the client competently will not be impaired.

No Imputed Disqualification

[7] The other lawyers in a firm are not disqualified from representing a client with whom the lawyer has become intimate. The potential impairment of the lawyer's ability to exercise independent professional judgment on behalf of the client with whom he or she is having a sexual relationship is specific to that lawyer's representation of the client and is unlikely to affect the ability of other members of the firm to competently and dispassionately represent the client.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

SECTION .0200 - COUNSELOR

27 NCAC 02 RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent, professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law, but also to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations such as cost or effects on other people are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 2.2 RESERVED

27 NCAC 02 RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client so requests or the client consents after consultation

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Comment

Definition

[1] An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information

[5] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Rules of the North Carolina Supreme Court for the Dispute Resolution Commission and the North Carolina Canons of Ethics for Arbitrators.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (*see* Rule 1.0(n)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

History Note: *Authority G.S. 84-17; 84-21; 84-21;*
Eff. February 27, 2003.

SECTION .0300 - ADVOCATE

27 NCAC 02 RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed.

However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.
[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.
[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim that otherwise would be prohibited by this Rule.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 3.2 EXPEDITING LITIGATION
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment
[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party’s attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 3.3 CANDOR TOWARD THE TRIBUNAL
(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. *See* Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adjudicative proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of material fact or law or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also Rule 8.4(b), Comment.

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. See Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. The lawyer's action must also be seasonable: depending upon the circumstances, reasonable remedial measures do not have to be undertaken immediately, however, the lawyer must act before a third party relies to his or her detriment upon the false testimony or evidence. The advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate's only option may be to make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

[13] The general rule that an advocate must reveal the existence of perjury with respect to a material fact—even that of a client—applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. These provisions have been construed to require that counsel present an accused as a witness if the accused wishes to testify, even if counsel knows the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement.

Duration of Obligation

[14] A practical time limit on the obligation to rectify false evidence or false statements of material fact or law has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when no matters in the proceeding are still pending before the tribunal or the proceeding has concluded pursuant to the rules of the tribunal such as when a final judgment in the proceeding is affirmed on appeal, a bankruptcy case is closed, or the time for review has passed.

Ex Parte Proceedings

[15] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[16] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(1) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(2) falsify evidence, counsel or assist a witness to testify falsely, counsel or assist a witness to hide or leave the jurisdiction for the purpose of being unavailable as a witness, or offer an inducement to a witness that is prohibited by law;

(3) knowingly disobey or advise a client or any other person to disobey an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to test the validity of such an obligation;

(4) in pretrial procedure,
  (a) make a frivolous discovery request,
  (b) fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, or
  (c) fail to disclose evidence or information that the lawyer knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions;

(5) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, ask an irrelevant question that is intended to degrade a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(6) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  (a) the person is a relative or a managerial employee or other agent of a client; and
  (b) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting

a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses, including lost income, or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Paragraph (c) permits a lawyer to take steps in good faith and within the framework of the law to test the validity of rules; however, the lawyer is not justified in consciously violating such rules and the lawyer should be diligent in the effort to guard against the unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that the lawyer believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless the lawyer believes that the statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing the witness; and a lawyer should not, by subterfuge, put before a jury matters which it cannot properly consider.

[5] Paragraph (d) makes it clear that a lawyer must be reasonably diligent in making inquiry of the client, or third party, about information or documents responsive to discovery requests or disclosure requirements arising from statutory law, rules of procedure, or caselaw. "Reasonably" is defined in Rule 0.1, *Terminology*, as meaning "conduct of a reasonably prudent and competent lawyer." Rule 0.1(i). When responding to a discovery request or disclosure requirement, a lawyer must act in good faith. The lawyer should impress upon the client the importance of making a thorough search of the client's records and responding honestly. If the lawyer has reason to believe that a client has not been forthcoming, the lawyer may not rely solely upon the client's assertion that the response is truthful or complete.

[6] To bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, and as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact and is prohibited by paragraph (e). However, a lawyer may argue, on an analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

[7] Paragraph (f) permits a lawyer to advise managerial employees of a client to refrain from giving information to another party because the statements of employees with managerial responsibility may be imputed to the client. *See also* Rule 4.2.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. November 16, 2006; October 1, 2003; February 27, 2003.

27 NCAC 02 RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer representing a party in a matter pending before a tribunal shall not:

(1) seek to influence a judge, juror, member of the jury venire, or other official by means prohibited by law;

(2) communicate ex parte with a juror or member of the jury venire except as permitted by law;

(3) unless authorized to do so by law or court order, communicate ex parte with the judge or other official regarding a matter pending before the judge or official;

(4) engage in conduct intended to disrupt a tribunal, including:

(A) failing to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving opposing counsel timely notice of the intent not to comply;

(B) engaging in undignified or discourteous conduct that is degrading to a tribunal; or

(C) intentionally or habitually violating any established rule of procedure or evidence; or

(5) communicate with a juror or prospective juror after discharge of the jury if:

(A) the communication is prohibited by law or court order;

(B) the juror has made known to the lawyer a desire not to communicate; or

(C) the communication involves misrepresentation, coercion, duress or harassment.

(b) All restrictions imposed by this rule also apply to communications with, or investigations of, family members of a juror or of a member of the jury venire.

(c) A lawyer shall reveal promptly to the court improper conduct by a juror or a member of the jury venire, and improper conduct by another person toward a juror, a member of the jury venire, or the family members of a juror or a member of the jury venire.

(d) For purposes of this rule:

(1) Ex parte communication means a communication on behalf of a party to a matter pending before a tribunal that occurs in the absence of an opposing party, without notice to that party, and outside the record.

(2) A matter is "pending" before a particular tribunal when that tribunal has been selected to determine the matter or when it is reasonably foreseeable that the tribunal will be so selected.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the North Carolina Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of provisions. This rule also prohibits gifts of substantial value to judges or other officials of a tribunal and stating or implying an ability to influence improperly a public official.

[2] To safeguard the impartiality that is essential to the judicial process, jurors and members of the jury venire should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with members of the jury venire prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with a juror or a member of the jury venire about the case.

[3] After the jury has been discharged, a lawyer may communicate with a juror unless the communication is prohibited by law or court order. The lawyer must refrain from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases, and must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] Vexatious or harassing investigations of jurors or members of the jury venire seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on the lawyer's behalf who conducts an investigation of jurors or members of the jury venire should act with circumspection and restraint.

[5] Communications with, or investigations of, members of the families of jurors or the families of members of the jury venire by a lawyer or by anyone on the lawyer's behalf are subject to the restrictions imposed upon the lawyer with respect to the lawyer's communications with, or investigations of, jurors or members of the jury venire.

[6] Because of the duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a juror, a prospective juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

[7] The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, shall not give or lend anything of value to a judge, a hearing officer, or an official or employee of a tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action.

[8] All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if unrepresented. Ordinarily, an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel or, if there is none, to the opposing party. A lawyer should not condone or lend himself or herself to private importunities by another with a judge or hearing officer on behalf of the lawyer or the client.

