

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20160082

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**Proposed Amendments to North Dakota Rules for Lawyer Discipline**

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Supreme Court No. 20160205

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**Proposed Amendment of North Dakota Rule of Lawyer Discipline 3.2 Regarding Service**

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[¶ 1] In June 2014, following a review of the North Dakota lawyer discipline by a consultation team of the American Bar Association Standing Committee on Professional Discipline, a report of the team was provided to the Supreme Court. In July 2014, the report was referred to the Joint Committee on Attorney Standards for review and recommendation.

[¶ 2] In Supreme Court No. 20160082, on March 1, 2016, the Joint Attorney Standards Committee filed its recommendation to amend North Dakota Rules for Lawyer Discipline 2.2, 2.3, 2.4, 2.5, 3.5, 4.1, 4.2, 4.3, 6.1, 6.3, 6.4, 6.6, and 6.7. On March 9, 2016, the Court issued a notice of hearing and comment regarding the proposed amendments. A hearing was held on May 9, 2016.

[¶ 3] After consideration of the comments and hearing, the Court proposed second draft amendments to North Dakota Rules for Lawyer Discipline 1.0, 1.2, 1.3, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.5, 4.1, 4.2, 4.3, 4.5, 6.1, 6.3, 6.4, 6.6, and 6.7. On August 3, 2016, the Court issued a notice of comment for the second draft amendments. The Supreme Court noted it was proposing further amendments to North Dakota Rules for Lawyer Discipline 2.4, to create one statewide inquiry committee and amendments to North Dakota Rules for Lawyer Discipline 6.3 to clarify what work a lawyer can do while suspended from the practice of law, and noted the remaining further amendments were clerical or to conform the rules to the new proposed amendments.

[¶ 4] In Supreme Court No. 20160205, on May 25, 2016, the Joint Attorney Standards Committee filed a petition to amend North Dakota Rule of Lawyer Discipline 3.2 regarding service. On June 2, 2016, the Court issued a notice of comment regarding the proposed amendments.

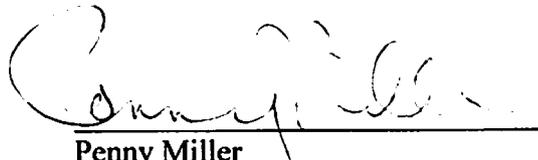
[¶ 5] The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. In considering the matter and the comments submitted after the second notice of comment in Supreme Court No. 20160082, the Court,

[¶ 6] **ORDERED**, that, as further amended by the Court, the amendments to North Dakota Rules for Lawyer Discipline 1.0, 1.2, 1.3, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.5, 4.1, 4.2, 4.3, 4.5, 6.1, 6.3, 6.4, 6.6, and 6.7 are **ADOPTED**, effective March 1, 2017.

[¶ 7] **IT IS FURTHER ORDERED**, that, as further amended by the Court, the amendments to North Dakota Rule of Lawyer Discipline 3.2 are **ADOPTED**, effective March 1, 2017.

[¶ 8] The Supreme Court of the State of North Dakota, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices, directed the Clerk of the Supreme Court to enter the above order.

Dated: October 13, 2016

A handwritten signature in cursive script, appearing to read "Penny Miller", written over a horizontal line.

Penny Miller  
Clerk  
North Dakota Supreme Court

RULE 1.0. TERMS.

1 As used in these rules:

2 A. "Association" means the state bar association of North Dakota.

3 B. "Board" means the disciplinary board of the supreme court.

4 C. "Clerk" means the clerk of the supreme court.

5 D. "Court" means the North Dakota supreme court.

6 E. "Counsel" means disciplinary counsel, unless the context or subject matter  
7 clearly requires otherwise.

8 EF. "Diversion from discipline" means a stay of proceedings before the district  
9 inquiry committee, the board, or the court, conditioned on participation in the lawyer  
10 assistance program.

11 FG. "Lawyer assistance program" means a program established by the  
12 association to aid in preventing and alleviating problems that may adversely influence  
13 a lawyer's performance.

14 H. "Public member" means an individual other than a licensed lawyer.

15 GI. "Secretary" means secretary of the disciplinary board. ~~"Secretary" means~~  
16 ~~secretary of the disciplinary board.~~

17 For additional definitions concerning lawyer discipline, see Rule 4.1C of these  
18 rules ("serious crime") and also North Dakota Standards for Imposing Lawyer  
19 Sanctions (Definitions Section and Section B).

20

EXPLANATORY NOTE

21 Rule 1.0 was adopted January 1, 1995, amended August 1, 2004; March 1, 2017.

22 Rule 1.0 was amended effective March 1, 2017, to add definitions of “counsel” and

23 “public member”.

RULE 1.2. GROUNDS FOR DISCIPLINE.

1           A. Grounds for Discipline. A lawyer may be disciplined for the following  
2           misconduct:

3           (1) Violating or attempting to violate the North Dakota Rules of Professional  
4           Conduct, assist or induce another to do so, or do so through the acts of another;

5           (2) Committing a criminal act that reflects adversely on the lawyer's honesty,  
6           trustworthiness, or fitness as a lawyer;

7           (3) Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

8           (4) Stating or implying an ability to influence improperly a government agency or  
9           official;

10          (5) Violating a provision of the canons governing judicial conduct adopted by the  
11          court;

12          (6) Assisting a judge or judicial officer in conduct in violation of canons of  
13          judicial conduct or other law;

14          (7) Willfully failing to appear before the court, board, or district inquiry  
15          Committee committee when required to do so;

16          (8) Engaging in conduct prejudicial to the administration of justice, including  
17          willful violation of a valid order of the court or board imposing discipline, or willfully  
18          failing to respond to a lawful demand from a disciplinary authority, except that this rule  
19          does not require disclosure of information otherwise protected by applicable rules of  
20          privilege or confidentiality;

21          (9) Violating any condition attached to a certificate of admission;

22 (10) Violating a duty specified in Section 27-13-01 of the North Dakota Century  
23 Code; or

24 (11) Committing any act specified in Section 27-14-02 of the North Dakota  
25 Century Code as a cause for suspension or disbarment.

26 B. Exception.

27

28 A lawyer who acts with good faith and reasonable reliance on a written opinion or  
29 advisory letter of the ethics committee of the association is not subject to sanction for  
30 violation of the North Dakota Rules of Professional Conduct as to the conduct that is the  
31 subject of the opinion or advisory letter.

32 In order to preserve the identities and confidentialities of attorneys' clients, all  
33 proceedings of the ethics committee of the association, the identity of requesting  
34 attorneys, and all requests, drafts and other records of the committee, other than its final  
35 opinions, are confidential.

36 Amended effective March 1, 2017.

RULE 1.3. FORMS OF DISCIPLINE.

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

3           (1) Disbarment by the court, in which case the lawyer is not eligible for  
4 readmission for five years;

5           (2) Suspension by the court for an appropriate fixed period of time not in  
6 excess of three years;

7           (3) Immediate interim suspension imposed by the court, pending final  
8 determination of discipline;

9           (4) Probation imposed by the court not in excess of two years, or imposed ~~by a~~  
10 by a hearing panel or district inquiry committee with the consent of the respondent not  
11 in excess of two years. The probation may be renewed for an additional two-year  
12 period by consent or after a hearing to determine if there is a continued need for  
13 supervision;

14           (5) Admonition by the district inquiry committee;

15           (6) Reprimand by the court or a hearing panel;

16           (7) Restitution to persons financially injured;

17           (8) Reimbursement to the client protection fund;

18           (9) Assessment of costs and expenses of proceedings against the lawyer; or

19           (10) Limitation by the court on the nature or extent of the lawyer's future  
20 practice.

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

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

27           D. Costs. Unless otherwise ordered by the court or ~~the~~ a hearing panel, costs  
28 and expenses of all disability or discipline proceedings, including, without limitation,  
29 the costs of investigations, service of process, witness fees, and a court reporter's  
30 services, must be assessed against the lawyer in any case where discipline is imposed  
31 or there is a transfer to disability inactive status or incapacitated status. In assessing  
32 costs and expenses, the court or hearing panel may consider as a mitigating factor the  
33 lawyer's tender of a conditional admission under Rule 4.2 that is consistent with or  
34 less than the discipline imposed. All expenses so assessed must be paid to the  
35 secretary of the board.

36 [Amended effective July 1, 1999; March 1, 2017. Adopted effective  
37 January 1, 1995.]

