

# **NORTH DAKOTA RULES FOR CONTINUING LEGAL EDUCATION**

## **Rule**

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### **Rule 1. Purpose.**

It is important to the Bar and to the public that attorneys continue their legal education throughout their active practice of law, and that attorneys who fail to do so should be prohibited from practicing law in the State of North Dakota.

### **Rule 2. State commission for continuing legal education.**

(a) The Commission for Continuing Legal Education consists of seven members, one of whom shall be a chairman. Each member must be licensed to practice law in the State of North Dakota. The members of the Commission are appointed by the Board of Governors of the State Bar Association of North Dakota.

(b) Members are appointed, for three-year terms.

(c) A member may not serve more than two successive three-year terms. Each member serves until a successor is appointed and qualified. The chair of the Commission is appointed annually by the Board of Governors of the State Bar Association of North Dakota. The Board of Governors designates the Secretary-Treasurer of the Commission who has no vote. The chair and the other members of the Commission serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Secretary-Treasurer is allowed compensation for services, staff, and expenses as the Commission determines.

(d) The Commission has general supervisory authority over the administration of these rules.

### **Rule 3. Mandatory Continuing Legal Education, Report of Compliance.**

(a) Except as qualified in section (b), each attorney duly admitted and licensed to practice in this State shall complete not less than 45 hours of approved course work in Continuing Legal Education during each three-year period the attorney is licensed in this State. Beginning in the 1993 reporting year, three hours of this forty-five hour triennial requirement shall be in the area of ethics or course work commonly considered professional responsibility.

(b) A Report of Compliance, in the form set by the Commission, must be filed by each attorney with the Commission by July 30 after the close of each three-year reporting period for the attorney under the following schedule:

- (1) The reporting periods for attorneys who were licensed to practice in this State prior to 1978 and who have secured an annual license to practice in this State every year since then are:
  - (i) from July 1, 1985, to June 30, 1988, for those whose last name in 1977 began with the letter A through G;
  - (ii) from July 1, 1986, to June 30, 1989, for those whose last name in 1977 began with the letter H through N; and
  - (iii) from July 1, 1984, to June 30, 1987, for those whose last name in 1977 began with the letter O through Z.

Subsequent reporting periods conclude on June 30 every three years thereafter.

- (2) The reporting periods for all other attorneys begin on July 1 succeeding the date the attorney initially secures a license to practice in this State, or succeeding the date the attorney secures relicensure after a period of nonlicensure in this State of one or more years, and concludes on June 30<sup>th</sup> three years later. Subsequent reporting periods will conclude on June 30<sup>th</sup> every three years thereafter.

(c) Each attorney shall pay a fee not to exceed \$25.00 as set by the Commission for expenses for operation of the Commission, to the State Bar Association of North Dakota -- Commission for Continuing Legal Education, at the time of filing the Report of Compliance.

#### **Rule 4. Procedures and penalty for failure to satisfy educational requirements.**

(a) If an attorney fails to file a report, or the proof accompanying the report fails to establish to the satisfaction of the Commission that the attorney has complied with the minimum requirements for Continuing Legal Education, the Commission shall serve upon the attorney notice that the attorney has 60 days within which to comply with these rules or the requirements of the Commission and that failure to do so may result in a suspension of the attorney's right to practice law in this State. The attorney may request, within 20 days after issuance of the 60-day notice, the Commission to schedule a hearing at which the attorney may appear in person to discuss the Commission's determination of non-compliance.

- (i) If a hearing is not timely requested and no proof of compliance is filed within 60-days of the date of the 60-day notice, it shall be deemed acquiescence by the

attorney of the Commission's finding of non-compliance.

- (ii) Upon the timely receipt of a request for hearing, the Commission shall set a date, time and place for hearing and notify the attorney of the hearing by first-class mail at least 10 days in advance of the hearing.

Unless compliance or good cause constituting extreme hardship is shown by the attorney within the 60 days set in the notice or, if requested, at the hearing, the Commission shall issue and file with the secretary-treasurer of the State Bar Board its findings of non-compliance and an order of suspension.

(b) An attorney not desiring licensure in North Dakota may request to be placed on inactive status. An attorney must make such a request in writing in the format in Appendix A no later than June 30 of the year in which the attorney's Report of Compliance is due. The request shall include a certification that the attorney is not subject to any pending discipline proceedings or investigations in any jurisdictions. Attorneys electing inactive status are not required to comply with continuing legal education reporting requirements.