[9] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[10] As professionals, lawyers are expected to avoid disruptive, undignified, discourteous, and abusive behavior. Therefore, the prohibition against conduct intended to disrupt a tribunal applies to conduct that does not serve a legitimate goal of advocacy or a requirement of a procedural rule and includes angry outbursts, insults, slurs, personal attacks, and unfounded personal accusations as well as to threats, bullying, and other attempts to intimidate or humiliate judges, opposing counsel, litigants, witnesses, or court personnel. Zealous advocacy does not rely upon such tactics and is never a justification for such conduct. This conduct is prohibited both in open court and in ancillary proceedings conducted pursuant to the authority of the tribunal (e.g., depositions). See comment [11], Rule 1.0(n). Similarly, insults,

slurs, threats, personal attacks, and groundless personal accusations made in documents filed with the tribunal are also prohibited by this Rule. "Conduct of this type breeds disrespect for the courts and for the legal profession. Dignity, decorum, and respect are essential ingredients in the proper conduct of a courtroom, and therefore in the proper administration of justice." Atty. Grievance Comm'n v. Alison, 565 A.2d 660, 666 (Md. 1989). See also Rule 4.4(a)(prohibiting conduct that serves no substantial purpose other than to embarrass, delay, or burden a third person) and Rule 8.4(d)(prohibiting conduct prejudicial to the administration of justice).

[11] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition or mediation. See Rule 1.0(n).

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; March 5, 2015; April 5, 2018; March 27, 2019.

27 NCAC 02 RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
(2) the information contained in a public record;
(3) that an investigation of a matter is in progress;
(4) the scheduling or result of any step in litigation;
(5) a request for assistance in obtaining evidence and information necessary thereto;
(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
(7) in a criminal case, in addition to subparagraphs (1) through (6):
    (A) the identity, residence, occupation and family status of the accused;
    (B) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
    (C) the fact, time and place of arrest; and
    (D) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is reasonably necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) The foregoing provisions of Rule 3.6 do not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative, or other investigative bodies.

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.
[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates. A lawyer who is subject to the rule must take reasonable measures to insure the compliance of nonlawyer assistants and may not employ agents to make statements the lawyer is prohibited from making. Rule 5.3 and Rule 8.4(a); see, e.g., Rule 3.8(f)(prosecutors duty to exercise reasonable care to prevent persons assisting prosecutor or associated with prosecutor from making improper extrajudicial statements).
[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a). Although paragraph (b)(2) allows extrajudicial statements about information in a public record, a lawyer may not use this safe harbor to justify, by means of filing pleadings or other public records, statements prohibited by paragraph (a). See also Rule 3.1.
[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining hat the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.
[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others. Moreover, when there is sufficient prior notice, a lawyer is encouraged to seek judicial intervention to prevent improper extrajudicial statements that may be prejudicial to the client and thereby avoid the necessity of a public response.
[8] *See* Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. October 9, 2008; March 1, 2003.

27 NCAC 02 RULE 3.7 LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or
(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Comment

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(f) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) after reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client, or participate in the application for the issuance of a search warrant to a lawyer for the seizure of information of a past or present client in connection with an investigation of someone other than the lawyer, unless:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible evidence or information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall:

(1) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence or information to (i) the defendant or defendant's counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction; or

(2) if the conviction was obtained in another jurisdiction, promptly disclose that evidence or information to the prosecutor's office in the jurisdiction of the conviction or to (i) the defendant or defendant's counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction of conviction.

(h) A prosecutor who concludes in good faith that evidence or information is not subject to disclosure under paragraph (g) does not violate this rule even if the prosecutor's conclusion is subsequently determined to be erroneous.

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely to convict or to uphold a conviction. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. See the ABA Standards of Criminal Justice Relating to the Prosecution Function. A systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] The prosecutor represents the sovereign and, therefore, should use restraint in the discretionary exercise of government powers, such as in the selection of cases to prosecute. During trial, the prosecutor is not only an advocate, but he or she also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all. In our system of criminal justice, the accused is to be given the benefit of all reasonable doubt. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence known to him or her that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should

not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused.

[3] Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[4] Every prosecutor should be aware of the discovery requirements established by statutory law and case law. See, e.g., N.C. Gen. Stat. §15A-903 et. seq, Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. U.S., 405 U.S. 150 (1972); Kyles v. Whitley, 514 U.S. 419 (1995). The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[5] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings, and search warrants for client information, to those situations in which there is a genuine need to intrude into the client-lawyer relationship. The provision applies only when someone other than the lawyer is the target of a criminal investigation.

[6] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements that a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[7] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[8] When a prosecutor knows of new, credible evidence or information creating a reasonable likelihood that a defendant did not commit an offense for which the defendant was convicted in the prosecutor's district, paragraph (g)(1) requires prompt disclosure to the defendant. However, if disclosure will harm the defendant's interests or the integrity of the evidence or information, disclosure should be made to the defendant's lawyer if any. Disclosure must be made to North Carolina Indigent Defense Services (NCIDS) or, if appropriate, the federal public defender, under all circumstances regardless of whether disclosure is also made to the defendant or the defendant's lawyer. If there is a good faith basis for not disclosing the evidence or information to the defendant, disclosure to NCIDS or the federal public defender and to any counsel of record satisfies this rule. If the conviction was obtained in another jurisdiction, paragraph (g)(2) allows the prosecutor promptly to disclose the evidence or information to the prosecutor's office in the jurisdiction of conviction in lieu of any other disclosure. The prosecutor in the jurisdiction of the conviction then has an independent duty of disclosure under paragraph (g)(1). In lieu of disclosure to the prosecutor's office in the jurisdiction of conviction, paragraph (g)(2) requires disclosure to the defendant or to the defendant's lawyer, if any, and to NCIDS or, if appropriate, the federal public defender.

[9] The word "new" as used in paragraph (g) means evidence or information unknown to a trial prosecutor at the time of the conviction or, if known to a trial prosecutor at the time of the conviction, never previously disclosed to the defendant or defendant's legal counsel. When analyzing new evidence or information, the prosecutor must evaluate the substance of the information received, and not solely the credibility of the source, to determine whether the evidence or information creates a reasonable likelihood that the defendant did not commit the offense.

[10] Nevertheless, a prosecutor who receives evidence or information relative to a conviction may disclose that evidence or information as directed in paragraph (g)(1) and (2) without examination to determine whether it is new, credible, or creates a reasonable likelihood that a convicted defendant did not commit an offense. A prosecutor who receives evidence or information subject to disclosure under paragraph (g) does not have a duty to undertake further investigation to determine whether the defendant is in fact innocent.

[11] A prosecutor's independent judgment, made in good faith, that the new evidence or information is not of such nature as to trigger the obligations of paragraph (g), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;

Amendments Approved by the Supreme Court: March 16, 2017; November 16, 2006; March 1, 2003.

SECTION .0400 - TRANSACTIONS WITH PERSON OTHER THAN CLIENTS

27 NCAC 02 RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortuous misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. Rule 1.6(b)(1) permits a lawyer to disclose information when required by law. Similarly, Rule 1.6(b)(4) permits a lawyer to disclose information when necessary to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) During the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. It is not a violation of this rule for a lawyer to encourage his or her client to discuss the subject of the representation with the opposing party in a good-faith attempt to resolve the controversy.

(b) Notwithstanding section (a) above, in representing a client who has a dispute with a government agency or body, a lawyer may communicate about the subject of the representation with the elected officials who have authority over such government agency or body even if the lawyer knows that the government agency or body is represented by another lawyer in the matter, but such communications may only occur under the following circumstances:

(1) in writing, if a copy of the writing is promptly delivered to opposing counsel;
(2) orally, upon adequate notice to opposing counsel; or
(3) in the course of official proceedings.

Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule does not prohibit a lawyer who does not have a client relative to a particular matter from consulting with a person or entity who, though represented concerning the matter, seeks another opinion as to his or her legal situation. A lawyer from whom such an opinion is sought should, but is not required to, inform the first lawyer of his or her participation and advice.