RULE 2.1. THE DISCIPLINARY BOARD.

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

9           B. Nominations. Each lawyer member is appointed by the court from a list  
10 of three practicing lawyers submitted by the association's governing board. Each  
11 public member is appointed by the court from a list of three nominees submitted  
12 by  
13 a committee consisting of the president of the association, the attorney general, and  
14 the chair of the judicial conference. If a lawyer member or public member is  
15 nominated for reappointment, a list of nominees is not required unless requested by  
16 the court.

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

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

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

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

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

41 H. Powers and Duties. The board shall:

42 (1) Upon receiving an appeal of a district inquiry ~~Committee~~ committee  
43 disposition, approve, modify or disapprove the disposition, or remand to the  
44 district inquiry ~~Committee~~ committee for further proceedings;

45 (2) Conduct hearings through a hearing panel on formal charges of  
46 misconduct, petitions for reinstatement, and petitions for transfer to and from  
47 disability inactive or incapacitated status;

48 (3) Inform the public about the existence and operation of the disability and  
49 disciplinary system, the disposition of each matter in which public discipline has  
50 been imposed, when a lawyer has been transferred to or from disability inactive or  
51 incapacitated status, or when a lawyer has been reinstated or readmitted;

52 (4) Delegate, in its discretion, to the chair or vice-chair power to act for the  
53 board on administrative and procedural matters;

54 (5) Annually review the operation of the disability and disciplinary system  
55 with the court, counsel, and district inquiry committees; and

56 (6) Propose amendments to these rules for adoption by the court.

57 [Adopted effective January 1, 1995; amended on an emergency basis  
58 effective July 16, 1998; adopted on a final basis effective September 8, 1998;  
59 amended effective November 15, 1998; amended effective July 1, 1999; amended  
60 effective January 1, 2014; amended effective March 1, 2017.]

RULE 2.2\_ OPERATIONS COMMITTEE\_

1           A. Appointment. The operations committee consists of four ~~three~~ members:  
2           three lawyer members, one former or current board member appointed by the court  
3           from a list of three nominations submitted by the disciplinary board, one appointed  
4           by the court from a list of three nominations submitted by the association's board  
5           of governors, ~~and~~ one former or current commission member appointed by the  
6           court from a list of three nominations submitted by the judicial conduct  
7           commission, and one public member appointed by the court. The state court  
8           administrator or designee serves as an ex officio, ~~non-voting~~ member who votes  
9           only when necessary to break a tie. Committee members each serve for a term of  
10          three-years and until a successor is appointed and qualifies. Terms of lawyer  
11          members must be staggered so that no more than one member is appointed for a  
12          full three-year term in any one year. Except when filling an unexpired term, a  
13          member may not serve for more than two consecutive three-year terms.

14          B. Election of Chair. At the first meeting of the committee in each calendar  
15          year, the members of the committee shall elect a chair and ~~vice-chair~~ vice-chair.  
16          The chair, and in the chair's absence the vice-chair, performs the duties normally  
17          associated with the office and presides over all meetings of the full committee.

18          C. Secretary. The executive director of the association is the ex officio  
19          secretary to the committee. The secretary shall maintain permanent financial and  
20          non-disciplinary case administrative records regarding the lawyer disciplinary

21 system and disciplinary personnel. The secretary shall regularly provide financial  
22 statements to the committee.

23 D. Compensation. Members receive no compensation for their services, but  
24 are reimbursed for reasonable and necessary expenses incurred in the performance  
25 of their duties. Costs associated with the administrative duties of the secretary are  
26 paid by the board from funds appropriated, deposited, or dedicated for its  
27 purposes.

28 E. Powers and Duties. The committee is responsible for:

29 (1) the fiscal management of the lawyer disciplinary system, including all  
30 issues related to personnel management;

31 (2) general oversight of caseload management efforts to ensure timely and  
32 efficient system operation; and

33 (3) conducting annual performance evaluation of disciplinary counsel.

34 The committee shall adopt rules for internal operations and procedures. The  
35 disciplinary board retains responsibility for issues of discipline.

36 The committee shall make an annual written report to the court, the  
37 association's board of governors, the disciplinary board, the state Board of Law  
38 Examiners, and the judicial conduct commission.

#### 39 EXPLANATORY NOTE

40 Rule 2.2. was adopted on an emergency basis effective July 16, 1998;  
41 adopted, as further amended, on a final basis effective September 8, 1998;  
42 amended effective August 1, 2001; amended effective March 1, 2017.

43           Section A was amended effective March 1, 2017, to add a public member to  
44 the operations committee and provide the state court administrator votes as an ex-  
45 officio member only when necessary to break a tie.

46           Section E was amended effective March 1, 2017, to add operations  
47 committee responsibilities related to oversight of caseload management and  
48 performance evaluations of disciplinary counsel.

RULE 2.3. HEARING PANELS.

1           A. Appointment. Upon the filing of a petition, the chair of the board shall  
2 appoint a hearing panel to conduct hearings and submit findings and  
3 recommendations on matters assigned under Rule 2.1H(2). The chair of the board  
4 shall appoint a lawyer member of the panel to serve as hearing panel chair. A  
5 hearing panel may consist of a three-member panel of not more than two lawyers  
6 and at least one public member appointed from current or former board members;  
7 ~~or may be a hearing officer designated from among district court or surrogate~~  
8 ~~judges.~~

9           B. Powers and Duties. Each hearing panel shall:

10           (1) Conduct hearings on matters referred by the board; and

11           (2) Submit findings and recommendations, together with the record of the  
12 hearing, to the court.

13           C. Abstention. A member of the hearing panel shall refrain from taking part  
14 in any proceedings in which a judge, similarly situated, would be required to  
15 disqualify.

16 [Adopted effective January 1, 1995; Amended on an emergency basis  
17 effective July 16, 1998; Adopted on a final basis effective September 8, 1998.]

18 [~~Amended effective July 1, 1999. Adopted effective January 1, 1995.~~

19 Amended effective March 1, 2017.]

RULE 2.4. DISTRICT INQUIRY COMMITTEES.

1 A. Disciplinary Districts. The state is divided into disciplinary districts:

2 (1) Southeastern District. The Southeastern District includes the following  
3 counties: Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom,  
4 Richland, Sargent, and Stutsman.

5 (2) Northeastern District. The Northeastern District includes the following  
6 counties: Benson, Cavalier, Eddy, Foster, Grand Forks, Griggs, Nelson, Pembina,  
7 Pierce, Ramsey, Rolette, Steele, Towner, Traill, Walsh, and Wells.

8 (3) Western District. The Western District includes the following counties:  
9 Adams, Billings, Bottineau, Bowman, Burleigh, Burke, Divide, Dunn, Emmons,  
10 Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton,  
11 Mountrail, Oliver, Renville, Sheridan, Sioux, Slope, Stark, Ward, and Williams.

12 B. Appointment ~~=Special Members~~. The association president shall appoint a  
13 nine-member district inquiry committee, consisting of six lawyers and three public  
14 members, within each disciplinary district. ~~Upon the request of an inquiry committee~~  
15 ~~chair, the association president may appoint not more than three special members to~~  
16 ~~an inquiry committee for purposes of conducting investigations of complaints and~~  
17 ~~preparing and presenting investigative reports. A special member need not be a~~  
18 ~~resident of or practice law in the disciplinary district for the inquiry committee to~~  
19 ~~which the member is appointed. A special member is appointed for a term of three~~  
20 ~~months but, the association president may extend the term for up to an additional nine~~

21 ~~months. A special member may not vote on the disposition of a complaint under~~  
22 ~~section E(3).~~

23 C. Terms of Office. All terms are for three years and a member of a district  
24 inquiry committee may not serve for more than two consecutive full three-year terms.  
25 Terms must be staggered so that no more than two lawyer members and one public  
26 member are appointed for full three-year terms in any one year. A member who has  
27 served two consecutive three-year terms may not be reappointed before the expiration  
28 of at least one year.

29 D. Chair. At the first meeting of each district inquiry committee in each  
30 calendar year, the members of the committee shall elect a chair who shall preside at  
31 all meetings, perform the usual duties of a chair, and be responsible for preparation  
32 of a report of the meeting to file with the board. A vice-chair shall be similarly elected  
33 to act in the absence of the chair.

34 E. Abstention. A committee member shall refrain from taking part in any  
35 proceedings in which a judge, similarly situated, would be required to disqualify.

