

Legislative Format - Add'l amendments by the Court  
are tabbed & bracketed

*Proposed Amendments to the Rules for Lawyer Discipline*

RULE 1.3. FORMS OF DISCIPLINE.

A. **Forms.** Misconduct is grounds for one or more of the following forms of discipline:

- (1) Disbarment by the court, in which case the lawyer is not eligible for readmission for five years;
- (2) Suspension by the court for an appropriate fixed period of time not in excess of three years;
- (3) Immediate interim suspension imposed by the court, pending final determination of discipline;
- (4) Probation imposed by the court not in excess of two years, or imposed by ~~the board~~ a hearing panel or district inquiry committee with the consent of the respondent not in excess of two years. The probation may be renewed for an additional two-year period by consent or after a hearing to determine if there is a continued need for supervision;
- (5) Admonition by the district inquiry committee;
- (6) Reprimand by the court or ~~board~~ hearing panel;
- (7) Restitution to persons financially injured;
- (8) Reimbursement to the client protection fund;
- (9) Assessment of costs and expenses of proceedings against the lawyer; or
- (10) Limitation by the court on the nature or extent of the lawyer's future practice.

B. **Conditions.** Conditions may be attached to an admonition, a reprimand, or probation. Failure to comply with a condition is a ground for reconsideration of the matter and imposition of further discipline against the lawyer.

C. **Mitigation or Aggravation.** Mitigating or aggravating circumstances affecting the nature or degree of discipline to be imposed must be fully set forth in the opinion disposing of the matter.

1 D. **Costs.** Unless otherwise ordered by the court or ~~the board~~ hearing panel, costs and  
2 expenses of all disability or discipline proceedings, including, without limitation, the costs of  
3 investigations, service of process, witness fees, and a court reporter's services, must be assessed  
4 against the lawyer in any case where discipline is imposed or there is a transfer to disability inactive  
5 status or incapacitated status. In assessing costs and expenses, the court or hearing panel may  
6 consider as a mitigating factor the lawyer's tender of a conditional admission under Rule 4.2 that is  
7 consistent with or less than the discipline imposed. All expenses so assessed must be paid to the  
8 secretary of the board. }  
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1     **RULE 2.1. THE DISCIPLINARY BOARD.**

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3     **A. Appointment.** The board consists of ten members: seven lawyer members, one from  
4 each judicial district of North Dakota, and three public members from the state at large. Board  
5 members each serve for a term of three years and until a successor is appointed and qualifies. Terms  
6 must be staggered so that no more than three lawyer members and one public member are appointed  
7 for full three-year terms in any one year. Except when filling an unexpired term, a member may not  
8 serve for more than two consecutive three-year terms. Past members may serve on hearing bodies.  
9 Vacancies must be filled by appointment by the court.

10  
11     **B. Nominations.** Each lawyer member is appointed by the court from a list of three  
12 practicing lawyers submitted by the association's governing board. Each public member is appointed  
13 by the court from a list of three nominees submitted by a committee consisting of the president of  
14 the association, the attorney general, and the chair of the judicial conference.

15  
16     **C. Election of Officers.** At the first meeting of the board in each calendar year, the  
17 members of the board shall elect a chair and vice-chair. The chair, and in the chair's absence the  
18 vice-chair, performs the duties normally associated with that office and presides over all meetings  
19 of the full board.

20  
21     **D. Secretary.** The clerk of the court is the ex officio secretary of the board. The  
22 secretary shall maintain permanent records of disability and discipline matters, subject to the  
23 expunction requirements of these rules, and compile statistics to aid in the administration of the  
24 system, including a single log of all complaints received, investigative files, statistical summaries  
25 of docket processing and case dispositions, transcripts of all proceedings (or the reporter's notes if  
26 not transcribed), and other records as the board or the court requires to be maintained. Counsel  
27 appointed under these rules shall cooperate with the secretary, and assist the secretary in the  
28 performance of the obligations of that office. The secretary may, with the board's approval, delegate  
29 recordkeeping obligations to counsel to avoid duplication and promote efficiency.

30  
31     **E. Quorum.** Six members are a quorum. The board may act only with the concurrence  
32 of a majority of the entire board except as to administrative matters, which only require a simple  
33 majority of a quorum.

34  
35     **F. Compensation.** Members receive no compensation for their services, but are  
36 reimbursed for reasonable and necessary expenses incurred in the performance of their duties. The  
37 salaries of counsel and staff, their expenses, administrative costs, and the expenses of the members  
38 of the board and of hearing ~~bodies~~ panels are paid out of funds deposited or dedicated for those  
39 purposes.

40  
41     **G. Abstention.** A board member shall refrain from taking part in any proceedings in  
42 which a judge, similarly situated, would be required to abstain.