[3] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[4] A lawyer may not make a communication prohibited by this Rule through the acts of another. *See* Rule 8.4(a). However, parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client or, in the case of a government lawyer, investigatory personnel, concerning a communication that the client or such investigatory personnel, is legally entitled to make. The Rule is not intended to discourage good faith efforts by individual parties to resolve their differences. Nor does the Rule prohibit a lawyer from encouraging a client to communicate with the opposing party with a view toward the resolution of the dispute.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. When a government agency or body is represented with regard to a particular matter, a lawyer may communicate with the elected government officials who have authority over that agency under the circumstances set forth in paragraph (b).

[6] Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[7] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[8] This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates. The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[9] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. It also prohibits communications with any constituent of the organization, regardless of position or level of authority, who is participating or participated substantially in the legal representation of the organization in a particular matter. Consent of the organization's lawyer is not required for communication with a former constituent unless the former constituent participated substantially in the legal representation of the organization in the matter. If an employee or agent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication would be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. *See* Rule 4.4, Comment [2].

[10] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. *See* Rule 1.0(g). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[11] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 4.3 DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:

(1) give legal advice to the person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client; and

(2) state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. To avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003..

27 NCAC 02 RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a writing relating to the representation of the lawyer's client and knows or reasonably should know that the writing was inadvertently sent shall promptly notify the sender.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Threats, bullying, harassment, insults, slurs, personal attacks, unfounded personal accusations generally serve no substantial purpose other than to embarrass, delay, or burden others and violate this rule. Conduct that serves no substantial purpose other than to intimidate, humiliate, or embarrass lawyers, litigants, witnesses, or other persons with

whom a lawyer interacts while representing a client also violates this rule. See also Rule 3.5(a) (prohibiting conduct intended to disrupt a tribunal) and Rule 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

[3] Paragraph (b) recognizes that lawyers sometimes receive writings that were mistakenly sent or produced by opposing parties or their lawyers. See Rule 1.0(o) for the definition of "writing," which includes electronic communications and metadata. A writing is inadvertently sent when it is accidentally transmitted, such as when an electronic communication or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a writing was sent inadvertently, then this rule requires the lawyer promptly to notify the sender in order to permit that person to take protective measures. This duty is imputed to all lawyers in a firm. Whether the lawyer who receives the writing is required to take additional steps, such as returning the writing, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a writing has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a writing that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer. A lawyer who receives an electronic communication from the opposing party or the opposing party's lawyer must refrain from searching for or using confidential information found in the metadata embedded in the communication. See 2009 FEO 1.

[4] Some lawyers may choose to return a writing or delete electronically stored information unread, for example, when the lawyer learns before receiving the writing that it was inadvertently sent. Whether the lawyer is required to do so is a matter of law. When return of the writing is not required by law, the decision voluntarily to return such a writing or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. March 5, 2015; October 2, 2014; August 18, 2005; March 1, 2003.

27 NCAC 02 RULE 5.1 RESPONSIBILITIES OF PRINCIPALS, MANAGERS, AND SUPERVISORY LAWYERS

(a) A principal in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority, shall make reasonable efforts to ensure that the firm or the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.
(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a principal or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm or legal department of an organization. See Rule 1.0(d). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm or organization.
[2] Paragraph (a) requires lawyers with managerial authority within a firm or organization to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm or organization will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.
[3] Other measures that may be required to fulfill the responsibility prescribed in Paragraph (a) can depend on the firm's or organization's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and

periodic review of compliance with the required systems ordinarily will suffice. In a large firm or organization, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated principal or special committee. See Rule 5.2. Firms and organizations, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm or organization can influence the conduct of all its members and the principals and managing lawyers may not assume that all lawyers associated with the firm or organization will inevitably conform to the rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a principal or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Principals and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a principal or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a principal or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of Paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of Paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a principal, associate or subordinate. Moreover, this rule is not intended to establish a standard for vicarious criminal or civil liability for the acts of another lawyer. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

[8] The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. September 22, 2016; March 1, 2003.

Ethics Opinion Notes

2012 Formal Ethics Opinion 13. Opinion rules that the partners and managerial lawyers remaining in a firm are responsible for the safekeeping and proper disposition of both the active and closed files of a suspended, disbarred, missing, or deceased member of the firm.

2013 Formal Ethics Opinion 8. Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

2013 Formal Ethics Opinion 9. Opinion provides guidance to lawyers who work for a public interest law organization that provides legal and non-legal services to its clientele and that has an executive director who is not a lawyer.

27 NCAC 02 RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document’s frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003..

27 NCAC 02 RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a principal, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or organization shall make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a principal or has comparable managerial authority in the law firm or organization in which the person is employed, or has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm or organization to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations and, depending upon the risk of unauthorized disclosure of confidential client information, should consider whether client consent is required. See Rule 1.1, cmt. [7]. The extent of this obligation will depend upon the circumstances, including the education, experience, and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See

also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these rules.

[5] A lawyer who discovers that a nonlawyer has wrongfully misappropriated money from the lawyer's trust account must inform the North Carolina State Bar pursuant to Rule 1.15-2(o).

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amendments Approved by the Supreme Court: September 22, 2016; October 2, 2014; March 1, 2003.

Ethics Opinion Notes

CPR 163. An attorney may use a secretarial agency so long as reasonable care is used to protect confidentiality.

CPR 182. A layman may be employed to interview and represent social security claimants if the clients consent after disclosure of the layman's nonprofessional status.

CPR 253. A paralegal employed by a law firm may have a business card with the firm's identification.

CPR 262. A law firm's office manager may have a business card with the firm's identification.

CPR 334. An attorney's secretary may also work for private investigator. The attorney must take care that client confidences are not compromised.

RPC 29. Opinion rules that an attorney may not rely upon title information from a nonlawyer assistant without direct supervision by said attorney.

RPC 70. Opinion rules that a legal assistant may communicate and negotiate with a claims adjuster if directly supervised by the attorney for whom he or she works.

RPC 74. Opinion rules that a firm which employs a paralegal is not disqualified from representing an interest adverse to that of a party represented by the firm for which the paralegal previously worked.

RPC 102. Opinion rules that a lawyer may not permit the employment of court reporting services to be influenced by the possibility that the lawyer's employees might receive premiums, prizes or other personal benefits.

RPC 139. Opinion rules that a lawyer may not sign an adoption petition prepared by an adoption agency as an accommodation to that agency without undertaking professional responsibility for the adoption proceeding.

RPC 152. Opinion rules that the prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions concerning such matters when pleas are entered in open court.

RPC 176. Opinion rules that a lawyer who employs a paralegal is not disqualified from representing a party whose interests are adverse to that of a party represented by a lawyer for whom the paralegal previously worked.

RPC 183. Opinion rules that a lawyer may not permit a legal assistant to examine or represent a witness at a deposition.

RPC 216. Opinion rules that a lawyer may use the services of a nonlawyer independent contractor to search a title provided the nonlawyer is properly supervised by the lawyer.

RPC 238. Opinion rules that a lawyer is subject to the Rules of Professional Conduct with respect to the provision of a law related service, such as financial planning, if the law related service is provided in circumstances that are not distinct from the lawyer's provision of legal services to clients.

99 Formal Ethics Opinion 6. Opinion examines the ownership of a title insurance agency by lawyers in North and South Carolina as well as the supervision of an independent paralegal.

2000 Formal Ethics Opinion 10. Opinion rules that a lawyer may have a non-lawyer employee deliver a message to a court holding calendar call, if the lawyer is unable to attend due to a scheduling conflict with another court or other legitimate reason.

2002 Formal Ethics Opinion 9. Opinion rules that a nonlawyer assistant supervised by a lawyer may identify to the client who is a party to such a transaction the documents to be executed with respect to the transaction, direct the client as to the correct place on each document to sign, and handle the disbursement of proceeds for a residential real estate transaction, even though the supervising lawyer is not physically present.