36 E G. Powers and Duties. Each district inquiry committee shall:

37 ~~(1) Through members designated by its chair or by using the services of~~  
38 ~~counsel, investigate all information about a lawyer which, if true, would be grounds~~  
39 ~~for discipline or transfer to disability inactive or incapacitated status, and provide a~~  
40 ~~report of the investigation to counsel for distribution to the district inquiry committee;~~

41 ~~(2)~~ Review investigative reports and recommendations;

42 ~~(3)~~ (2) Act on each complaint:

43           (a) by dismissal in accordance with Rule 3.1C,  
46           (b) by approval of diversion from discipline,  
47           (c) by issuance of an admonition or consent probation or both,  
48           (d) by directing participation in a lawyer assistance program in conjunction  
49 with an admonition or consent probation; ~~or~~

50           (e) by directing counsel to file a petition with the board initiating formal  
51 disciplinary or disability proceedings;

52           ~~(4)~~ (3) Dismiss a complaint after a lawyer's completion of all conditions of  
53 diversion from discipline; and

54           ~~(5)~~ (4) Discontinue diversion from discipline if a lawyer does not complete all  
55 conditions of that diversion.

56           ~~F. Failure to complete reports or investigation. Failure of the investigator~~  
57 ~~designated under section E(1) to complete reports in a timely fashion may result in~~  
58 ~~reassignment of the investigation and removal, unless counsel is the investigator, of~~  
59 ~~the investigator from the district inquiry committee by the association president.~~  
60 ~~Failure of an investigator to timely complete an investigation under Rule 3.1D does~~  
61 ~~not prejudice the complaint.~~

62           ~~G. F.~~ Compensation. All expenses of the district inquiry committees incurred  
63 in connection with the enforcement of these rules must be paid from association  
64 funds.

65           [Adopted effective January 1, 1995; amended on an emergency basis effective  
66 may 28, 1997 (See Order in Sup.Ct. No. 970152); amended on an emergency basis

67 effective July 16, 1998; Adopted on a final basis effective September 8, 1998.]

68 [Amended effective March 1, 2017. Amended effective August 1, 2004.

69 Amended effective July 1, 1999. Adopted effective January 1, 1995.]

RULE 2.5. DISCIPLINARY COUNSEL.

1 A. Qualifications of Counsel.

2 (1) Counsel and substitute temporary counsel must be admitted to the practice  
3 of law in North Dakota; and

4 (2) With the exception of substitute temporary counsel, counsel may not engage  
5 in the private practice of law.

6 B. Powers and Duties. Counsel ~~shall~~ has the following powers and duties:

7 (1) Receive and screen all complaints to determine whether summary dismissal  
8 is appropriate;

9 ~~(1) Upon referral by a district inquiry committee, investigate~~ (2) Investigate all  
10 information about a lawyer which, if true, would be grounds for discipline or transfer  
11 to disability inactive or incapacitated status and prepare an investigative report and  
12 recommendations for the district inquiry committee's disposition;

13 (3) In accordance with Rule 3.1C, dismiss a complaint;

14 ~~(2) (4) Advise~~ Provide training and education to the board, hearing panels, and  
15 the district inquiry committees on legal issues relating to lawyer discipline and  
16 disability;

17 ~~(3) (5) Prosecute~~ disciplinary, disability, and reinstatement proceedings before  
18 hearing panels and the court;

19 ~~(4) (6) Supervise~~ staff needed for the performance of investigative and  
20 prosecutorial functions, as authorized by the operations committee and within limits

21 of funds available;

22 ~~(5)~~ (7) Promptly notify the complainant and the lawyer of the disposition of  
23 each matter;

24 ~~(6)~~ (8) Notify each jurisdiction in which a lawyer is admitted of a transfer to  
25 or from disability inactive or incapacitated status, a reinstatement, or any public  
26 discipline imposed in this state;

27 ~~(7)~~ (9) When a lawyer is convicted in this state of a serious crime as defined  
28 in Rule 4.1C, forward a certified copy of the judgment of conviction to the  
29 disciplinary agency in each jurisdiction in which the lawyer is admitted; ~~and~~

30 (10) Maintain permanent records of informal matters, subject to the expunction  
31 requirements of Rule 6.1C; and

32 ~~(8)~~ (11) Provide regular reports on all complaints filed with the secretary to the  
33 district inquiry committees and the board at their scheduled meetings.

34 C. Advisory Letter. At the direction of the inquiry committee under Rule 3.1C,  
35 counsel shall issue an advisory letter in conjunction with dismissal of a complaint  
36 when:

37 (1) the respondent's conduct constitutes a violation, but does not warrant an  
38 admonition or sanction and it appears appropriate to caution the respondent  
39 concerning the respondent's conduct; or

40 (2) the respondent's conduct does not constitute a violation, but the respondent  
41 should be cautioned.

42 An advisory letter is not a sanction and is not a disciplinary action. An advisory

43 letter may not be introduced into evidence in any subsequent disciplinary proceeding.

44 D. Ex Parte Communications with Disciplinary Counsel

45 Members of the inquiry committee, hearing panel, the board, or the supreme  
46 court shall not communicate ex parte with disciplinary counsel regarding a pending  
47 or impending investigation or disciplinary matter except as explicitly provided for by  
48 law or for procedural, scheduling, or administrative purposes, or emergencies that do  
49 not deal with substantive matters or issues on the matters provided that:

50 (1) it is reasonable to believe that no party will gain a procedural or tactical  
51 advantage as a result of the ex parte communication; and

52 (2) provision is promptly made to notify all other parties of the substance of  
53 the ex parte communication and an opportunity to respond is allowed.

54 EXPLANATORY NOTE

55 Rule 2.5 adopted effective January 1, 1995; amended on an emergency basis  
56 effective July 16, 1998; adopted on a final basis effective September 8, 1998;  
57 amended effective July 1, 1999; amended effective March 1, 2017.

58 Section B was amended effective March 1, 2017, to establish new disciplinary  
59 counsel duties related to receiving and screening all complaints to determine whether  
60 summary dismissal is appropriate, investigation of all information and complaints,  
63 summary dismissal of a complaint under Rule 3.1C, providing training and education,  
61 rather than advising, the disciplinary board, hearing panels, and inquiry committees,  
62 and maintaining permanent records of informal matters.

63 New Section C was created effective March 1, 2017, to provide for the issuance

64 to a respondent lawyer of an advisory letter by disciplinary counsel if directed by the  
65 inquiry committee.

66 New Section D was created effective March 1, 2017, to prohibit, with certain  
67 exceptions, ex parte communications between disciplinary counsel and members of  
68 the inquiry committees, hearing panel, disciplinary board, or the supreme court.

RULE 3.1. GENERALLY.

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

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

15           C. Summary Dismissal of Complaint. ~~A~~ Subject to this section, a complaint  
16           ~~must~~ may be summarily dismissed by ~~the district inquiry committee~~ disciplinary  
17           counsel if the alleged facts, if true, are not grounds for disciplinary action or disability.

18           At least every 30 days, counsel shall submit to the inquiry committee to which  
19           the complaint is assigned a list of all complaints considered subject to summary  
20           dismissal. The list must include a summary of reasons for each dismissal. Upon review

21 of the reported complaints, any committee member may, within 14 days of the date  
22 the list was mailed, request that the committee further consider a particular complaint.  
23 If the committee concludes summary dismissal of a particular complaint may be  
24 inappropriate, the committee shall direct that counsel conduct additional investigation.  
25 The committee shall review the recommendation and additional investigation for  
26 purposes of determining whether dismissal is appropriate. Counsel shall issue a letter  
27 of summary dismissal if a request for further consideration is not received within 14  
28 days of the date the list of complaints was mailed or if the committee, following  
29 further consideration, notifies counsel that additional investigation is not required and  
30 summary dismissal is appropriate.

31 If dismissal of a complaint is recommended by disciplinary counsel following  
32 investigation, the recommendation and accompanying investigative report must be  
33 submitted to the inquiry committee for consideration.

34 An inquiry committee may direct disciplinary counsel to issue an advisory  
35 letter in accordance with Rule 2.5C.

36 After summary dismissal or dismissal of a complaint, ~~the chair or vice-chair,~~  
37 ~~as appropriate,~~ counsel shall promptly notify the lawyer and complainant of the action  
38 and the reasons for the action and furnish a copy of the complaint to the lawyer. The  
39 lawyer is not required to respond to ~~the~~ a complaint subject to summary dismissal.  
40 There is no appeal from a summary dismissal.