43

} delete

1 H. Powers and Duties. The board shall:

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- 3 (1) Upon receiving an appeal of a district inquiry committee disposition, approve,  
4 modify or disapprove the disposition, or remand to the district inquiry committee for  
5 further proceedings;
- 6
- 7 (2) Conduct hearings, ~~either en banc or by referral to~~ through a hearing body, panel on  
8 formal charges of misconduct, petitions for reinstatement, and petitions for transfer  
9 to and from disability inactive or incapacitated status, ~~and submit findings and~~  
10 ~~recommendations together with the record of the hearing to the court;~~
- 11
- 12 ~~(3) Review the findings and recommendations of each hearing body, together with the~~  
13 ~~record of the proceedings before the hearing body. Upon completion of its review~~  
14 ~~the board may adopt or modify the hearing body's findings and recommendations and~~  
15 ~~forward those, together with the record of the proceedings before the hearing body,~~  
16 ~~to the court; or the board may remand the matter to the hearing body with directions~~  
17 ~~for further proceedings;~~
- 18
- 19 ~~(4) Act on each formal disciplinary proceeding, either by dismissing the petition, issuing~~  
20 ~~a reprimand, imposing probation, or, if appropriate, recommending imposition of~~  
21 ~~other sanctions;~~
- 22
- 23 ~~(5)~~ (3) Inform the public about the existence and operation of the disability and disciplinary  
24 system, the disposition of each matter in which public discipline has been imposed,  
25 when a lawyer has been transferred to or from disability inactive or incapacitated  
26 status, or when a lawyer has been reinstated or readmitted;
- 27
- 28 ~~(6)~~ (4) Delegate, in its discretion, to the chair or vice-chair power to act for the board on  
29 administrative and procedural matters;
- 30
- 31 ~~(7)~~ (5) Annually review the operation of the disability and disciplinary system with the  
32 court, counsel, and district inquiry committees; and
- 33
- 34 ~~(8)~~ (6) Propose amendments to these rules for adoption by the court.
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1  
2 **RULE 2.3. HEARING ~~BODIES~~ PANELS.**

3  
4 A. **Appointment.** ~~When the board refers a matter to a hearing body, other than the board~~  
5 ~~en-banc, the~~ Upon the filing of a petition, the chair of the board shall appoint a hearing ~~body panel~~  
6 to conduct ~~the hearing, make findings, and recommend action to the board~~ hearings and submit  
7 findings and recommendations on matters assigned under Rule 2.1H(2). A hearing ~~body panel~~  
8 consist of a three-member panel of not more than two lawyers and at least one public member  
9 appointed from current or former board members, or may be a hearing officer designated from  
10 among ~~sitting or retired state court~~ district court or surrogate judges.

11 B. **Powers and Duties.** Each hearing ~~body panel~~ shall:

- 12  
13 (1) Conduct hearings on matters referred by the board; and  
14  
15 (2) Submit findings and recommendations, together with the record of the hearing, to the  
16 ~~board~~ court.  
17

18 C. **Abstention.** A member of the hearing ~~body panel~~ shall refrain from taking part in  
19 any proceedings in which a judge, similarly situated, would be required to disqualify.  
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1  
2 **RULE 2.4. DISTRICT INQUIRY COMMITTEES.**  
3

4 A. **Disciplinary Districts.** The state is divided into disciplinary districts:  
5

6 (1) **Eastern Southeastern District.** The ~~Eastern Southeastern~~ District includes the  
7 following counties: Barnes, ~~Benson~~, Cass, ~~Cavalier~~, Dickey, ~~Eddy~~, ~~Foster~~, ~~Grand~~  
8 ~~Forks~~, ~~Griggs~~, Kidder, LaMoure, Logan, McIntosh, ~~Nelson~~, ~~Pembina~~, ~~Pierce~~,  
9 ~~Ramsey~~, Ransom, Richland, ~~Rolette~~, Sargent, ~~Steele~~, and Stutsman, Towner, Traill,  
10 Walsh, and Wells.

11  
12 (2) **Northeastern District.** The Northeastern District includes the following counties:  
13 Benson, Cavalier, Eddy, Foster, Grand Forks, Griggs, Nelson, Pembina, Pierce,  
14 Ramsey, Rolette, Steele, Towner, Traill, Walsh, and Wells.

15  
16 (23) **Western District.** The Western District includes the following counties: Adams,  
17 Billings, Bottineau, Bowman, Burleigh, Burke, Divide, Dunn, Emmons, Golden  
18 Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail,  
19 Oliver, Renville, Sheridan, Sioux, Slope, Stark, Ward, and Williams.  
20

21 ....  
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1     **RULE 2.5. DISCIPLINARY COUNSEL.**

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3     **A.     Qualifications of Counsel.**

- 4  
5     (1)    Counsel and substitute temporary counsel must be admitted to the practice of law in  
6            North Dakota; and  
7  
8     (2)    With the exception of substitute temporary counsel, counsel may not engage in the  
9            private practice of law.