2004 Formal Ethics Opinion 13. Opinion rules that a lawyer may form a professional corporation for the practice of law and the professional corporation may enter into a law partnership with another such professional corporation.

2005 Formal Ethics Opinion 2. Opinion rules that a law firm that employs a nonlawyer to represent Social Security claimants must so disclose to prospective clients and in any advertising for this service.
2005 Formal Ethics Opinion 6. Opinion rules that the compensation of a nonlawyer law firm employee who represents Social Security disability claimants before the Social Security Administration may be based upon the income generated by such representation.
2006 Formal Ethics Opinion 13. Opinion rules that if warranted by exigent circumstances, a lawyer may allow a paralegal to sign his name to court documents so long as it does not violate any law and the lawyer provides the appropriate level of supervision.
2007 Formal Ethics Opinion 12. Opinion rules that a lawyer may outsource limited legal support services to a foreign lawyer or a nonlawyer (collectively "foreign assistants") provided the lawyer properly selects and supervises the foreign assistants, ensures the preservation of client confidences, avoids conflicts of interests, discloses the outsourcing, and obtains the client's advanced informed consent.
2009 Formal Ethics Opinion 10. Opinion rules that a lawyer must provide appropriate supervision to a nonlawyer appearing pursuant to N.C. Gen. Stat. A796-17(b) on behalf of a claimant or an employer in an unemployment hearing.
2011 Formal Ethics Opinion 14. Opinion rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.
2012 Formal Ethics Opinion 11. Opinion rules that a law firm may send a nonlawyer field representative to meet with a prospective client and obtain a representation contract if a lawyer at the firm has reviewed sufficient information from the prospective client to determine that an offer of representation is appropriate.
2013 Formal Ethics Opinion 9. Opinion provides guidance to lawyers who work for a public interest law organization that provides legal and non-legal services to its clientele and that has an executive director who is not a lawyer.

27 NCAC 02 RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, principal, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer or a disbarred lawyer may pay to the estate of the deceased lawyer or to the disbarred lawyer that portion of the total compensation that fairly represents the services rendered by the deceased lawyer or the disbarred lawyer;

(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement;

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(6) a lawyer or law firm may pay a portion of a legal fee to a credit card processor, group advertising provider, or online marketing platform if the amount paid is for payment processing or for administrative or marketing services, and there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, engages, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or

recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] A determination under paragraph (a)(6) of this rule as to whether an advertising provider or online marketing platform (jointly "platform") will interfere with the independent professional judgment of a lawyer requires consideration of a number of factors. These factors include, but are not limited to, the following: (a) the percentage of the fee or the amount the platform charges the lawyer; (b) the percentage of the fee or the amount that the lawyer receives from clients obtained through the platform; (c) representations made to prospective clients and to clients by the platform; (d) whether the platform communicates directly with clients and to what degree; and (e) the nature of the relationship between the lawyer and the platform. A relationship wherein the platform, rather than the lawyer, is in charge of communications with a client indicates interference with the lawyer's professional judgment. The lawyer should have unfettered discretion as to whether to accept clients from the platform, the nature and extent of the legal services the lawyer provides to clients obtained through the platform, and whether to participate or continue participating in the platform. The lawyer may not permit the platform to direct or control the lawyer's legal services and may not assist the platform to engage in the practice of law, in violation of Rule 5.5(a).

[3] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f)(lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

[4] Although a nonlawyer may serve as a director or officer of a professional corporation organized to practice law if permitted by law, such a nonlawyer director or officer may not have the authority to direct or control the conduct of the lawyers who practice with the firm.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; September 22, 2016; March 27, 2019.

27 NCAC 02 RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction if the lawyer's conduct is in accordance with these rules and:

(1) the lawyer is authorized by law or order to appear before a tribunal or administrative agency in this jurisdiction or is preparing for a potential proceeding or hearing in which the lawyer reasonably expects to be so authorized;

(2) the lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice and the lawyer's services are not services for which pro hac vice admission is required;

(3) the lawyer acts with respect to a matter that is in or is reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the lawyer's services arise out of or are reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission is required; or

(4) the lawyer is associated in the matter with a lawyer admitted to practice in this jurisdiction who actively participates in the representation and the lawyer is admitted pro hac vice or the lawyer's services are not services for which pro hac vice admission is required.

(d) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, does not engage in the unauthorized practice of law in this jurisdiction and may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law if the lawyer's conduct is in accordance with these rules and:

(1) the lawyer provides legal services to the lawyer's employer or its organizational affiliates; the services are not services for which pro hac vice admission is required; and, when the services are performed by a foreign lawyer and require advice on the law of this or another US jurisdiction or of the United States, such advice is based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) the lawyer is providing services limited to federal law, international law, the law of a foreign jurisdiction or the law of the jurisdiction in which the lawyer is admitted to practice, or the lawyer is providing services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) A lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction and may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law if the lawyer's conduct is in accordance with these rules, the lawyer is the subject of a pending application for admission to the North Carolina State Bar by comity, having never previously been denied admission to the North Carolina State Bar for any reason, and the lawyer satisfies the following conditions:

(1) is licensed to practice law in a state with which North Carolina has comity in regard to admission to practice law;

(2) is a member in good standing in every jurisdiction in which the lawyer is licensed to practice law;

(3) has satisfied the educational and experiential requirements prerequisite to comity admission to the North Carolina State Bar;

(4) is domiciled in North Carolina;

(5) has established a professional relationship with a North Carolina law firm and is actively supervised by at least one licensed North Carolina attorney affiliated with that law firm; and

(6) gives written notice to the secretary of the North Carolina State Bar that the lawyer intends to begin the practice of law pursuant to this provision, provides the secretary with a copy of the lawyer's application for admission to the State Bar, and agrees that the lawyer is subject to these rules and the disciplinary jurisdiction of the North Carolina State Bar. A lawyer acting pursuant to this provision may not provide services for which pro hac vice admission is required, and shall be ineligible to practice law in this jurisdiction immediately upon being advised that the lawyer's application for comity admission has been denied.

(f) A lawyer shall not assist another person in the unauthorized practice of law.

(g) A lawyer or law firm shall not employ a disbarred or suspended lawyer as a law clerk or legal assistant if that individual was associated with such lawyer or law firm at any time on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

(h) A lawyer or law firm employing a disbarred or suspended lawyer as a law clerk or legal assistant shall not represent any client represented by the disbarred or suspended lawyer or by any lawyer with whom the disbarred or suspended lawyer practiced during the period on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

(i) For the purposes of Paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. The practice of law in violation of lawyer-licensing standards of another jurisdiction constitutes a violation of these rules. This rule does not restrict the ability of lawyers authorized by federal statute or other federal law to represent the interests of the United States or other persons in any jurisdiction.

[2] There are occasions in which lawyers admitted to practice in another United States jurisdiction, but not in North Carolina, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in North Carolina under circumstances that do not create an unreasonable risk to the interests of their clients, the courts, or the public. Paragraphs (c), (d), and (e) identify seven situations in which the lawyer may engage in such conduct without fear of violating this rule. All such conduct is subject to the duty of competent representation. See Rule 1.1. Rule 5.5 does not address the question of whether other conduct constitutes the unauthorized practice of law. The fact that conduct is not included or described in this rule is not intended to imply that such conduct is the unauthorized

practice of law. With the exception of Paragraphs (d) and (e), this rule does not authorize a US or foreign lawyer to establish an office or other systematic and continuous presence in North Carolina without being admitted to practice here. Presence may be systematic and continuous even if the lawyer is not physically present in this jurisdiction. A lawyer not admitted to practice in North Carolina must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in North Carolina. See also Rules 7.1(a) and 7.5(b). However, a lawyer admitted to practice in another jurisdiction who is a principal, shareholder, or employee of an interstate or international law firm that is registered with the North Carolina State Bar pursuant to 27 N.C.A.C. 1E, Section .0200, may practice, subject to the limitations of this rule, in the North Carolina offices of such law firm.