#### 41 D. Investigation and District Inquiry Committee Procedures.

42 (1) Complaints not summarily dismissed must be promptly investigated by a

43 ~~member of the district inquiry committee or counsel.~~ Failure to timely complete an  
44 investigation does not prejudice the complaint.

45 (2) ~~Upon assignment of the investigator,~~ a A copy of the complaint must be  
46 served on the lawyer.

47 (3) The lawyer, within twenty days of service of the complaint, shall serve a  
48 written response to the allegations in the complaint upon ~~the assigned investigator~~  
49 counsel. An extension may be granted by ~~the chair~~ counsel only upon a showing of  
50 good cause. Failure to make a timely response ~~is an~~ may be deemed an admission that  
51 the factual allegations of the complaint are true for purposes of proceedings before  
52 the district inquiry committee.

53 At any time the complaint is under consideration by the district inquiry  
54 committee or counsel, ~~the district inquiry committee may refer~~ the lawyer may be  
55 referred to the lawyer assistance program for screening for possible participation in  
56 the lawyer assistance program. Screening for possible participation in the lawyer  
57 assistance program may also be initiated by the lawyer at any time the complaint is  
58 under consideration by the district inquiry committee or counsel.

59 (4) Concurrent with submission of the lawyer's written response under section  
60 D(3), the lawyer shall serve a copy of the response, including all attachments, upon  
61 the complainant. The lawyer shall provide to ~~the assigned investigator~~ counsel proof  
62 of service of the response upon the complainant. Any subsequent written reply to the  
63 lawyer's response by the complainant must be provided to the lawyer within a  
64 reasonable time after receipt by ~~the investigator~~ counsel.

65           (5) Within 60 days of assignment, ~~absent an extension from the chair, the~~  
66 investigator of receiving the complaint or a request for investigation, whichever  
67 occurs later, counsel shall file a written report with the chair containing a summary  
68 of the investigation and conclusions, the response received from the lawyer, and  
69 relevant documents. An extension may be granted by the chair only upon a showing  
70 of good cause. Counsel shall serve the written report upon the lawyer and the  
71 complainant at the time the report is filed with the chair.

72           (6) Notice of the opportunity to appear before the district inquiry committee  
73 must be provided to the complainant unless the complaint is subject to summary  
74 dismissal under Rule 3.1C, unless there is a diversion from discipline, ~~or unless in the~~  
75 ~~chair's opinion the complainant poses a threat of harm to the committee.~~

76           (7) Notice of the opportunity to appear before the district inquiry committee  
77 must be provided to the lawyer before entry of any discipline by the district inquiry  
78 committee, before diversion from discipline, or before referral for formal proceedings.

79           (8) Counsel shall promptly notify the complainant and lawyer in writing of the  
80 disposition of the complaint and the reasons for the inquiry committee's decision. The  
81 complainant, lawyer, or counsel may appeal any disposition, except a determination  
82 that there is probable cause or a diversion from discipline, to the board by filing a  
83 written request for review with counsel within 30 days of mailing of notice. The  
84 person appealing the inquiry committee's decision must show that the committee acted  
85 arbitrarily, capriciously, or unreasonably. Upon receipt of the written request, counsel  
86 shall refer the file to the board which shall consider the merits of the appeal. The

87 determination of the board may be the subject of a petition for leave to appeal to the  
88 court, but leave will not be granted unless the person seeking leave to appeal shows  
89 that the board acted arbitrarily, capriciously, or unreasonably. A petition for leave to  
90 appeal must be submitted within 30 days of mailing of notice of the board's  
91 determination.

92 ~~(9) The report required under section D(5) must be filed with the secretary upon~~  
93 ~~disposition of the matter by the district inquiry committee.~~

94 E. Formal Proceedings.

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

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

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

113           (3) If there are any material issues of fact raised by the pleadings or if the  
114 lawyer requests the opportunity to be heard in mitigation, the hearing panel shall give  
115 25 days written notice of the hearing to the lawyer, complainant, and counsel, stating  
116 the date and place of hearing. The hearing must be held in a judicial district in which  
117 the lawyer resides, is employed, or maintains an office. The notice of hearing must  
118 advise that the lawyer is entitled to be represented by counsel, to cross-examine  
119 witnesses, and to present evidence. The hearing must be recorded. The hearing panel  
120 may request that a transcript be made.

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

124           (5) All documents in a proceeding under this rule must be filed in accordance  
125 with Rule 5(d) of the North Dakota Rules of Civil Procedure, except the filing shall  
126 be made with the ~~Secretary~~ secretary, with copies served upon the assigned hearing  
127 panel.

128           F. Review by the Court.

129           (1) Within 60 days of the close of the hearing record, the hearing panel shall  
130 file with the secretary its order of dismissal, consent probation or reprimand. A copy

131 of the panel's order must be served upon counsel, the complainant, and the lawyer.  
132 Counsel, the complainant, or the lawyer may seek court review of the panel's decision.  
133 A written petition for review, stating the reasons for the requested review, must be  
134 filed with the clerk within 20 days of service of the panel's order. The petition must  
135 contain a clear statement of the reasons petitioner believes the panel's decision is  
136 arbitrary, capricious, or unreasonable. The court may provide for oral arguments or  
137 the submission of briefs.

138 (2) Within 60 days of the close of the hearing record, the hearing panel shall  
139 submit to the court a report containing its findings and recommendations on each  
140 matter heard other than those resulting in dismissal , consent probation, or reprimand.  
141 The hearing panel's report shall contain mitigating or aggravating circumstances  
142 affecting the nature or degree of discipline recommended. A copy of the report  
143 submitted to the court must be served upon counsel, complainant, and the lawyer.  
144 Within 20 days of service of the report, the lawyer and counsel may file objections to  
145 the report. Within 50 days after service of the report, the lawyer and counsel may file  
146 briefs limited to objections timely filed under this rule. Oral arguments may be  
147 requested by the lawyer or counsel, or may be set upon the court's own motion.  
148 Briefing and oral argument will be as provided in the North Dakota Rules of  
149 Appellate Procedure.

150 G. Reserved Authority. Nothing in these rules prevents the court from  
151 instituting disability or disciplinary proceedings, diversion from discipline, or  
152 participation in the lawyer assistance program on its own initiative.

153 [Adopted effective January 1, 1995. Amended effective July 1, 1999; August  
154 1, 2001; January 16, 2002; August 1, 2004; March 1, 2012; March 1, 2017.]

RULE 3.5. ADDITIONAL PROCEDURE.

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

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

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

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

14          E. Prehearing Conference. ~~At the discretion of the hearing panel or upon~~  
15 ~~request of either party, a prehearing conference may be ordered for any purpose~~  
16 ~~available under Rule 16 of the North Dakota Rules of Civil Procedure. Following the~~  
17 ~~filing of a petition for discipline, a petition for transfer to disability inactive or~~  
18 ~~incapacitated status, or a petition for reinstatement or readmission, the hearing panel~~  
19 ~~chair shall schedule at least one prehearing conference to be held as soon as~~  
20 ~~practicable after the petition is filed the time for a response has elapsed. The~~

21 scheduling order must specify issues that should be considered during the prehearing  
22 conference. The prehearing conference should be arranged and conducted in a manner  
23 to ensure optimal use of resources.

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

27 G. No Abatement. Restitution by the lawyer; unwillingness of a complainant  
28 to pursue a complaint; settlement of the complaint; or compromise between a  
29 complainant and the lawyer does not in itself abate any proceeding before the court,  
30 hearing panel, or district inquiry committee.

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

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

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

40 (2) If the lawyer is a member of a district inquiry committee, the complaint  
41 must be referred to another district inquiry committee; or

(3) If the lawyer is a member of the board and the remaining members

42        decline to act, the chief justice shall appoint a special board of not less than three  
43        persons for the case.

44                [Amended effective March 1, 2017. Amended effective July 1, 1999. Adopted  
45        effective January 1, 1995.]

RULE 4.1.CRIMINAL CONDUCT.

1           A. Certificate of Conviction. The clerk of any court in this state in which a  
2 lawyer is convicted of a crime shall within ten days of the conviction certify the  
3 conviction to counsel.