A lawyer not complying with the continuing legal education requirements and electing voluntary inactive status has special ethical concerns. An inactive lawyer may not represent any other person or business in legal matters or proceedings. The name of an inactive lawyer may not appear on a law firm letterhead without a qualification that the North Dakota license is inactive. A law firm name may continue to include the lawyer's name if the name was included prior to the lawyer's placement on inactive status. An inactive lawyer may not be listed as "of counsel" or otherwise be represented to clients or others as being able to undertake legal business.

Law partners or associates knowingly allowing an inactive lawyer to continue practice violate the Rules of Professional Conduct. An inactive lawyer may not have a financial interest in a law firm that is a professional corporation except under a separation agreement allowing for payments to former partners or associates of a law firm. An inactive lawyer should promptly advise clients that the lawyer is unable to represent them and that they should retain other counsel.

Reinstatement to active status from inactive status is governed by Rule 7 of the Admission to Practice Rules which allows the State Bar Board to examine the attorney's continuing legal education course work during the three-year period preceding the period of nonlicensure and the number of approved or approvable coursework hours received during the period of nonlicensure.

(c) Upon the filing of the Commission's findings of non-compliance and order of suspension with the secretary-treasurer of the State Bar Board, the attorney's license to practice law is suspended effective the 31st day of December after the order of suspension is filed with the secretary-treasurer of the State Bar Board. From that date forward the attorney is prohibited from engaging in the practice of law and is prohibited from securing a license to practice law in the State of North Dakota until the Commission issues and files with the secretary-treasurer of the State Bar Board findings of compliance and an order of reinstatement, or unless the attorney is relicensed under Rule 7 of the North Dakota Admission to Practice Rules. The order of suspension shall require the attorney to comply with Rule 6.3 of the North Dakota Rules for Lawyer Discipline pertaining to notification of clients regarding the suspension by December 31<sup>st</sup>

unless an order of reinstatement has been entered.

At the time the order of suspension and findings of non-compliance are filed with the secretary-treasurer of the State Bar Board, the Commission shall serve, by certified mail -- return receipt requested, the findings of non-compliance and the order of suspension upon the attorney involved. At the same time the order of suspension and findings of non-compliance are filed with the secretary-treasurer of the State Bar Board a certified copy of the findings of non-compliance and the order of suspension shall be filed with the Clerk of the Supreme Court of the State of North Dakota.

(d) If strict compliance by the attorney with the requirements of this rule is excused by the Commission because of a showing of extreme hardship, the Commission may extend the reporting period for the attorney or make other reasonable accommodations consistent with the spirit of these rules, subject to reasonable limitations and conditions as the Commission imposes.

(e) An attorney subject to an order of suspension issued by the Commission may have his or her license to practice law reinstated by 1) completing the number of hours of approved course work in Continuing Legal Education which the Commission has determined the attorney to be delinquent, 2) filing proof of such compliance with the Commission within one year from the date of issuance of the order of suspension, and 3) filing the proof of compliance with Rule 6.3 of the North Dakota Rules for Lawyer Discipline within the time period specified in Rule 6.3(f). If an attorney timely files proof of such compliance, the Commission shall issue and file with the secretary-treasurer of the State Bar Board and the Clerk of the Supreme Court of the State of North Dakota its findings of compliance and an order of reinstatement. Upon such filing with the secretary-treasurer of the State Bar Board, the attorney's license to practice and right to practice law in this State shall be reinstated, provided the attorney's certificate of admission to the bar has not otherwise been revoked or suspended by the Supreme Court.

(f) Reports of compliance received after the issuance of a 60-day notice as described in subpart (a) and the reports of compliance of lawyers who have been granted extensions by the Commission, and which are in turn received by the Commission within the granted period of extension, shall be accompanied by a late filing fee of \$25.00 made out to the North Dakota Commission for Continuing Legal Education in addition to the fee required by Rule 3(c). Reports received after the expiration of the 60-day notice period or after the expiration of an extension period shall be accompanied by a late filing fee of \$75.00 made out to the North Dakota Commission for Continuing Legal Education in addition to the fee required by Rule 3(c).