[3] Paragraphs (c), (d), and (e) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory, or commonwealth of the United States and, where noted, any foreign jurisdiction. The word "admitted" in Paragraphs (c), (d)(2), and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice because, for example, the lawyer is on inactive status.

[4] Paragraphs (c), (d), and (e) do not authorize communications advertising legal services in North Carolina by lawyers who are admitted to practice in other jurisdictions. Nothing in these paragraphs authorizes a lawyer not licensed in this jurisdiction to solicit clients in North Carolina. Whether and how lawyers may communicate the availability of their services in this jurisdiction are governed by Rules 7.1-7.5.

[5] Lawyers not admitted to practice generally in North Carolina may be authorized by law or order of a tribunal or an administrative agency to appear before a the tribunal or agency. Such authority may be granted pursuant to formal rules or law governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under Paragraph (c)(1), a lawyer does not violate this rule when the lawyer appears before such a tribunal or agency. Nor does a lawyer violate this rule when the lawyer engages in conduct in anticipation of a proceeding or hearing, such as factual investigations and discovery conducted in connection with a litigation or administrative proceeding, in which an out-of-state lawyer has been admitted or in which the lawyer reasonably expects to be admitted.

[6] Paragraph (c)(2) recognizes that the complexity of many matters requires that a lawyer whose representation of a client consists primarily of conduct in a jurisdiction in which the lawyer is admitted to practice, also be permitted to act on the client's behalf in other jurisdictions in matters arising out of or otherwise reasonably related to the lawyer's representation of the client. This conduct may involve negotiations with private parties, as well as negotiations with government officers or employees, and participation in alternative dispute-resolution procedures. This provision also applies when a lawyer is conducting witness interviews or other activities in this jurisdiction in preparation for a litigation or other proceeding that will occur in another jurisdiction where the lawyer is either admitted generally or expects to be admitted pro hac vice.

[7] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in North Carolina if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, and if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[8] Paragraph (c)(4) recognizes that association with a lawyer licensed to practice in North Carolina is likely to protect the interests of both clients and the public. The lawyer admitted to practice in North Carolina, however, may not serve merely as a conduit for an out-of-state lawyer but must actively participate in and share actual responsibility for the representation of the client. If the admitted lawyer's involvement is merely pro forma, then both lawyers are subject to discipline under this rule.

[9] Paragraphs (d) and (e) identify three circumstances in which a lawyer who is admitted to practice in another jurisdiction, or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may establish an office or other systematic and continuous presence in North Carolina for the practice of law. Except as provided in these paragraphs, a lawyer who is admitted to practice law in another jurisdiction and who desires to establish an office or other systematic or continuous presence in North Carolina must be admitted to practice law generally in North Carolina.

[10] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers, and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is

licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.
[11] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation, or judicial precedent.
[12] Paragraph (e) permits a lawyer who is awaiting admission by comity to practice on a provisional and limited basis if certain requirements are met. As used in this paragraph, the term "professional relationship" refers to an employment or partnership arrangement.
[13] The definition of the practice of law is established by N.C.G.S. §84-2.1. Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (d) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.
[14] Lawyers may also provide professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se. However, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.
[15] Paragraphs (g) and (h) clarify the limitations on employment of a disbarred or suspended lawyer. In the absence of statutory prohibitions or specific conditions placed on a disbarred or suspended lawyer in the order revoking or suspending the license, such individual may be hired to perform the services of a law clerk or legal assistant by a law firm with which he or she was not affiliated at the time of or after the acts resulting in discipline. Such employment is, however, subject to certain restrictions. A licensed lawyer in the firm must take full responsibility for, and employ independent judgment in, adopting any research, investigative results, briefs, pleadings, or other documents or instruments drafted by such individual. The individual may not directly advise clients or communicate in person or in writing in such a way as to imply that he or she is acting as a lawyer or in any way in which he or she seems to assume responsibility for a client's legal matters. The disbarred or suspended lawyer should have no communications or dealings with, or on behalf of, clients represented by such disbarred or suspended lawyer or by any individual or group of individuals with whom he or she practiced during the period on or after the date of the acts which resulted in discipline through and including the effective date of the discipline. Further, the employing lawyer or law firm should perform no services for clients represented by the disbarred or suspended lawyer during such period. Care should be taken to ensure that clients fully understand that the disbarred or suspended lawyer is not acting as a lawyer, but merely as a law clerk or lay employee. Under some circumstances, as where the individual may be known to clients or in the community, it may be necessary to make an affirmative statement or disclosure concerning the disbarred or suspended lawyer's status with the law firm. Additionally, a disbarred or suspended lawyer should be paid on some fixed basis, such as a straight salary or hourly rate, rather than on the basis of fees generated or received in connection with particular matters on which he or she works. Under these circumstances, a law firm employing a disbarred or suspended lawyer would not be acting unethically and would not be assisting a nonlawyer in the unauthorized practice of law.
[16] A lawyer or law firm should not employ a disbarred or suspended lawyer who was associated with such lawyer or firm at any time on or after the date of the acts which resulted in the disbarment or suspension through and including the time of the disbarment or suspension. Such employment would show disrespect for the court or body which disbarred or suspended the lawyer. Such employment would also be likely to be prejudicial to the administration of justice and would create an appearance of impropriety. It would also be practically impossible for the disciplined lawyer to confine himself or herself to activities not involving the actual practice of law if he or she were employed in his or her former office setting and obliged to deal with the same staff and clientele.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amendments Approved by the Supreme Court: September 22, 2016; October 2, 2014; November 16, 2006; March 1, 2003.

Ethics Opinion Notes
RPC 9. Opinion states that house counsel for a mortgage bank may not represent other lenders and borrowers while serving as house counsel.
RPC 40. Opinion rules that for the purposes of a real estate transaction, an attorney may, with proper notice to the borrower, represent only the lender, and that the lender may prepare the closing documents.