4           B. Determination of “Serious Crime<sup>22</sup>.” Upon being advised that a lawyer  
5 subject to the jurisdiction of the court has been convicted of a crime, counsel shall  
6 determine whether the crime constitutes a serious crime. If the crime is a serious  
7 crime, counsel shall prepare an order for interim suspension and forward it to the  
8 court with a certificate or other satisfactory evidence of the conviction. Counsel  
9 shall in addition file formal charges against the lawyer predicated upon the  
10 conviction. If the crime is not a serious crime, counsel shall process the matter like  
11 any other information coming to the attention of the board.

12           C. Definition of “Serious Crime<sup>22</sup>.” A serious crime is any felony and any  
13 lesser crime a necessary element of which, as determined by the statutory or  
14 common law definition of the crime, involves interference with the administration  
15 of justice, false swearing, misrepresentation, fraud, willful failure to file income  
16 tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a  
17 conspiracy or solicitation of another to commit any of those crimes.

18           D. Immediate Suspension. Upon ~~the filing with the court of a certificate or~~  
19 ~~other satisfactory evidence of conviction demonstrating proof~~ that a lawyer has  
20 been convicted or has pled or been found guilty of a serious crime, the court shall

21 enter an order immediately suspending the lawyer ~~pending final disposition of a~~  
22 ~~disciplinary proceeding predicated upon the conviction~~ regardless of the pendency  
23 of any appeal. Upon good cause shown a showing of extraordinary circumstances,  
24 the court may in the interest of justice set aside or modify ~~an~~ the interim  
25 suspension ~~based on conviction of serious crime~~ after affording disciplinary  
26 counsel and the lawyer notice and an opportunity to be heard.

27 E. Formal Procedure. In formal proceedings after conviction or a plea or  
28 finding of guilt for a serious crime, the sole issue is the extent of the final  
29 discipline to be imposed. A disciplinary proceeding so instituted will not be  
30 brought to hearing until all appeals from the conviction, plea, or finding are  
31 concluded, unless the respondent requests that the matter not be deferred.

32 F. Certificate Conclusive. A certificate of a conviction of an attorney for  
33 any crime is conclusive evidence of the commission of that crime in any  
34 disciplinary proceeding based upon the conviction.

35 G. Automatic Reinstatement. If a lawyer under interim suspension for a  
36 serious crime demonstrates that the underlying plea or finding of guilt or  
37 conviction has been reversed or vacated, the order for interim suspension must be  
38 vacated and the lawyer placed on active status. Vacation of the interim suspension  
39 does not automatically terminate any formal proceeding then pending against the  
40 lawyer.

#### EXPLANATORY NOTE

41 Rule 4.1 was adopted effective January 1, 1995, amended effective March

42 1, 2017.

43 Section D was amended effective March 1, 2017 to provide for the  
44 suspension of a lawyer upon proof that the lawyer has been convicted or has pled  
45 or been found guilty of a serious crime, and to provide that the court may set aside  
46 the suspension upon a showing of extraordinary circumstances and after affording  
47 counsel and the lawyer notice and an opportunity to be heard.

48 Section E was amended effective March 1, 2017 to add a plea or finding of  
49 guilt as a factor in formal proceedings.

RULE 4.2. DISCIPLINE BY CONSENT.

1           A. Conditional Admission to Hearing Panel Approval. A lawyer may tender  
2 a conditional admission in exchange for a stated form of discipline. The tendered  
3 admission must be submitted to counsel and approved or rejected by the hearing  
4 panel, subject to final approval or rejection by the court if the stated form of discipline  
5 includes disbarment or suspension. If the stated form of discipline is rejected by the  
6 hearing panel, the admission must be withdrawn and cannot be used against the  
7 lawyer in any subsequent proceedings. After approval by the hearing panel of the  
8 proposed discipline and, if required, by the court, the final order of discipline must be  
9 entered in accordance with the conditional admission tendered.

10           B. Stipulation of Consent. ~~A lawyer who consents to a stated form of discipline,~~  
11 ~~or disciplinary counsel, shall present to the hearing panel a~~ Any disciplinary matter  
12 may be resolved by stipulation at any time after investigation and an opportunity for  
13 any complainant to have been heard. The stipulation must set forth the stated form of  
14 discipline, which may include terms and conditions of probation, and any other  
15 appropriate provisions. The stipulation; must be signed by the lawyer and disciplinary  
16 counsel, stating that the lawyer desires to consent to the discipline and that:

17           (1) Consent is freely and voluntarily rendered; there is no coercion or duress;  
18 the lawyer is fully aware of the implications of the consent;

19           (2) The lawyer is aware that there is presently pending an investigation into,  
20 or a proceeding involving, allegations that grounds for discipline exist, the nature of

21 which must be specifically set forth;

22 (3) The lawyer acknowledges that the material facts are true; and

23 (4) The lawyer knows that the charges cannot be successfully defended; and

24 (5) The lawyer waives procedural rights that may be available in the absence

25 of the stipulation, including as appropriate the right to a complaint specifying the

26 allegations of misconduct, the right to answer the allegations in writing, the right to

27 have the allegations reviewed by the inquiry committee, the right to a formal petition

28 for discipline, the opportunity to answer the petition for discipline, and the right to

29 defend against the petition for discipline in a disciplinary hearing before a hearing

30 panel.

31 C. Form. A stipulation must:

32 (1) provide sufficient detail regarding the particular acts or omissions of the

33 lawyer to permit the entity considering the stipulation to form an opinion regarding

34 the propriety of the proposed resolution and, if approved, to ensure the stipulation is

35 useful in any subsequent disciplinary proceeding against the lawyer;

36 (2) set forth the lawyer's prior disciplinary record or its absence; and

37 (3) fix the amount of costs and expenses to be paid by the lawyer.

38 ~~C. Order of Discipline~~ D. Approval of Stipulation.

39 (1) Approval by inquiry committee. If the ~~discipline by consent~~ complaint is

40 under consideration by the inquiry committee, and the proposed sanction is a

41 reprimand an admonition or consent probation, or a combination of both, the hearing

42 panel shall enter the order. In all other instances in which proposed discipline has

43 ~~been consented to and approved, the court shall enter the order disciplining the lawyer~~  
44 ~~on consent. The stipulation may be sealed only by order of the court~~ stipulation may  
45 be approved or rejected by the committee as a whole or the chair may expedite  
46 consideration of the stipulation by appointing a three-member panel of not more than  
47 two lawyer members and at least one public member to approve or reject the  
48 stipulation.

49 (2) Approval by disciplinary board. If the proposed sanction is a reprimand,  
50 suspension, or disbarment, the chair of the board shall appoint a three-member panel  
51 of not more than two lawyer members and at least on public member to approve or  
52 reject the stipulation. Approval may be granted at any point before entry of an order  
53 or recommendation by the hearing panel under Rule 3.1F. If the proposed sanction is  
54 a reprimand by the court, suspension, or disbarment, the approval must be in the form  
55 of a recommendation to the court in the manner specified in Rule 3.1F(2).

56 (3) Approval by the court. All stipulations agreeing to a reprimand by the  
57 court, suspension, or disbarment must be submitted to the court. Following review in  
58 the manner specified in Rule 3.1F(2), the court shall enter the order regarding the  
59 stipulation. The stipulation may be sealed only by order of the court.

60 E. Stipulation rejected. An order rejecting a stipulation must state the reasons  
61 for the rejection. A rejected stipulation has no force or effect and neither it nor the fact  
62 of its rejection is admissible in evidence in any disciplinary, civil, or criminal  
63 proceeding.

64 F. Failure to comply. A lawyer's failure to comply with the terms of an

65 approved stipulation may be grounds for discipline.

66 EXPLANATORY NOTE

67 Rule 4.2 was adopted effective January 1, 1995; amended effective July 1,  
68 1999; March 1, 2017.

69 Section A was amended effective March 1, 2017 to relate to submission of a  
70 conditional admission to a hearing panel.

71 Section B was amended effective March 1, 2017 to provide for resolution of  
72 a disciplinary matter by stipulation at any time after investigation and an opportunity  
73 for any complainant to have been heard and to describe the elements of the stipulation,  
74 including an acknowledgment by the lawyer of the waiver of certain, described  
75 procedural rights.

76 New Section C was created effective March 1, 2017 to set out the contents of  
77 the stipulation.

78 Section C was amended effective March 1, 2017 to become new Section D and  
79 describe approval of a stipulation by the inquiry committee, disciplinary board, or  
80 court.