10  
11    **B.     Powers and Duties. Counsel shall:**

- 12  
13    (1)    Upon referral by a district inquiry committee, investigate all information about a  
14            lawyer which, if true, would be grounds for discipline or transfer to disability  
15            inactive or incapacitated status and prepare an investigative report and  
16            recommendations for the district inquiry committee's disposition;  
17  
18    (2)    Advise the board, hearing panels, and the district inquiry committees on legal issues  
19            relating to lawyer discipline and disability;  
20  
21    (3)    Prosecute disciplinary, disability, and reinstatement proceedings before hearing  
22            bodies, ~~the board,~~ panels and the court;  
23  
24    (4)    Supervise staff needed for the performance of investigative and prosecutorial  
25            functions, as authorized by the operations committee and within limits of funds  
26            available;  
27  
28    (5)    Promptly notify the complainant and the lawyer of the disposition of each matter;  
29  
30    (6)    Notify each jurisdiction in which a lawyer is admitted of a transfer to or from  
31            disability inactive or incapacitated status, a reinstatement, or any public discipline  
32            imposed in this state;  
33  
34    (7)    When a lawyer is convicted in this state of a serious crime in Rule 4.1C, forward a  
35            certified copy of the judgment of conviction to the disciplinary agency in each  
36            jurisdiction in which the lawyer is admitted; and  
37  
38    (8)    Provide regular reports on all complaints filed with the secretary to the district  
39            inquiry committees and the board at their scheduled meetings.  
40

1     **RULE 3.1. GENERALLY.**

2           **A. Initiation of Disciplinary Process.** The board or district inquiry committees may  
3 consider on their own motions alleged grounds for disciplinary action or disability proceedings. All  
4 complaints other than those upon motion by the board or district inquiry committees must be in  
5 writing, signed by the complainant, ~~and~~ filed with the secretary and assigned to the appropriate  
6 inquiry committee. The secretary may assign new complaints to another inquiry committee when  
7 it appears that the inquiry committee to which the complaint would normally be assigned has a  
8 disproportionately high caseload. }>

9           **B. Initial Consideration.** The chair or, upon designation by the chair, the vice-chair  
10 of the district inquiry committee shall evaluate complaints received. If the lawyer is not subject to  
11 the jurisdiction of the court, the chair or vice-chair shall refer the matter to the appropriate entity in  
12 the jurisdiction in which the lawyer is admitted.

13           **C. Summary Dismissal.** A complaint must be summarily dismissed by the district  
14 inquiry committee if the alleged facts, if true, are not grounds for disciplinary action or disability.  
15 After summary dismissal of a complaint, the chair or vice-chair, as appropriate, shall promptly notify  
16 the lawyer and complainant of the action and furnish a copy of the complaint to the lawyer. The  
17 lawyer is not required to respond to the complaint. There is no appeal from a summary dismissal.

18           **D. Investigation and District Inquiry Committee Procedures.**

19           (1) Complaints not summarily dismissed must be promptly investigated by a member of  
20 the district inquiry committee or counsel.

21           (2) Upon assignment of the investigator, a copy of the complaint must be provided to the  
22 lawyer.

23           (3) The lawyer, within twenty days of receiving the complaint, shall submit a written  
24 response to the allegations in the complaint. An extension may be granted by the  
25 chair only upon a showing of good cause. Failure to make a timely response is an  
26 admission that the factual allegations of the complaint are true for purposes of  
27 proceedings before the district inquiry committee.

28           (4) Before consideration by the district inquiry committee, a copy of the lawyer's written  
29 response must be provided to the complainant.

30           (5) Within 60 days of assignment, absent an extension from the chair, the investigator  
31 shall file a written report with the chair containing a summary of the investigation  
32 and conclusions, the response received from the lawyer, and relevant documents. An  
33 extension may be granted by the chair only upon a showing of good cause.



- 1 (6) Notice of the opportunity to appear before the district inquiry committee must be  
2 provided to the complainant unless the complaint is subject to summary dismissal  
3 under Rule 3.1C or unless in the chair's opinion the complainant poses a threat of  
4 harm to the committee.
- 5 (7) Notice of the opportunity to appear before the district inquiry committee must be  
6 provided to the lawyer before entry of any discipline by the district inquiry  
7 committee or referral for formal proceedings.
- 8 (8) Counsel shall promptly notify the complainant and lawyer in writing of the  
9 disposition of the complaint and the reasons for the inquiry committee's decision.  
10 The complainant, lawyer, or counsel may appeal any disposition, except a  
11 determination that there is probable cause, to the board by filing a written request for  
12 review with counsel within 30 days of mailing of notice. Upon receipt of the written  
13 request, counsel shall refer the file to the board which shall consider the merits of the  
14 appeal. The determination of the board may be the subject of a petition for leave to  
15 appeal to the court, but leave will not be granted unless the complainant person  
16 seeking leave to appeal shows that the board acted arbitrarily, capriciously, or  
17 unreasonably.
- 18 (9) The report required under section D(5) must be filed with the secretary upon  
19 disposition of the matter by the district inquiry committee.