RPC 114. Opinion rules that attorneys may give legal advice and drafting assistance to persons wishing to proceed pro se without appearing as counsel of record.
RPC 139. Opinion rules that a lawyer may not sign an adoption petition prepared by an adoption agency as an accommodation to that agency without undertaking professional responsibility for the adoption proceeding.
RPC 151. Opinion discusses when an attorney who is a full-time employee of an insurance company may represent the insurance company, the insured, or others respecting various matters of interest to the insurance company.
RPC 216. Opinion rules that a lawyer may use the services of a nonlawyer independent contractor to search a title provided the nonlawyer is properly supervised by the lawyer.
98 Formal Ethics Opinion 7. Opinion rules that a law firm may employ a disbarred lawyer as a paralegal provided the firm accepts no new clients who were clients of the disbarred lawyer's former firm during the period of misconduct; however, a disbarred lawyer may not work as a paralegal at a firm where he was employed as a lawyer during the period of misconduct.
98 Formal Ethics Opinion 8. Opinion rules that a lawyer may not participate in a closing or sign a preliminary title opinion if, after reasonable inquiry, the lawyer believes that the title abstract or opinion was prepared by a non-lawyer without supervision by a licensed North Carolina lawyer.
99 Formal Ethics Opinion 6. Opinion examines the ownership of a title insurance agency by lawyers in North and South Carolina as well as the supervision of an independent paralegal.
2000 Formal Ethics Opinion 9. Opinion explores the situations in which a lawyer who is also a CPA may provide legal services and accounting services from the same office.
2000 Formal Ethics Opinion 10. Opinion rules that a lawyer may have a non-lawyer employee deliver a message to a court holding calendar call, if the lawyer is unable to attend due to a scheduling conflict with another court or other legitimate reason.
2002 Formal Ethics Opinion 9. Opinion rules that a nonlawyer assistant supervised by a lawyer may identify to the client who is a party to such a transaction the documents to be executed with respect to the transaction, direct the client as to the correct place on each document to sign, and handle the disbursement of proceeds for a residential real estate transaction, even though the supervising lawyer is not physically present.
2006 Formal Ethics Opinion 13. Opinion rules that if warranted by exigent circumstances, a lawyer may allow a paralegal to sign his name to court documents so long as it does not violate any law and the lawyer provides the appropriate level of supervision.
2007 Formal Ethics Opinion 3. Opinion explains the duties of a lawyer who represents a local government and of a lawyer who is elected to the governing body of the local government relative to a nonlawyer appearing in a representative capacity for a party at a zoning variance and other quasi-judicial hearings before the government body.
2007 Formal Ethics Opinion 12. Opinion rules that a lawyer may outsource limited legal support services to a foreign lawyer or a nonlawyer (collectively "foreign assistants") provided the lawyer properly selects and supervises the foreign assistants, ensures the preservation of client confidences, avoids conflicts of interests, discloses the outsourcing, and obtains the client's advanced informed consent.
2008 Formal Ethics Opinion 6. Opinion rules that a lawyer may hire a nonlawyer independent contractor to organize and speak at educational seminars so long as the nonlawyer does not give legal advice.
2009 Formal Ethics Opinion 2. Opinion rules a closing lawyer who reasonably believes that a title company engaged in the unauthorized practice of law when preparing a deed must report the lawyer who assisted the title company but may close the transaction if client consents and doing so is in the client's interest.
2012 Formal Ethics Opinion 10. Opinion rules a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied.
2012 Formal Ethics Opinion 11. Opinion rules that a law firm may send a nonlawyer field representative to meet with a prospective client and obtain a representation contract if a lawyer at the firm has reviewed sufficient information from the prospective client to determine that an offer of representation is appropriate.
2013 Formal Ethics Opinion 9. Opinion provides guidance to lawyers who work for a public interest law organization that provides legal and non-legal services to its clientele and that has an executive director who is not a lawyer.
Authorized Practice Advisory Opinion 2002-1. Revised January 26, 2012

The North Carolina State Bar has been requested to interpret the North Carolina unauthorized practice of law statutes (N.C. Gen. Stat. §§84-2.1 to 84-5) as they apply to residential real estate transactions. The State Bar issues the following authorized practice of law advisory opinion pursuant to N.C. Gen. Stat. §84-37(f) after careful consideration and

investigation. This opinion supersedes any prior opinions and decisions of any standing committee of the State Bar interpreting the unauthorized practice of law statutes to the extent those opinions and decisions are inconsistent with the conclusions expressed herein.As a result of its review of the activities of more than 50 nonlawyer service providers since the adoption of this opinion on January 24, 2003, including injunctions issued against two companies, the Committee is clarifying the opinion concerning issues that it has addressed since adoption of the opinion.

27 NCAC 02 RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17. The Rule also does not prohibit restrictions on a lawyer's right to practice that are included in a plea agreement or other settlement of a criminal matter or the resolution of a disciplinary proceeding where the accused is a lawyer.

History Note: *Authority G.S. 84-23;*
Adopted September 24, 2015; March 1, 2003; July 24, 1997.

ETHICS OPINION NOTES

RPC 13. A retirement agreement may require a lawyer to accept inactive status as a member of the State Bar as a condition of payment of retirement benefits.

RPC 179. A lawyer may not offer or enter into a settlement agreement that contains a provision barring the lawyer who represents the settling party from representing other claimants against the opposing party.

2001 Formal Ethics Opinion 10. Opinion prohibits a lawyer from entering into an employment agreement with a law firm that includes a provision reducing the amount of deferred compensation the lawyer will receive if the lawyer leaves the firm before retirement to engage in the private practice of law within a 50-mile radius of the firm's offices.

27 NCAC 02 RULE 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) by a separate entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment

[1] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[2] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[3] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See*, e.g., Rule 8.4.

[4] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in Rule 5.7(a)(1).

[5] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[6] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[7] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[8] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[9] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and scrupulously to adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed

to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. *See also* Rule 8.4 (Misconduct).

History Note: *Authority G.S. 84-17; 84-21; 84-23;*
Eff. February 27, 2003.

27 NCAC 02 RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
  (1) persons of limited means;
  (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; or
  (3) individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.

(b) provide any additional services through:
  (1) the delivery of legal services described in Paragraph (a) at a substantially reduced fee; or
  (2) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The North Carolina State Bar urges all lawyers to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] The critical need for legal services among persons of limited means is recognized in Paragraphs (a)(1) and (2) of the Rule. Legal services to persons of limited means consists of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under Paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of Paragraph (a). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations described in Paragraphs (a)(2) and (3).

[5] Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in Paragraphs (a)(1), (2), and (3), and (b) (1). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in Paragraph (b)(2). Such lawyers and judges are not expected to undertake the reporting outlined in Paragraph [12] of this Comment.

[6] Paragraph (a)(3) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. Examples of the types of issues that may be addressed under this Paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.
[7] Paragraph (b)(1) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.
[8] Paragraph (b)(2) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees; serving on boards of pro bono or legal services programs; taking part in Law Day activities; acting as a continuing legal education instructor, a mediator or an arbitrator; and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this Paragraph.
[9] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.
[10] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.
[11] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.
[12] Lawyers are encouraged to report pro bono legal services to Legal Aid of North Carolina, the North Carolina Equal Access to Justice Commission, or other similar agency as appropriate in order that such service might be recognized and serve as an inspiration to others.

History Note: *Authority G.S. 84-23;*
Adopted Eff. January 28, 2010.

27 NCAC 02 RULE 6.2 RESERVED

27 NCAC 02 RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION
A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(1) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
(2) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.
[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* Rule 1.2(b). For example, a lawyer concentrating in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 6.5 LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. *See* Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the

program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.
[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

History Note: *Authority G.S. 84-17; 84-21; 84-23;*
Eff. February 27, 2003.

27 NCAC 02 RULE 6.6 ACTION AS A PUBLIC OFFICIAL
A lawyer who holds public office shall not:

(a) use his or her public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or herself or for a client under circumstances where the lawyer knows, or it is obvious, that such action is not in the public interest;
(b) use his or her public position to influence, or attempt to influence, a tribunal to act in favor of himself or herself or his or her client; or
(c) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

Comment

[1] Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part time, should not engage in activities in which the lawyer's personal or professional interests are or foreseeably may be in conflict with his or her official duties.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

SECTION .0700 - INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES
A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. Such communications include but are not limited to a statement that is likely to create an unjustified expectation about results the lawyer can achieve; a statement that states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or a statement that compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Comment

False and Misleading Communications
[1] This Rule governs all communications about a lawyer's services, including advertising. Whatever means are used to make known a lawyer's services, statements about them must be truthful.
[2] Misleading truthful statements are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.
[3] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each

client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names, Letterheads, and Professional Designations

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current principals or by the names of deceased or retired principals where there has been a succession in the firm's identity. The name of a retired principal may be used in the name of a law firm only if the principal has ceased the practice of law. A lawyer or law firm also may be designated by a trade name, a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased or retired lawyer who was not a former principal of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public or charitable legal services organization may be required to avoid a misleading implication.

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading. It is also misleading to use a designation such as "Smith and Associates" for a solo practice.