81 New Section E was created effective March 1, 2017 to require that an order  
82 rejecting a stipulation must state the reasons for the rejection, to provide that a rejected  
83 stipulation has no force or effect, and to provide that the rejected stipulation is not  
84 admissible in any disciplinary, civil, or criminal proceeding.

85 New Section F was created effective March 1, 2017 to provide that failure to  
86 comply with an approved stipulation may be grounds for discipline.





21            New Section C was created effective March 1, 2017, to provide for monitoring  
22            of probation conditions by disciplinary counsel, to require periodic reports regarding  
23            the probationer's progress, and to provide responses to noncompliance with probation  
24            conditions.

RULE 4.5. REINSTATEMENT.

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

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

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

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

20           E. Successive Petitions. A petition for reinstatement may not be filed for one

21 year following an adverse judgment upon a petition for reinstatement.

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

- 35 1. The petitioner's fitness and competence to practice law;
- 36 2. The petitioner has fully complied with the terms and conditions of all  
37 applicable disciplinary orders and rules;
- 38 3. The petitioner has not engaged or attempted to engage in the unauthorized  
39 practice of law during the period of suspension or disbarment;
- 40 4. Where alcohol or drug abuse was a causative factor in the lawyer's  
41 misconduct, the petitioner must show that the petitioner has been successfully  
42 rehabilitated or is pursuing appropriate rehabilitative treatment;

43           5. The petitioner recognizes the wrongfulness and seriousness of the  
44 misconduct for which the petitioner was suspended or disbarred;

45           6. The petitioner has not engaged in any other professional misconduct since  
46 suspension or disbarment; or

47           7. Notwithstanding the conduct for which the petitioner was disciplined, the  
48 petitioner has the requisite honesty and integrity to practice law.

49           The hearing panel shall file a report containing findings, recommendations, and  
50 the record with the court. A copy of the report must be served upon the lawyer and  
51 counsel. Within 20 days of service of the report, the lawyer and counsel may file  
52 objections to the report. Within 50 days after service of the report, the lawyer and  
53 counsel may file briefs. Oral arguments may be set on the court's own motion.  
54 Briefing and oral argument will be as provided in the North Dakota Rules of  
55 Appellate Procedure.

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

59           H. Conditions of Reinstatement. If the petitioner fails to establish qualification  
60 for reinstatement, the petition must be dismissed. If the court determines that the  
61 petitioner is qualified to again practice law, the court shall order reinstatement,  
62 provided that the court may impose conditions upon the petitioner's reinstatement or  
63 readmission where the court reasonably believes that further precautions should be  
64 taken to ensure that the public will be protected upon the petitioner's return to

65 practice.

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

70 1. Payment of all or part of the costs of the proceedings;

71 2. Restitution;

72 3. Proof of competency, including certification by the bar examiners of the  
73 successful completion of an examination for admission to practice administered  
74 subsequent to the order for reinstatement;

75 4. Limitation upon practice to one area of law or through association with an  
76 experienced supervising lawyer;

77 5. Compliance with continuing legal education requirements of the admission  
78 to practice rules, which may include participation in specific continuing legal  
79 education courses;

80 6. Monitoring of the lawyer's practice for compliance with trust account rules,  
81 accounting procedures, or office management procedures;

82 7. Abstention from the use of drugs or alcohol;

83 8. Active participation in Alcoholics Anonymous or other alcohol or drug  
84 rehabilitation program; or

85 9. Monitoring of the lawyer's compliance with any other orders, such as  
86 abstinence from alcohol or drugs, or participation in alcohol or drug rehabilitation

87 programs. If the monitoring lawyer determines that the reinstated or readmitted  
88 lawyer's compliance with any condition of reinstatement or readmission is  
89 unsatisfactory and that there exists a potential for harm to the public, the monitoring  
90 lawyer shall notify the court and counsel and, where necessary to protect the public,  
91 the lawyer may be suspended from practice under Rule 3.4.

92 I. Reciprocal Reinstatement or Readmission. If the court has imposed a  
93 suspension or disbarment solely on the basis of imposition of discipline in another  
94 jurisdiction and the lawyer gives notice to the court that the lawyer has been, without  
95 condition or probation, reinstated or readmitted in the other jurisdiction, the court  
96 shall determine whether the lawyer should be reinstated or readmitted. Unless  
97 disciplinary counsel presents evidence demonstrating procedural irregularities in the  
98 other jurisdiction's proceeding or presents other compelling reasons, the court shall  
99 reinstate or readmit a lawyer who has been reinstated or readmitted in the jurisdiction  
100 where the misconduct occurred.

101 EXPLANATORY NOTE

102 Rule 4.5 was adopted January 1, 1995, amended effective July 1, 1999; March  
103 1, 2017.

104 Section F was amended effective March 1, 2017, to make a technical  
105 correction.

RULE 6.1. RECORDS.

1           A. Confidentiality. Before the filing of the petition with the board by counsel,  
2 all proceedings involving an allegation of misconduct or disability of a lawyer and all  
3 associated records, including the complaint, investigative report, and  
4 recommendation, are confidential, except that the pendency, subject matter, status of  
5 an investigation, and final disposition, if any, may be disclosed by the chair of the  
6 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  
10 known to the public; or
- 11           (4) It involves matters alleging any form of disability and the court enters an  
12 order transferring the lawyer to disability inactive or incapacitated status.

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

21 petition to the local prosecutor, if counsel determines the facts alleged in the petition  
22 may constitute a criminal violation.

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

27 This rule does not require the disclosure of any records concerning a lawyer's  
28 screening for or participation in the lawyer assistance program.

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

31 (1) Deliberations of the hearing panel, the board, and the court;

32 (2) Information with respect to which the hearing panel has issued a protective  
33 order, after showing of good cause by the lawyer; and

34 (3) The work product of counsel, hearing panels, inquiry committees,  
35 and the board.

36 C. Expungement of Records. The secretary or disciplinary counsel, as  
applicable,

37 shall expunge records relating to dismissed complaints as follows:

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

40 (2) Retention of Records. Upon application to the board by counsel, for good  
41 cause shown and with notice to the lawyer and opportunity to be heard, records that

42 should otherwise be expunged under this rule may be retained for additional time not  
43 exceeding three years as the board directs. Counsel may, for good cause shown and  
44 with notice to the lawyer and opportunity to be heard, seek a further extension of the  
45 period for which retention of the records is authorized whenever a previous  
46 application has been granted for the maximum period of three years permitted under  
47 this paragraph.

48 EXPLANATORY NOTE

49 Rule 6.1 was adopted effective January 1, 1995, amended effective July 1,  
50 1999; August 1, 2004; March 1, 2017.

51 Section B(3) was amended effective March 1, 2017, to include disciplinary  
52 counsel responsibility for expungement of records.

**RULE 6.3. NOTICE OF STATUS - NONCOMPLIANCE.**

A. Notice Required. Within 10 days after the date of the order by which the lawyer is disbarred, transferred to disability inactive or incapacitated status, placed on interim suspension, or suspended, the lawyer shall cause notice to be given by registered or certified mail, return receipt requested, to:

- (1) All clients being represented in pending matters;
- (2) Co-counsel in pending matters; and
- (3) Opposing counsel in pending matters, or in the absence of such counsel, the adverse parties.

This notice must also state the place of residence of the client and of the lawyer. The notice must include the order of the court and state that the lawyer cannot act as a lawyer after the effective date of the order.

B. Special Notice. The court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

C. Client Property. The lawyer shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any lawyer representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. The lawyer shall promptly refund any part of fees paid in advance which have not been earned.

D. New Representation Prohibited. The lawyer may not undertake any new legal matters between service of the order and the effective date of discipline. The lawyer shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, or similar title. The lawyer shall not engage in any activities requiring a license to practice law. From service of the order and while the order of discipline is in effect, a suspended lawyer may only, while under the direct employment and supervision of a lawyer admitted to practice who has agreed to provide to disciplinary counsel quarterly affidavits of the suspended lawyer's compliance with this section, perform research, drafting, clerical, or similar activities, including:

(1) performing legal work of a preparatory nature for the supervising lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents,

(2) communicating with the supervising lawyer's client or third parties regarding matters such as scheduling, billing, updates, information gathering, and confirmation of receipt or sending of correspondence and message, or

(3) accompanying the supervising lawyer to a deposition or other discovery matter for the limited purpose of providing clerical assistance to the supervising lawyer who will appear as the client's

representative.