20 E. **Formal Proceedings.**

- 21 (1) ~~When a district inquiry committee or the board determines there is probable cause~~  
22 ~~to believe a lawyer committed misconduct warranting public discipline, it shall begin~~  
23 ~~formal disciplinary proceedings before the board. Within 90 days, unless for good~~  
24 ~~cause shown, The board shall begin a formal disciplinary proceeding must be~~  
25 ~~instituted by counsel within 60 days of referral of a matter to the board for formal~~  
26 ~~proceedings or within 60 days of the board's determination that there is probable~~  
27 ~~cause to believe a lawyer committed misconduct warranting public discipline.~~  
28 Counsel shall initiate the proceeding by filing with the board and serving upon the  
29 lawyer a petition that is sufficiently clear and specific to inform the lawyer of the  
30 alleged misconduct. The time within which formal proceedings must be instituted  
31 may be extended for good cause. Upon receiving the petition the chair of the board  
32 shall assign the matter to a hearing ~~body or to the board en-banc~~ panel.
- 33 (2) The lawyer shall serve an answer upon counsel and file the original with the ~~board~~  
34 assigned hearing panel within 20 days after the service of the petition, unless the time  
35 is extended by the chair of the hearing ~~body~~ panel. In the event the lawyer fails to  
36 timely answer, the charges are admitted.

1 (3) If there are any material issues of fact raised by the pleadings or if the lawyer  
2 requests the opportunity to be heard in mitigation, the hearing ~~body panel~~ shall give  
3 25 days written notice of the hearing to the lawyer, complainant, and counsel, stating  
4 the date and place of hearing. The hearing must be held in a judicial district in which  
5 the lawyer resides, is employed, or maintains an office. The notice of hearing must  
6 advise that the lawyer is entitled to be represented by counsel, to cross-examine  
7 witnesses, and to present evidence. The hearing must be recorded. The hearing  
8 panel may request that a transcript be made.

9 (4) ~~The hearing body shall in every case submit to the board within 60 days after the~~  
10 ~~conclusion of its hearing a report containing findings and recommendations, together~~  
11 ~~with a record of its proceedings. The hearing body may request that a transcript be~~  
12 ~~made. Neither the lawyer, complainant, nor counsel may be present during~~  
13 ~~deliberations on the disposition of the formal complaint by the hearing body.~~  
14 Disciplinary counsel and the respondent may submit proposed findings, conclusions,  
15 and recommendations for sanction or order of dismissal to the hearing body.

16 F. ~~Review by Board.~~ Upon receiving the findings and recommendations of the hearing  
17 body, the secretary shall notify counsel and the lawyer of the right to, and time within which to,  
18 request the opportunity to present briefs and oral argument to the board. Review by the board is  
19 limited to consideration of the report from the hearing body and the record of formal proceedings;  
20 the transcript when one has been requested, and, if granted, briefs and oral argument. Within 30  
21 days of review, the board shall file with the secretary its order dismissing the petition, imposing  
22 discipline, or its report recommending or imposing discipline.

23 G. E. Review of Formal Proceedings by the Court. ]

24 (1) ~~The board~~ Within 60 days of its hearing, the hearing panel shall promptly file with  
25 the secretary its order of dismissal, consent probation or reprimand. A copy of the  
26 panel's order must be served upon counsel, the complainant, and the lawyer. ]  
27 Counsel, the complainant, or the lawyer may seek court review of the panel's  
28 decision. A written petition for review, stating the reasons for the requested review,  
29 must be filed with the clerk within 20 days of service of the panel's order. The  
30 petition must contain a clear statement of the reasons petitioner believes the panel's  
31 decision is arbitrary, capricious, or unreasonable. The court may provide for oral  
32 arguments or the submission of briefs. ]

33 (2) Within 60 days of its hearing, the hearing panel shall submit to the court a report  
34 containing its findings and recommendations on each matter heard other than those  
35 resulting in ~~remand~~; dismissal ~~without appeal~~, consent probation ~~without appeal~~, or  
36 reprimand ~~without appeal~~. The ~~board's~~ hearing panel's report shall contain mitigating  
37 or aggravating circumstances affecting the nature or degree of discipline  
38 recommended. A copy of the report submitted to the court must be served upon

1 counsel, complainant, and the lawyer. Within 20 days of service of the report, the  
2 lawyer and counsel may file objections to the report. Within 50 days after service of  
3 the report, the lawyer and counsel may file briefs limited to objections timely filed  
4 under this rule. Oral arguments may be requested by the lawyer or counsel, or may  
5 be set upon the court's own motion. Briefing and oral argument will be as provided  
6 in the North Dakota Rules of Appellate Procedure.

7 **H. G. Reserved Authority.** Nothing in these rules prevents the court from instituting  
8 disability or disciplinary proceedings on its own initiative.

1     **RULE 3.3. DISCOVERY AND SUBPOENAS.**

2           A.     **Oaths.** Any member of the board or of a hearing body panel in matters before it, and  
3 counsel in matters under investigation, may administer oaths and affirmations.