[8] This Rule does not prohibit the employment by a law firm of a lawyer who is licensed to practice in another jurisdiction, but not in North Carolina, provided the lawyer's practice is exclusively limited to areas that do not require a North Carolina law license. The lawyer's name may be included in the firm letterhead, provided all communications by such lawyer on behalf of the firm indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina.

[9] If law offices are maintained in another jurisdiction, the law firm is an interstate law firm and must register with the North Carolina State Bar as required by 27 N.C. Admin. Code 1E.0200 et seq.

Dramatizations

[10] Dramatizations of fictional cases in video advertisements are potentially misleading. See 2010 FEO 9, RPC 164. A communication by a lawyer that contains a dramatization depicting a fictional situation is not misleading if it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 2, 2014; April 21, 2021.

27 NCAC 02 RULE 7.2 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(a) A lawyer may communicate information regarding the lawyer's services through any media.

(b) A lawyer shall not compensate, give, or promise anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of an intermediary organization that complies with Rule 7.4, or a prepaid legal services plan that complies with 27 N.C. Admin. Code 1E.0301 et seq.;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) A lawyer shall not state that the lawyer specializes or is a specialist in a field of practice unless:

(1) the lawyer is certified as a specialist in the field of practice by:

(A) the North Carolina State Bar;

(B) an organization that is accredited by the North Carolina State Bar; or

(C) an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and

(2) the name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

Comment

[1] This Rule permits public dissemination of information concerning a lawyer's or law firm's name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

[3] Paragraph (b)(1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons, and website designers.

[4] Paragraph (b)(4) permits a lawyer to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

Paying Lead Generators

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Comment [2] (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(duty to avoid violating the Rules through the acts of another).

Referrals from Intermediary Organizations and Prepaid Legal Service Plans

[6] A lawyer who accepts assignments or referrals from a prepaid legal service plan or referrals from an intermediary organization must act reasonably to assure that the activities of the plan or organization are compatible with the lawyer's professional obligations. See Rule 5.3, Rule 7.3, and Rule 7.4. A prepaid legal service plan assists people who seek to secure legal representation. Intermediary organizations, including lawyer referral services, are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Prepaid legal service plans and intermediary organizations may communicate with the public, but such communication must be in conformity with these Rules; notably, such communication must not be false or misleading.

Specialty Certification

[7] The use of the word "specialize" in any of its variant forms connotes to the public a particular expertise often subject to recognition by the state. Indeed, the North Carolina State Bar has instituted programs providing for official certification of specialists in certain areas of practice. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations are expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To avoid misrepresentation and deception, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. The Rule requires that a representation of specialty may be made only if the certifying organization is the North Carolina State Bar, an organization accredited by the North Carolina State Bar, or an organization accredited by the American Bar Association under procedures approved by the North Carolina State Bar. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding the certification.

[8] A lawyer may, however, describe his or her practice without using the term "specialize" in any manner which is truthful and not misleading. This Rule specifically permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. The lawyer may, for instance, indicate a "concentration" or an "interest" or a "limitation."

Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address, or a physical office location.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 2, 2014; September 28, 2017; April 21, 2021.

27 NCAC 02 RULE 7.3 DIRECT CONTACT WITH POTENTIAL CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:

(1) lawyer;

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, or harassment.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid legal service plan in compliance with 27 N.C. Admin. Code 1E.0301 et seq. that uses live person-to-person contact to enroll members or sell subscriptions for the plan to persons who are not known to need legal services in a particular matter covered by the plan, provided that, after reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with 27 N.C. Admin. Code 1E.0301 et seq., and the lawyer's participation in the plan does not otherwise violate the Rules of Professional Conduct.

Comment

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a

website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services by live person-to-person contact. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for overreaching inherent in live person-to-person justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person's judgment.

[4] The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business, or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of Rule 7.1, which involves coercion, duress, or harassment within the meaning of Rule 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is prohibited.

Contact to Establish Prepaid Legal Service Plan

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

Contact to Enroll Members in Prepaid Legal Service Plan

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal

services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with 27 N.C. Admin. Code 1E.0301 et seq., as well as Rules 7.1, 7.2 and 7.3(c).

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 6, 2004; November 16, 2006; August 23, 2007; August 25, 2011; October 2, 2014; September 28, 2017; April 21, 2021.

27 NCAC 02 RULE 7.4 INTERMEDIARY ORGANIZATIONS

(a) An intermediary organization is a lawyer referral service, lawyer advertising cooperative, lawyer matching service, online marketing platform, or other similar organization that engages in referring consumers of legal services to lawyers or facilitating the creation of lawyer-client relationships between consumers of legal services and lawyers willing to provide assistance. A tribunal or similar government agency that appoints or assigns lawyers to represent parties before the tribunal or government agency is not an intermediary organization under this Rule.

(b) Before and while participating in an intermediary organization, the lawyer shall make reasonable efforts to ensure that the intermediary organization's conduct complies with the professional obligations of the lawyer, including the following conditions:

(1) The intermediary organization does not direct or regulate the lawyer's professional judgment in rendering legal services to the client;

(2) The intermediary organization, including its agents and employees, does not engage in improper solicitation pursuant to Rule 7.3;

(3) The intermediary organization makes the criteria for inclusion available to prospective clients, including any payment made or arranged by the lawyer(s) participating in the service and any fee charged to the client for use of the service, at the outset of the client's interaction with the intermediary organization;

(4) The function of the referral arrangement between lawyer and intermediary organization is fully disclosed to the client at the outset of the client's interaction with the lawyer;

(5) The intermediary organization does not require the lawyer to pay more than a reasonable sum representing a proportional share of the organization's administrative and advertising costs, including sums paid in accordance with Rule 5.4(a)(6); and

(6) The intermediary organization is not owned or directed by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm.

(c) If a lawyer discovers an intermediary organization's noncompliance with Rule 7.4(b)(1) – (6), the lawyer shall either withdraw from participation or seek to correct the noncompliance. If the intermediary organization fails to correct the noncompliance, the lawyer must withdraw from participation.

Comment

[1] The term "referral" implies that some attempt is made to match the needs of the prospective client with the qualifications of the recommended lawyer.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: February 27, 2003; April 21, 2021.

27 NCAC 02 RULE 7.5 RESERVED

History Note: *Authority G.S. 84-23;*
Adopted by Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; September 22, 2016;
Repealed by Supreme Court: April 21, 2021.

27 NCAC 02 RULE 7.6 RESERVED

SECTION .0800 - MAINTAINING THE INTEGRITY OF THE PROFESSION

27 NCAC 02 RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) knowingly make a false statement of material fact; or

(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware. It should also be noted that N.C.G.S. §84-28(b)(3) defines failure to answer a formal inquiry of the North Carolina State Bar as misconduct for which discipline is appropriate.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of the North Carolina Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003..

27 NCAC 02 RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, or other adjudicatory officer or of a candidate for election or appointment to judicial office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against such unjust criticism.

[4] While a lawyer as a citizen has a right to criticize such officials publicly, the lawyer should be certain of the merit of the complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the North Carolina State Bar or the court having jurisdiction over the matter.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the North Carolina Judicial Standards Commission or other appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6.

(d) A lawyer who is disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court shall inform the secretary of the North Carolina State Bar of such action in writing no later than 30 days after entry of the order of discipline.

(e) A lawyer who is serving as a mediator and who is subject to the North Carolina Supreme Court Standards of Professional Conduct for Mediators (the Standards) is not required to disclose information learned during a mediation if the Standards do not allow disclosure. If disclosure is allowed by the Standards, the lawyer is required to report professional misconduct consistent with the duty to report set forth in paragraph (a).

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. June 9, 2016; October 7, 2010; March 1, 2003.