(g) The number of hours of approved course work in Continuing Legal Education completed by an attorney in bringing the attorney into compliance with an order of suspension issued by the Commission, in the year succeeding the order, may not be applied to the number of hours reportable to the Commission by the attorney in the subsequent three-year reporting period applicable to the attorney.

(h) An attorney whose license has been suspended, who does not qualify for a license under section (d), and who seeks licensure must file an application for a license with the State Bar Board in the manner prescribed in Rule 7 of the North Dakota Admission to Practice Rules.

(i) Within 20 days of receipt of the Commission's order of suspension, any attorney aggrieved by a decision of the Commission may petition the North Dakota Supreme Court for review of the decision. Any petition filed with the Court must be accompanied by a signed affidavit stating that a copy of the petition had been sent by first-class mail to the Commission on or before the date of filing the petition. The filing of the petition and affidavit vacates the decision of the Commission. No transcript of the Commission's proceedings is required. The record on review consists of all relevant documents maintained by the Commission, the written decision of the Commission, and any other documents submitted by the attorney to the Commission. The attorney and Commission may submit briefs to the Court within 20 days after the filing of the petition. If requested by either the attorney or Commission within 10 days after the filing of the petition, the Court may set a hearing for oral arguments on the petition. The attorney has the burden of showing proof of compliance with these rules by a preponderance of the evidence.

(Amendment effective November 1, 2000)

**Rule 5. Payment of expenses.**

The employees and members of the Commission are entitled to reimbursement for all necessary expenses incurred in the performance of their official duties. Each claim must be certified by the individual seeking payment.

**Rule 6. Approved course work.**

(a) The Commission determines what constitutes "approved course work." It may issue and publish advance guidelines or evaluate courses and supporting information as submitted for approval. It may also approve courses after they had been presented. Courses sponsored by the following organizations, and their associated entities, are presumptively approved:

- (1) State bar associations;
- (2) Accredited law schools;
- (3) American Bar Association;
- (4) American Law Institute;
- (5) Practicing Law Institute.

(b) The Commission shall cooperate with the Continuing Legal Education Committee of the State Bar Association of North Dakota, the University of North Dakota School of Law, and other educational institutions within the State to promote Continuing Legal Education within the State.

(c) The Commission shall publish quarterly, in the newsletter of the State Bar Association of North Dakota, a list of Continuing Legal Education courses and activities that are available to attorneys within the State of North Dakota, and may include courses available elsewhere.

**Rule 7. Judges exempt.**

These rules do not apply to Judges who are prohibited by the Code of Judicial Conduct from

engaging in the private practice of law. (Amended 3/24/87; 1/01/94)

**Rule 8. Effective dates.**

The Commission for Continuing Legal Education was established on September 1, 1977. The remainder of the original rules became effective January 1, 1978, and all applications of the rules are prospective.

**EXPLANATORY NOTE**

The North Dakota Rules for Continuing Legal Education were adopted July 27, 1977. Rules 1, 3 and 4 were subsequently amended as emergency rules December 1, 1986, and adopted as permanent rules March 24, 1987. Rule 7 was amended March 24, 1987. The above Rule incorporates the previous amendments adopted March 24, 1987, and those approved November 22, 1988, which were effective December 31, 1988. Rule 3 was further amended June 24, 1992. Emergency amendments to Rule 4 were adopted August 17, 1993, and subsequently amended and readopted February 2, 1994. Nonsubstantive amendments to the permanent rules were adopted February 2, 1994. Changes to the filing fee in Rule 3 were changed on November 1, 1998. Rule 4 was amended effective November 1, 2000, to include the language regarding notice to clients of the suspension as required in Rule 6.3 of the ND Rules for Lawyer Discipline.

## SUMMARY OF CHANGES TO THE RULES

2000

Rule 4: Incorporate reference to Rule 6.3 of the ND Rules for Lawyer Discipline requiring lawyers receiving a CLE suspension to provide clients with a notice of the suspension within 10 days of the suspension.

1993

Rule 4: Amended to allow an inactive status for attorneys not planning on continuing the practice of law in ND. Included language concerning the ethical restraints placed upon the attorney and associated firm when placed on inactive status. Referenced to Rules of Admissions for obtaining license again.

Rule 7: Deleted following language: "Rules of Judicial Conduct" and inserted, "Code of Judicial Conduct". Order of adoption issued 10/20/93...effective 01/01/94.