4           B.     **Subpoenas.**

5           (1)    Counsel, before any hearing or for a hearing and in accordance with Rule 45 of the  
6 North Dakota Rules of Civil Procedure, may compel by subpoena the attendance of  
7 witnesses, including the lawyer, and the production of pertinent books, papers, and  
8 documents. A lawyer, under Rule 45 of the North Dakota Rules of Civil Procedure,  
9 may compel by subpoena the attendance of witnesses and the production of pertinent  
10 books, papers, and documents before a hearing body panel after formal disciplinary  
11 proceedings are instituted.

12          (2)    Subpoenas issued by counsel during the course of an investigation must clearly  
13 indicate on their face that the subpoenas are issued in connection with a confidential  
14 investigation under these rules and that it is regarded as contempt of court or grounds  
15 for discipline under these rules for a person subpoenaed to breach the confidentiality  
16 of the investigation. It is not a breach of confidentiality for a person subpoenaed to  
17 consult with an attorney.

18          (3)    The district court of the district in which the attendance or production is required  
19 may, upon proper application, enforce the attendance and testimony of any witnesses  
20 and the production of any documents subpoenaed.

21          (4)    Any attack on the validity of a subpoena issued under these rules must be heard and  
22 determined by the hearing body panel before which the matter is pending or by the  
23 court in which enforcement of the subpoena is being sought.

24          C.     **Discovery Limited.** For 60 days following service of the petition in formal  
25 proceedings, counsel and the lawyer are entitled to reciprocal discovery, pursuant to the North  
26 Dakota Rules of Civil Procedure, of all matters not privileged. An extension may be granted by the  
27 chair of the ~~board~~ hearing panel only upon a showing of good cause. Disputes concerning the scope  
28 and other aspects of discovery must be determined by the hearing body panel before which the  
29 matter is pending. All discovery orders by the hearing body panel are interlocutory and may not be  
30 appealed before entry of the final order.

31           ~~An extension may be granted by the chair of the board only upon a showing of good cause.~~  
32 Disputes concerning the scope and other aspects of discovery must be determined by the hearing  
33 body panel before which the matter is pending. All discovery orders by the hearing body panel are  
34 interlocutory and may not be appealed before entry of the final order.

1           D.     **Witness Fees.** Witness fees and mileage are the same as those provided for  
2 proceedings in the district court.

3           E.     **Reciprocal Enforcement.** Whenever a subpoena is sought in this state under the  
4 laws of another jurisdiction for use in lawyer discipline or disability proceedings, the chair of the  
5 board, upon petition, may issue a subpoena as provided in this section to compel the attendance of  
6 witnesses and production of documents.

1      **RULE 3.5. ADDITIONAL PROCEDURE.**

2           **A. Nature of Proceedings.** Disability and disciplinary proceedings are neither civil nor  
3 criminal but are quasi-judicial proceedings.

4           **B. Other Rules Apply.** Except as otherwise provided in these rules and insofar as  
5 appropriate, the North Dakota Rules of Civil Procedure and North Dakota Rules of Evidence apply  
6 in disability and discipline proceedings.

7           **C. Standard of Proof.** Disposition of formal charges of misconduct, petitions for  
8 reinstatement, and petitions for transfer to and from disability inactive or incapacitated status must  
9 be supported by clear and convincing evidence.

10          **D. Burden of Proof.** Counsel has the burden of proof in proceedings seeking discipline  
11 or transfer to disability inactive or incapacitated status. The lawyer has the burden of proof in  
12 proceedings seeking reinstatement or transfer from disability inactive or incapacitated status.

13          **E. Prehearing Conference.** At the discretion of the hearing ~~body panel~~ or upon request  
14 of either party, a prehearing conference may be ordered for any purpose available under Rule 16 of  
15 the North Dakota Rules of Civil Procedure.

16          **F. Related Litigation.** Except as authorized in Rules 4.1 and 5.1, a disability or  
17 disciplinary matter may not be delayed because of pending criminal or civil litigation, unless the  
18 board in its discretion authorizes a stay for good cause shown.

19          **G. No Abatement.** ~~Unwillingness Restitution by the lawyer; unwillingness~~ of a  
20 complainant to pursue a complaint; ~~settlement of the complaint; or compromise between a~~  
21 complainant and the lawyer; ~~or restitution by the lawyer~~ does not in itself abate any proceeding;  
22 ~~whether~~ before the court, ~~board hearing panel~~, or district inquiry committee.

23          **H. Time Limitations.** Except as otherwise provided in these rules, time is directory and  
24 not jurisdictional. Failure to observe prescribed time intervals may result in discipline against the  
25 violator but does not abate any proceeding.

26          **I. Organizational Members.** If a complaint is filed against counsel, a member of a  
27 district inquiry committee, or a member of the board, the matter must proceed in accordance with  
28 these rules except that:

29           (1) If the lawyer is counsel, the board shall appoint a special substitute temporary  
30 counsel to present the case;

31           (2) If the lawyer is a member of a district inquiry committee, the complaint must be  
32 referred to ~~the other~~ another district inquiry committee; or

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- (3) If the lawyer is a member of the board and the remaining members decline to act, the chief justice shall appoint a special board of not less than three persons for the case.

