

State of North Dakota

DISCIPLINARY BOARD OF THE SUPREME COURT

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IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
JAN 10 2012  
BRENT J. EDISON  
ASSISTANT DISCIPLINARY COUNSEL  
STATE OF NORTH DAKOTA

January 9, 2012

The Honorable Gerald W. VandeWalle  
Chief Justice  
600 East Boulevard Avenue  
First Floor, Judicial Wing  
Bismarck, ND 58505-0530

RECEIVED BY  
Chief Justice  
Supreme Court  
JAN 10 2012  
STATE OF  
NORTH DAKOTA

RE: North Dakota Rules for Lawyer Discipline

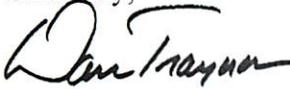
Dear Chief Justice VandeWalle:

Attached are proposed amendments to Rule 3.1, N.D.R. Lawyer Discipl., regarding filing documents with the Secretary of the Disciplinary Board, during pending formal proceedings.

The Board recommends approval of this amendment to ensure a complete and accurate record of formal disciplinary proceedings is maintained, and to enable the eventual electronic transmittal of the record to the assigned hearing panel members.

If you have any questions regarding this matter, please contact me or Penny Miller.

Sincerely,



Daniel M. Traynor  
Chairman  
Disciplinary Board

Attachments

pc: Penny Miller, Secretary, Disciplinary Board

**Rule 3.1. Generally.**

**E. Formal Proceedings**

(1) The board shall begin a formal disciplinary proceeding within 60 days of referral of a matter to the board for formal proceedings or within 60 days of the board's determination that there is probable cause to believe a lawyer committed misconduct warranting public discipline. Counsel shall initiate the proceeding by filing with the board and serving upon the lawyer a petition that is sufficiently clear and specific to inform the lawyer of the alleged misconduct. The time within which formal proceedings must be instituted may be extended for good cause. Upon receiving the petition the chair of the board shall assign the matter to a hearing panel.

At any time after assignment to the hearing panel, the hearing panel may refer the lawyer to the lawyer assistance program for screening for possible participation in the lawyer assistance program. Screening for possible participation in the lawyer assistance program may also be initiated by the lawyer at any time after the matter is assigned to the hearing panel. The hearing panel shall proceed with its consideration of the matter during the screening process.

(2) The lawyer shall serve an answer upon counsel and ~~file the original with~~ the assigned hearing panel within 20 days after the service of the petition, unless the time is extended by the chair of the hearing panel. In the event the lawyer fails to timely answer, the charges are admitted.

(3) If there are any material issues of fact raised by the pleadings or if the lawyer requests the opportunity to be heard in mitigation, the hearing panel shall give 25 days written notice of the hearing to the lawyer, complainant, and counsel, stating the date and place of hearing. The hearing must be held in a judicial district in which the lawyer resides, is employed, or maintains an office. The notice of hearing must advise that the lawyer is entitled to be represented by

23 counsel, to cross-examine witnesses, and to present evidence. The hearing must be recorded. The  
24 hearing panel may request that a transcript be made.

25 (4) Disciplinary counsel and the respondent may submit proposed findings, conclusions,  
26 and recommendations for sanction or order of dismissal to the hearing panel.

27 (5) All papers in a proceeding under this rule must be filed in accordance with Rule 5 of  
28 the North Dakota Rules of Civil Procedure, except the filing shall be made with the Secretary,  
29 with copies served upon the assigned hearing panel.