The supervising lawyer must give disciplinary counsel immediate notice of the termination of the employment of the suspended lawyer.

D. E. Effective Date. Orders imposing suspension or disbarment, reprimand, probation, or transfer to disability inactive or incapacitated status are effective immediately, unless otherwise ordered by the court.

E. F. Winding Up. In the event the client does not obtain another lawyer before the effective date of the disbarment, transfer, or suspension, it is the responsibility of the disciplined lawyer to move for leave to withdraw in each court or agency in which a proceeding is pending. The lawyer shall file with the court or agency before which the matter is pending a copy of the notice to opposing counsel or adverse parties.

F. G. Proof of Compliance. Within 10 days after the effective date of an order of disbarment, suspension, or transfer to disability inactive or incapacitated status, the lawyer shall file with the court an affidavit showing:

- (1) Full compliance with the provisions of the order and with these rules;
- (2) All other state, federal and administrative jurisdictions of admission to practice;
- (3) The residence or other addresses where communications may thereafter be directed to the lawyer; and that
- (4) A copy of such affidavit has been served upon counsel.

H. Contempt. Counsel may petition the court to hold a disbarred or suspended lawyer in contempt for failing to comply with sections A through G of this rule or the provisions of an order entered in a disciplinary proceeding. The court may order the lawyer to appear and show cause, if any, why the lawyer should not be held in contempt of court and sanctioned accordingly.

#### **EXPLANATORY NOTE**

Rule 6.3 was adopted effective January 1, 1995; amended effective \_\_\_\_\_.

The title of Rule 6.3 was amended effective \_\_\_\_\_ to include “Noncompliance”.

New Section D was created effective \_\_\_\_\_ to require that a lawyer who is disbarred, transferred to disability inactive or incapacitated status, placed on interim suspension, or suspended must not undertake any new legal matters between service of the order and the effective date of discipline and must remove all indicia of lawyer, counselor at law, or similar title. The new section describes permissible activities of a suspended lawyer while under the supervision of a lawyer who agrees to provide to disciplinary counsel quarterly affidavits of the suspended lawyer’s compliance with Section D requirements.

New Section H was created effective \_\_\_\_\_ to provide a process for contempt in the event a lawyer fails to comply with the provisions of Rule 6.3 or the disciplinary order.

RULE 6.4. PROFESSIONAL TRUSTEESHIPS.

1           A. Inventory of Attorney Files, Trust Assets, and Other Duties. If a lawyer  
2 has been transferred to disability inactive or incapacitated status, placed on interim  
3 suspension, or has been suspended or disbarred, and there is evidence of  
4 non-compliance with Rule 6.3; or if a lawyer has apparently abandoned the  
5 lawyer's law practice, or has died, and no partner, shareholder, personal  
6 representative, administrator, executor or other responsible party capable of  
7 conducting the lawyer's affairs is known to exist, the presiding judge in the judicial  
8 district in which the lawyer's primary place of business is located, upon the  
9 application of any interested party, may appoint one or more lawyers as a  
10 professional trustee, to inventory the active files of the lawyer, to take control of  
11 the attorney's trust and business accounts and any trust assets, to take possession of  
12 the attorney's law practice, and to take appropriate action, including marshalling  
13 assets of the law practice, primarily to protect the interests of the lawyer's clients  
14 and secondarily to protect the interests of the lawyer. Notice of such order of  
15 appointment must be given to the clerk.

16           B. Protection for of Records. Any professional trustee so appointed is not  
17 permitted to disclose information contained in any files without the consent of the  
18 client to whom the file relates, except as necessary to carry out the appointment  
19 order of the court.

20           C. Instructions. The professional trustee may apply to the presiding judge in

21 the judicial district issuing the order of appointment for instructions whenever  
22 necessary to carry out or conclude the duties and obligations imposed by this rule.

23 D. Immunity. All professional trustees appointed under this rule have  
24 qualified immunity from liability for conduct in the performance of their official  
25 duties. This immunity does not extend to employment under section E.

26 E. Acceptance of Clients. With the consent of any client, the appointed  
27 professional trustee may, but need not, accept employment to complete any legal  
28 matter.

29 F. Legal Fees and Costs. The professional trustee is entitled to  
30 reimbursement for actual expenses incurred for costs (including physical office  
31 overhead, publication of notices, travel, secretarial, telephone, postage, moving  
32 and storage expenses) and for reasonable hourly fees. Application for approval of  
33 costs and fees must be to the presiding judge in the judicial district issuing the  
34 order of appointment at the conclusion of the trusteeship and must be accompanied  
35 by an accounting of all assets coming into the professional trustee's possession.  
36 Any application must be made on such notice to the board and to the lawyer or, if  
37 deceased, to the lawyer's personal representative, or administrator as the court may  
38 order. For good cause shown, an interim application for costs and legal fees may  
39 be made. The professional trustee shall, from the time of appointment, have  
40 absolute priority as an administrative expense against the law practice of the  
41 lawyer, including all personal and other property incident to the practice and all  
42 legal fees due the lawyer, whether arising before or after the appointment. To the

43 extent such assets of the lawyer are insufficient to pay approved professional  
44 trustees fees and costs, the board shall pay the same if funds are available. To the  
45 extent the funds of an identifiable interest bearing trust account cannot be traced  
46 back to a particular client by the professional trustee, the funds may be applied  
47 toward client claims, creditors, and the approved fees and costs of the professional  
48 trustee, with the remaining amount deposited into the client protection fund.

49 EXPLANATORY NOTE

50 Rule 6.4 was adopted effective January 1, 1995, amended effective March  
51 1, 2017.

52 Section B was amended effective March 1, 2017, to make a technical  
53 revision.

54 Section F was amended effective March 1, 2017, to provide for the  
55 disposition of funds in a trust account when the funds cannot be traced to a  
56 particular client.

RULE 6.6. DIVERSION FROM DISCIPLINE.

1           A. Lawyer Assistance Program Committee. A lawyer assistance program  
2 committee is established ~~pursuant to~~ by Administrative Rule 49.

3           B. Cases Appropriate for Diversion from Discipline. The purpose of diversion  
4 from discipline is to protect the public by improving the professional competence of  
5 and providing educational, remedial, and rehabilitative programs to members of the  
6 association through:

7           1. The early identification of lawyers who have violated the North Dakota  
8 Rules of Professional Conduct in ways which do not raise questions about the  
9 lawyer's  
10 moral fitness or integrity, but about the lawyer's practice administration or  
11 organization, health, or competence.

12           2. The prevention of similar ethical violations by identified lawyers by altering  
13 the circumstances which caused the violation.

14           3. The improvement of the quality and speed of formal ~~disciplinary~~ proceedings  
15 against those lawyers whose conduct warrants formal proceedings by reducing  
16 recidivism and reallocating disciplinary system time toward more serious disciplinary  
17 matters.

18           C. Cases involving poor administration, poor practice skills, alcohol or drug  
19 addiction or abuse, less serious misconduct, or other deficiencies in professional  
20 capabilities are often best suited for diversion from discipline. For purposes of this  
rule, conduct is not ordinarily considered less serious misconduct if any of the

21 following considerations apply:

22 1. The misconduct involves the misappropriation of funds;

23 2. The misconduct results in or is likely to result in substantial prejudice to a  
24 client or other person, absent adequate provisions for restitution;

25 3. The lawyer has been sanctioned in the preceding three years;

26 4. The misconduct is of the same nature as misconduct for which the lawyer  
27 has been sanctioned in the preceding five years;

28 5. The misconduct involves dishonesty, deceit, fraud, or misrepresentation;

29 6. The misconduct constitutes a crime that is classified as a felony; or

30 7. The misconduct is part of a pattern of similar misconduct.

31 D. In considering a case for diversion from discipline, the reviewing entity shall  
32 determine whether, under all of the circumstances, diversion from discipline can  
33 reasonably be expected to treat, educate, or alter the respondent's behavior or  
34 otherwise address the underlying problem so as to minimize the risks that the  
35 respondent will commit the same or similar acts of misconduct in the future. Such  
36 circumstances include the nature of the violation; the duty involved; whether the  
37 respondent was involved in self-dealing, dishonest conduct, or a breach of fiduciary  
38 duty; whether harm resulted; and the absence or presence of aggravating or mitigating  
39 factors; and whether diversion was previously attempted.