27 NCAC 02 RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client or, in the case of a government lawyer, investigatory personnel, of action the client, or such investigatory personnel, is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on a lawyer's fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. A lawyer's dishonesty, fraud, deceit, or misrepresentation is not mitigated by virtue of the fact that the victim may be the lawyer's partner or law firm. A lawyer who steals funds, for instance, is guilty of the most serious disciplinary violation regardless of whether the victim is the lawyer's employer, partner,

law firm, client, or a third party.
[3] The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession. Lawyer discipline affects only the lawyer's license to practice law. It does not result in incarceration. For this reason, to establish a violation of paragraph (b), the burden of proof is the same as for any other violation of the Rules of Professional Conduct: it must be shown by clear, cogent, and convincing evidence that the lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Conviction of a crime is conclusive evidence that the lawyer committed a criminal act although, to establish a violation of paragraph (b), it must be shown that the criminal act reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. If it is established by clear, cogent, and convincing evidence that a lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the lawyer may be disciplined for a violation of paragraph (b) although the lawyer is never prosecuted or is
acquitted or pardoned for the underlying criminal act.
[4] A showing of actual prejudice to the administration of justice is not required to establish a violation of paragraph (d). Rather, it must only be shown that the act had a reasonable likelihood of prejudicing the administration of justice. For example, in State Bar v. DuMont, 52 N.C. App. 1, 277 S.E.2d 827 (1981), modified on other grounds, 304 N.C. 627, 286 S.E.2d 89 (1982), the defendant was disciplined for advising a witness to give false testimony in a deposition even though the witness corrected his statement prior to trial. Conduct warranting the imposition of professional discipline under paragraph (d) is characterized by the element of intent or some other aggravating circumstance. The phrase "conduct prejudicial to the administration of justice" in paragraph (d) should be read broadly to proscribe a wide variety of conduct, including conduct that occurs outside the scope of judicial proceedings. In State Bar v. Jerry Wilson, 82 DHC 1, for example, a lawyer was disciplined for conduct prejudicial to the administration of justice after forging another individual's name to a guarantee agreement, inducing his wife to notarize the forged agreement, and using the agreement to obtain funds.
[5] Threats, bullying, harassment, and other conduct serving no substantial purpose other than to intimidate, humiliate, or embarrass anyone associated with the judicial process including judges, opposing counsel, litigants, witnesses, or court personnel violate the prohibition on conduct prejudicial to the administration of justice. When directed to opposing counsel, such conduct tends to impede opposing counsel's ability to represent his or her client effectively. Comments "by one lawyer tending to disparage the personality or performance of another...tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth-finding function by distracting judges and juries from the serious business at hand." State v. Rivera, 350 N.C. 285, 291, 514 S.E.2d 720, 723 (1999). See Rule 3.5, cmt. [10] and Rule 4.4, cmt. [2].
[6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.
[7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; March 5, 2015; September 28, 2017.

27 NCAC 02 RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW
(a) Disciplinary Authority. A lawyer admitted to practice in North Carolina is subject to the disciplinary authority of North Carolina, regardless of where the lawyer's conduct occurs. A lawyer not admitted in North Carolina is also subject to the disciplinary authority of North Carolina if the lawyer renders or offers to render any legal services in North Carolina. A lawyer may be subject to the disciplinary authority of both North Carolina and another jurisdiction for the same conduct.
(b) Choice of Law. In any exercise of the disciplinary authority of North Carolina, the rules of professional conduct to be applied shall be as follows:
(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be

applied to the conduct. A lawyer is not subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that conduct of a lawyer admitted to practice in North Carolina is subject to the disciplinary authority of North Carolina. Extension of the disciplinary authority of North Carolina to other lawyers who render or offer to render legal services in North Carolina is for the protection of the citizens of North Carolina.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct might involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing a safe harbor for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer is not subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer’s reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client’s informed consent confirmed in the agreement.

[6] If North Carolina and another admitting jurisdiction were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

History Note: *Authority G.S. 84-23*
Eff. July 24, 1997;
Amended October 2, 2014; March 1, 2003.

27 NCAC 02 RULE 8.6 INFORMATION ABOUT A POSSIBLE WRONGFUL CONVICTION

(a) Subject to paragraph (b), when a lawyer knows of credible evidence or information, including evidence or information otherwise protected by Rule 1.6, that creates a reasonable likelihood that a defendant did not commit the offense for which the defendant was convicted, the lawyer shall promptly disclose that evidence or information to the

prosecutorial authority for the jurisdiction in which the defendant was convicted and to North Carolina Office of Indigent Defense Services or, if appropriate, the federal public defender for the district of conviction.

(b) Notwithstanding paragraph (a), a lawyer shall not disclose evidence or information if:

(1) the evidence or information is protected from disclosure by law, court order, or 27 N.C. Admin. Code Ch. 1B §.0129;

(2) disclosure would criminally implicate a current or former client or otherwise substantially prejudice a current or former client's interests; or

(3) disclosure would violate the attorney-client privilege applicable to communications between the lawyer and a current or former client.

(c) A lawyer who in good faith concludes that information is not subject to disclosure under this rule does not violate the rule even if that conclusion is subsequently determined to be erroneous.

(d) This rule does not require disclosure if the lawyer knows an appropriate governmental authority, the convicted defendant, or the defendant's lawyer already possesses the information.

COMMENT

[1] The integrity of the adjudicative process faces perhaps no greater threat than when an innocent person is wrongly convicted and incarcerated. The special duties of a prosecutor with respect to disclosure of potentially exonerating post-conviction information are set forth in Rule 3.8(g) and (h). However, as noted in the comment to Rule 3.3, Candor Toward the Tribunal, the special obligation to protect the integrity of the adjudicative process applies to all lawyers. Under Rule 3.3(b), this obligation may require a lawyer to disclose fraudulent testimony to a tribunal even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. Similarly, the need to rectify a wrongful conviction and prevent or end the incarceration of an innocent person justifies extending the duty to disclose potentially exculpatory information to all members of the North Carolina State Bar, regardless of practice area and limited only by paragraph (b). It also justifies the disclosure of information otherwise protected by Rule 1.6. For prosecutors, compliance with Rule 3.8(g) and (h) constitutes compliance with this rule.

[2] This rule may require a lawyer to disclose credible evidence or information, whether protected by Rule 1.6 or not, if the evidence or information creates a reasonable likelihood that a convicted defendant did not commit the offense for which the defendant was convicted. To determine whether disclosure is required, a lawyer must not only consider the credibility of the evidence or information and its source but must also evaluate the substance of the evidence or information to determine whether it creates a reasonable likelihood that the defendant did not commit the offense.

[3] The duty to disclose is qualified in paragraph (b) by legal obligations and client loyalty. A lawyer may not disclose evidence or information if prohibited by law, court order, or the administrative rule that makes the proceedings of the State Bar's Grievance Committee confidential (27 N.C. Admin. Code Ch. 1B §.0129). The latter prohibition insures a lawyer's response to a grievance does not inadvertently impose a duty to disclose on the lawyers in the State Bar Office of Counsel or on the State Bar Grievance Committee. In addition, paragraph (b) specifies that a lawyer may not disclose evidence or information if doing so would criminally implicate the lawyer's client or the evidence or information was received in a privileged communication between the client and the lawyer. Disclosure is also prohibited when it would result in substantial prejudice the client's interests. Substantial prejudice to a client's interests includes bodily harm, loss of liberty, or loss of a significant legal right or interest such as the right to effective assistance of counsel or the right against self-incrimination.

[4] When disclosure of information protected by Rule 1.6 is permitted, the lawyer should counsel the client confidentially, advising the client of the lawyer's duty to disclose and, if possible, seeking the client's cooperation.

History Note *Authority G.S. 84-23;*
Adopted by the Supreme Court: March 16, 2017.