1       RULE 4.2.     **DISCIPLINE BY CONSENT.**

2           A.     **Board Hearing Panel Approval.** ~~At any stage, a~~ A lawyer may tender a conditional  
3 admission in exchange for a stated form of discipline. The tendered admission must be submitted  
4 to counsel and approved or rejected by the board hearing panel, ~~after considering the~~  
5 ~~recommendation of the hearing body if the matter has already been assigned for hearing and~~ subject  
6 to final approval or rejection by the court if the stated form of discipline includes disbarment or  
7 suspension. If the stated form of discipline is rejected by the board hearing panel, the admission  
8 must be withdrawn and cannot be used against the lawyer in any subsequent proceedings. After  
9 approval by the board hearing panel of the proposed discipline and, if required, by the court, the final  
10 order of discipline must be entered in accordance with the conditional admission tendered.

11           B.     **Stipulation of Consent.** A lawyer who consents to a stated form of discipline, or  
12 disciplinary counsel, shall present to the board hearing panel a stipulation, signed by the lawyer and  
13 disciplinary counsel, stating that the lawyer desires to consent to the discipline and that:

- 14           (1)     Consent is freely and voluntarily rendered; there is no coercion or duress; the lawyer  
15 is fully aware of the implications of the consent;
- 16           (2)     The lawyer is aware that there is presently pending an investigation into, or a  
17 proceeding involving, allegations that grounds for discipline exist, the nature of  
18 which must be specifically set forth;
- 19           (3)     The lawyer acknowledges that the material facts are true; and
- 20           (4)     The lawyer knows that the charges cannot be successfully defended.

21           C.     **Order of Discipline.** If the discipline by consent is a reprimand or consent probation,  
22 or a combination of both, the board hearing panel shall enter the order. In all other instances in  
23 which proposed discipline has been consented to and approved, the court shall enter the order  
24 disciplining the lawyer on consent. The stipulation may be sealed only by order of the court.



1 RULE 4.5. REINSTATEMENT.

2 A. **Proof of Rehabilitation.** Reinstatement following suspension of six months or less  
3 does not require proof of rehabilitation. Reinstatement following suspension of more than six  
4 months or disbarment requires that proof of rehabilitation be demonstrated in a reinstatement  
5 proceeding culminating in a court order of reinstatement.

6 B. **Short Suspension.** A lawyer suspended for six months or less may resume practice  
7 at the end of the period of suspension by filing with the court and serving upon counsel an affidavit  
8 stating that the lawyer has fully complied with the requirements of the suspension order and has paid  
9 all required fees, costs, and expenses.

10 C. **Long Suspension.** A lawyer who has been suspended for more than six months may  
11 not apply for reinstatement until 60 days before the expiration of the period set forth in the  
12 suspension order.

13 D. **Following Disbarment.** A lawyer who has been disbarred may not apply for  
14 reinstatement until the expiration of at least five years from the effective date of the disbarment.  
15 Reinstatement must be conditioned upon the certification by the bar examiners of the successful  
16 completion, after the order for reinstatement, of an examination for admission to practice  
17 ~~administered after the order for reinstatement, not including a character and fitness investigation.~~

18 E. **Successive Petitions.** A petition for reinstatement may not be filed for one year  
19 following an adverse judgment upon a petition for reinstatement.

20 F. **Hearing on Application.** Petitions for reinstatement of a disbarred or suspended  
21 lawyer under this rule must be filed with the board and served upon counsel. Upon receiving the  
22 petition the board shall promptly refer the petition to a hearing ~~body panel~~. Notice that a petition  
23 for reinstatement is pending must be mailed by counsel to the last known address of the complainant  
24 in the proceeding leading to the lawyer's disbarment or suspension, and any other known or  
25 ascertainable victim of the lawyer's misconduct, and any known immediate family member of a  
26 deceased complainant or a deceased other victim. Each person receiving notice under this section  
27 is entitled to submit comments or other information concerning the petition for reinstatement } The  
28 hearing ~~body panel~~ shall conduct a hearing at which the petitioner has the burden of demonstrating  
29 ~~that~~ the petitioner's qualifications for reinstatement or readmission is appropriate. Factors that may  
30 be considered include evidence of the following:

- 31 1. The petitioner's fitness and competence to practice law;
- 32 2. The petitioner has fully complied with the terms and conditions of all applicable  
33 disciplinary orders and rules;

- 1           3.     The petitioner has not engaged or attempted to engage in the unauthorized practice  
2           of law during the period of suspension or disbarment;
- 3           4.     Where alcohol or drug abuse was a causative factor in the lawyer's misconduct, the  
4           petitioner must show that the petitioner has been successfully rehabilitated or is  
5           pursuing appropriate rehabilitative treatment;
- 6           5.     The petitioner recognizes the wrongfulness and seriousness of the misconduct for  
7           which the petitioner was suspended or disbarred;
- 8           6.     The petitioner has not engaged in any other professional misconduct since suspension  
9           or disbarment; or
- 10          7.     Notwithstanding the conduct for which the petitioner was disciplined, the petitioner  
11          has the requisite honesty and integrity to practice law.