40 E. Diversion under this rule may include:

41 1. Fee arbitration;

42 2. Arbitration;

- 43           3. Mediation;
- 44           4. Law office management assistance;
- 45           5. Psychological and behavioral counseling;
- 46           6. Completion of an addiction treatment program;
- 47           7. An agreement for random testing for drugs and alcohol;
- 48           8. Monitoring;
- 49           9. Restitution;
- 50           10. Continuing legal education; or
- 51           11. Any other program or corrective course of action considered appropriate
- 52 to address the lawyer's misconduct.

53           C. E. Intake and Screening. Referral to the lawyer assistance program can be

54 initiated by any person involved in discipline, including a lawyer against whom a

55 complaint has been filed. The lawyer assistance program will conduct appropriate

56 intake and screening to determine whether a lawyer who has been referred to the

57 program would benefit from the lawyer assistance program.

58           D. G. Individualized Assistance Plan. ~~If, after~~ After intake and screening, the

59 lawyer assistance program committee ~~determines that~~ will determine whether a lawyer

60 would benefit from the program, ~~the committee will select.~~ Counsel and

61 a person with expertise in the apparent problem area ~~who~~ will work with the lawyer

62 to be assisted in developing an individualized assistance plan. The individualized

63 assistance plan ~~shall~~ must be approved by the committee. An individualized assistance

64 plan ~~might~~ may include, e.g., completion of an office management training program,

65 ~~mentoring in office management skills, completion of an addiction treatment program,~~  
66 ~~an agreement for random testing for drugs and alcohol, or an agreement to obtain~~  
67 ~~appropriate professional counseling~~ any of the forms of diversion identified in Section  
68 E.

69 E. H. Approval of Individualized Assistance Plan. If participation in the lawyer  
70 assistance plan is to be a condition of diversion from the discipline system, the  
71 assistance plan must be signed by the lawyer and must include a specific  
72 acknowledgment that a material violation of a term of the plan renders the lawyer's  
73 participation in diversion voidable. The assistance plan must be approved by the entity  
74 currently considering the complaint against the lawyer, whether it is a district  
75 inquiry committee, the disciplinary board, or the Supreme Court court. The assistance  
76 plan may be amended on agreement of the lawyer and the reviewing entity. The  
lawyer  
77 assistance program committee ~~shall be~~ is responsible for monitoring compliance with  
78 the individualized assistance plan and reporting compliance or non-compliance to ~~the~~  
79 entity that approved the plan counsel.

80 I. Compliance - Non-Compliance with Individualized Assistance Plan.  
81 Disciplinary counsel shall report the lawyer's compliance or non-compliance with the  
82 individualized assistance plan to the entity considering the complaint for further  
83 disposition of the complaint. If the lawyer fails to comply with the plan, counsel shall  
84 notify the lawyer that the plan is terminated and that disciplinary proceedings may be  
85 instituted, resumed, or reinstated. Counsel shall submit a recommendation to the entity

86 considering the complaint.

87 F. J. Costs of Individualized Assistance Plan. A lawyer participating in the  
88 lawyer assistance program is responsible for all costs associated with compliance with  
89 the lawyer's individualized assistance plan.

90 G. K. Confidentiality and Immunity. Information regarding a lawyer's  
91 participation in a lawyer assistance program is confidential under Administrative Rule  
92 49, section 4.

93 Immunity of persons involved in the lawyer assistance program is governed by  
94 Administrative Rule 49, section 5.

95 EXPLANATORY NOTE

96 Rule 6.6 was adopted effective August 1, 2004; amended effective March 1,  
97 2017.

98 Section B was amended effective March 1, 2017. to create new lettered  
99 Sections C and D comprised generally of language in Section B and new language.  
100 Section C describes cases that may be appropriate for diversion, including those  
101 involving less serious conduct, and to identify kinds of conduct that would not  
102 ordinarily be considered less serious misconduct. Language was added to Section  
103 D to include whether diversion was previously attempted among various  
104 circumstances in considering whether a case is appropriate for diversion.

105 New Section E was created effective March 1, 2017. to describe the kinds  
106 of diversion that may be available.

107           Section C was amended effective March 1, 2017. and relettered as Section  
108    E.

109           Section D was amended effective March 1, 2017. and relettered as Section  
110    G. The section was further amended to describe the greater role of disciplinary  
111    counsel in the diversion process.

112           Section E was amended effective March 1, 2017, and relettered as Section  
113    H and further amended to require that the lawyer assistance plan must be signed by  
114    the lawyer, the plan must contain a specific acknowledgment that a material  
115    violation of a plan term renders participation in diversion voidable, the plan must  
116    be approved by the entity considering the complaint, and to provide that the plan  
117    may be amended on the agreement of the lawyer and the reviewing entity.

118           New Section I was created effective March 1, 2017, to provide disciplinary  
119    counsel responsibilities regarding a lawyer's compliance or noncompliance with  
120    the assistance plan.

121           Sections F and G were amended effective March 1, 2017, and relettered as  
122    Sections J and K respectively.

~~RULE 6.7. EFFECTIVE DATE.~~

~~1 ————— These rules, as amended, become effective on August 1, 2004 March 1,~~  
~~2 ————— 2017. Any matter then pending with respect to which a formal hearing has been~~  
~~3 ————— commenced shall be concluded under the procedure existing prior to the effective~~  
~~4 ————— date of these rules.~~

**RULE 3.2. SERVICE.**

A. **Petition.** Service of a petition upon the lawyer must be made by personal service as provided for in N.D.R.Civ.P. 4, or by registered or certified mail at the last address shown in the roster of licensed attorneys maintained by the ~~clerk of the court~~ State Board of Law Examiners or other last known address. ~~Service in all other respects is governed by the North Dakota Rules of Civil Procedure.~~

**B. ~~Other Papers-Documents.~~**

~~Service of any other reports, papers, or notices required by these rules must, unless otherwise provided by these rules, be made in accordance with Rule 5 of the North Dakota Rules of Civil Procedure.~~

**(1) Service-When Required.**

(a) In General. Other than service under subdivision (A), service of other reports, ~~papers~~-documents, or notices required by these rules must be made on the lawyer, unless the rules provide otherwise.

(b) If a Lawyer Fails to Appear. No service is required on a lawyer who is in default for failing to appear. But a pleading that asserts a new claim against a lawyer must be served on the lawyer under subdivision (A).

**(2) Service-How Made.**

(a) Service on a Lawyer Represented by an Attorney. If a lawyer is represented, service under this rule must be made on the representing attorney unless otherwise provided in these rules. If the representing attorney is providing limited representation under N.D.R.Civ.P. 11(e), service must be made on the representing attorney for matters within the limited scope of representation.

(b) Service in General. A document is served under this rule:

(i) Prior to a petition for discipline, for matters to be considered by an inquiry committee, by:

(A) handing it to the person;

(B) leaving it:

(1) at the lawyer's office with a clerk or other person in charge or, if no one is in charge, leaving it in a conspicuous place in the office; or,

(2) if the lawyer has no office or the office is closed, at the lawyer's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the lawyer's last address shown in the roster of

licensed attorneys maintained by the State Board of Law Examiners or other last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to:

(1) the complainant at the last known address provided on the complaint or on file with disciplinary counsel, in which event service is completed upon deposit of the paper to be served with the commercial carrier; or

(2) the lawyer's last address shown in the roster of licensed attorneys maintained by the State Board of Law Examiners or other last known address, in which event service is complete upon deposit of the paper to be served with the commercial carrier;

(E) if no address is known, by submitting an affidavit regarding attempts to locate the lawyer with the clerk of the supreme court, who upon a showing of due diligence must accept service on behalf of the lawyer;

(F) sending it by electronic means if the lawyer consented in writing, in which event service is complete upon transmission, but is not effective if the serving person learns that it did not reach the lawyer to be served; or

(G) delivering it by any other means that the person consented to writing.

in

(ii) After a petition for discipline, service may be made upon the lawyer by:

(A) any of the methods of service addressed within subparagraph (B)(2)(b)(i); or,

(B) electronically sending it to the e-mail address posted on the North Dakota Supreme Court website. Electronic service otherwise must be consistent with the procedure defined in N.D.R.Ct. 3.5(e), with the exception that the filings and service will not be conducted through the Odyssey® system.

(c) Proof of service under this rule is made as provided in N.D.R.Civ.P. 4 or by an attorney's certificate showing that service was made as required by these rules.

[Adopted effective August 1, 2004. Amended effective March 1, 2017.]