12           The hearing ~~body panel~~ shall file a report containing findings, recommendations, and the  
13           record ~~with the board. The board shall promptly review the report and shall file its own findings and~~  
14           ~~recommendations, together with the record,~~ with the court. A copy of the report must be served  
15           upon the lawyer and counsel. Within 20 days of service of the report, the lawyer and counsel may  
16           file objections to the report. Within 50 days after service of the report, the lawyer and counsel may  
17           file briefs. Oral arguments may be set on the court's own motion. Briefing and oral argument will  
18           be as provided in the North Dakota Rules of Appellate Procedure.

19           G.     **Deposit for Costs.** Petitions for reinstatement under this rule must be accompanied  
20           by an advance cost deposit in an amount to be set from time to time by the board to cover anticipated  
21           costs of the reinstatement proceeding.

22           H.     **Conditions of Reinstatement.** If the petitioner fails to establish qualification for  
23           reinstatement, the petition must be dismissed. If the court determines that the petitioner is qualified  
24           to again practice law, the court shall order reinstatement, provided that the court may impose  
25           conditions upon the petitioner's reinstatement or readmission where the court reasonably believes  
26           that further precautions should be taken to ensure that the public will be protected upon the  
27           petitioner's return to practice.

28           The court may impose any conditions that are reasonably related to the grounds for the  
29           petitioner's original suspension or disbarment, or to evidence presented at the hearing regarding the  
30           petitioner's failure to meet the criteria for reinstatement or readmission. Conditions imposed by the  
31           court may include any of the following:

- 32           1.     Payment of all or part of the costs of the proceedings;
- 33           2.     Restitution;

- 1           3.     Proof of competency, including certification by the bar examiners of the successful  
2           completion of an examination for admission to practice administered subsequent to  
3           the order for reinstatement;
- 4           4.     Limitation upon practice to one area of law or through association with an  
5           experienced supervising lawyer;
- 6           5.     Compliance with continuing legal education requirements of the admission to  
7           practice rules, which may include participation in specific continuing legal education  
8           courses;
- 9           6.     Monitoring of the lawyer's practice for compliance with trust account rules,  
10          accounting procedures, or office management procedures;
- 11          7.     Abstention from the use of drugs or alcohol;
- 12          8.     Active participation in Alcoholics Anonymous or other alcohol or drug rehabilitation  
13          program; or
- 14          9.     Monitoring of the lawyer's compliance with any other orders, such as abstinence  
15          from alcohol or drugs, or participation in alcohol or drug rehabilitation programs.  
16          If the monitoring lawyer determines that the reinstated or readmitted lawyer's  
17          compliance with any condition of reinstatement or readmission is unsatisfactory and  
18          that there exists a potential for harm to the public, the monitoring lawyer shall notify  
19          the court and counsel and, where necessary to protect the public, the lawyer may be  
20          suspended from practice under Rule 3.4.

21           I.     **Reciprocal Reinstatement or Readmission.** If the court has imposed a suspension  
22          or disbarment solely on the basis of imposition of discipline in another jurisdiction and the lawyer  
23          gives notice to the court that the lawyer has been, without condition or probation, reinstated or  
24          readmitted in the other jurisdiction, the court shall determine whether the lawyer should be reinstated  
25          or readmitted. Unless disciplinary counsel presents evidence demonstrating procedural irregularities  
26          in the other jurisdiction's proceeding or presents other compelling reasons, the court shall reinstate  
27          or readmit a lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct  
28          occurred.

1     **RULE 5.2     RETURN TO ACTIVE STATUS**

2             ....

3             **B.     Hearing.** Upon the filing of a petition for transfer to active status, the court may take  
4 or direct whatever action it deems necessary or proper to determine whether the disability has been  
5 removed, including a reference to a hearing ~~body~~ panel for hearing and recommendation. An  
6 examination of the lawyer by qualified medical experts designated by the court or hearing ~~body~~  
7 panel may be required. In its discretion, the court or hearing ~~body~~ panel may direct that the expense  
8 of the examination be paid by the lawyer.

1       **RULE 6.1.   RECORDS.**

2           **A.   Confidentiality.** Before the filing of the petition with the board by counsel, all  
3 proceedings involving an allegation of misconduct or disability of a lawyer and all associated  
4 records, including the complaint, investigative report, and recommendation, are confidential, except  
5 that the pendency, subject matter, status of an investigation, and final disposition, if any, may be  
6 disclosed by the chair of the board if:

- 7           (1)   The lawyer has waived confidentiality;
- 8           (2)   The proceedings are based upon conviction of a crime;
- 9           (3)   The proceedings are based upon allegations that have become generally known to the  
10 public; or
- 11          (4)   It involves matters alleging any form of disability and the court enters an order  
12 transferring the lawyer to disability inactive or incapacitated status.

13 All officials and employees of the board, hearing ~~bodies~~ panels, or district inquiry committees in the  
14 proceedings shall conduct themselves so as to maintain the confidentiality of the proceedings. This  
15 rule does not deny access to relevant information to authorized agencies investigating qualifications  
16 for admission to practice, to the client protection fund operated by the association investigating the  
17 validity of a client's claim, to law enforcement agencies investigating qualifications for government  
18 employment, or to any judicial nominating committee. Upon the filing of a formal petition with the  
19 board, counsel shall inform the appropriate local prosecutor, by mailing a copy of the petition to the  
20 local prosecutor, if counsel determines the facts alleged in the petition may constitute a criminal  
21 violation.

22           The confidentiality established by this rule does not apply to the dissemination or exchange  
23 of information concerning any proceeding involving an allegation of misconduct or disability  
24 between district inquiry committees or between district inquiry committees and the board.

25           **B.   Public Proceedings.** Upon filing of the petition with the board by counsel, the  
26 proceedings are public, except for:

- 27          (1)   Deliberations of the hearing ~~body~~ panel, the board, and the court;
- 28          (2)   Information with respect to which the hearing ~~body~~ panel has issued a protective  
29 order, after showing of good cause by the lawyer; and
- 30          (3)   The work product of counsel, hearing ~~bodies~~ panels, inquiry committees, and the  
31 board.

1           C.     **Expunction of Records.** The secretary shall expunge records relating to dismissed  
2 complaints as follows:

3           (1)    *Destruction Schedule.* All records or other evidence of the existence of a dismissed  
4 complaint must be destroyed three years after the dismissal.

5           (2)    *Retention of Records.* Upon application to the board by counsel, for good cause  
6 shown and with notice to the lawyer and opportunity to be heard, records that should  
7 otherwise be expunged under this rule may be retained for additional time not  
8 exceeding three years as the board directs. Counsel may, for good cause shown and  
9 with notice to the lawyer and opportunity to be heard, seek a further extension of the  
10 period for which retention of the records is authorized whenever a previous  
11 application has been granted for the maximum period of three years permitted under  
12 this paragraph.

1     **RULE 6.5     IMMUNITY**

2             Communications to the board and its secretary, district inquiry committees, hearing ~~bodies~~  
3 panels, or counsel relating to lawyer misconduct or disability, as well as testimony given in any  
4 disability or disciplinary proceeding, are privileged, and no lawsuit predicated thereon may be  
5 instituted against any complainant or witness. Members of the board, the board's secretary, hearing  
6 ~~bodies~~ panels, members of district inquiry committees, counsel and staff are immune from suit for  
7 any conduct in the course of their official duties. Except as otherwise provided in these rules, lawyer  
8 members of the board, hearing ~~bodies~~ panels, and district inquiry committees have qualified  
9 immunity from disciplinary complaints for conduct in the course of their official duties.

## RULES FOR LAWYER DISCIPLINE

### RULE 6.5 IMMUNITY

Communications to the board and its secretary, district inquiry committees, hearing bodies, or counsel relating to lawyer misconduct or disability, as well as testimony given in any disability or disciplinary proceeding, are privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, the board's secretary, hearing bodies, members of district inquiry committees, counsel and staff are immune from suit for any conduct in the course of their official duties. Except as otherwise provided in these rules, lawyer members of the board, hearing bodies, and district inquiry committees have qualified immunity from disciplinary complaints for conduct in the course of their official duties.

[Adopted effective January 1, 1995.]

### RULE 6.6 EFFECTIVE DATE

These rules, as amended, become effective on January 1, 1995. Any matter then pending with respect to which a formal hearing has been commenced shall be concluded under the procedure existing prior to the effective date of these rules.

[Adopted effective January 1, 1995.]

### RULE 6.7 TITLE AND CITATION

These rules are titled, "North Dakota Rules for Lawyer Discipline" and may be cited as "N.D.R. Lawyer Discipl."

[Adopted effective January 1, 1995; amended effective August 1, 1995.]

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Admonition—Rule 1.3 A.(5)  
Complaint, formal.—Rule 3.1 E.  
Consent discipline—Rule 4.2  
Counsel—Rule 2.1 H.(5) and Rule 2.4  
Costs—Rule 1.3 D.  
Criminal conduct—Rule 4.1  
Disability—Rule 5.1  
Disbarment—Rule 1.3 A.(1)  
Disciplinary board—Rule 2.1  
Discipline—Rule 1.3  
Discipline by consent—Rule 4.2  
Disciplinary districts—Rule 2.3  
District inquiry committees—Rule 2.3  
Expunction—Rule 6.1 C.  
Formal proceedings (complaint or petition)—Rule 3.1 E.  
Grounds for discipline—Rule 1.2  
Hearing body—Rule 2.2  
Immediate interim suspension—Rule 3.4 B.  
Immediate suspension—Rule 4.1 D.  
Inability to defend (disability)—Rule 5.1 B.