

CHAPTER 3

ATTORNEYS AND THE PRACTICE OF LAW

ARTICLE 3

DISCIPLINE PROCEDURES FOR LAWYERS

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Preface.

The Nebraska Supreme Court has the inherent power and duty to prescribe standards of conduct for attorneys admitted to practice law in Nebraska; to determine what constitutes grounds for the discipline of attorneys: to disbar, suspend, censure, or reprimand for cause attorneys whose failure to comply with the obligations of a member of the bar has been duly established.

Attorneys are a part of the judicial system of the State and are officers of its courts. A license to practice law confers no vested right, but is a conditional privilege, revocable for cause.

The discipline of attorneys is for the protection of the public, the profession, and the administration of justice.

Definitions.

The following definitions shall apply wherever used in these rules:

ASSOCIATION The Nebraska State Bar Association.

ATTORNEY A person duly admitted to the practice of law in the State of Nebraska by the Court, under the laws of the State of Nebraska, and who is by his or her oath required to abide by its laws, including the laws of its subdivisions and the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

CLERK The Clerk of the Supreme Court and Court of Appeals of the State of Nebraska.

COMPLAINANT Any person who makes a Grievance.

COMPLAINT A written statement prepared by the Counsel for Discipline as a result of an investigation of a Grievance and filed with the appropriate Committee on Inquiry.

CONDITIONAL ADMISSION OF GUILT
A process whereby a member charged can conditionally admit his or her guilt pending final approval by the Court.

COUNSEL FOR DISCIPLINE
The person employed by the Nebraska Supreme Court to fulfill the duties and responsibilities set out in these rules, and it shall include that person's staff to whom he or she shall have the power to delegate the authority to make the required investigations and such other duties as he or she may assign to the staff. It shall also include the person appointed by the Court to serve as special prosecutor in a disciplinary case.

Amended December 13, 1995.

COURT The Supreme Court of the State of Nebraska.

DISABILITY INACTIVE STATUS
Suspension from the practice of law due to a disability or substance abuse problem.

EXECUTIVE COUNCIL
The Executive Council of the Nebraska State Bar Association.

FORMAL CHARGE A written statement prepared by the Counsel for Discipline at the direction of the Committee on Inquiry or the Disciplinary Review Board.

GRIEVANCE Any written statement made by any person alleging conduct on the part of a member which appears, in the judgment of the Counsel for Discipline, to have merit, and, if true, would constitute a violation of the member's oath, the Nebraska Rules of Professional Conduct, or these rules; allegations of misconduct not appearing in the judgment of the Counsel for Discipline to have merit are not deemed a Grievance under these rules.

Amended February 28, 2001; amended July 13, 2005, effective September 1, 2005.

INQUIRY A review of the investigative file of the Counsel for Discipline by a Committee on Inquiry Panel subsequent to the filing of a Complaint. An Inquiry is not a hearing and witnesses shall not be called and evidence shall not be introduced. At the request of the Inquiry Panel, the Counsel for Discipline may appear and participate in the proceeding.

MEMBER A member of the Nebraska State Bar Association of any class of membership.

OATH The oath of office taken by an attorney or member at the time of his or her admission to practice as provided by Neb. Rev. Stat. § 7-104, or as the same may be hereafter amended.

PRIVATE REPRIMAND A reprimand of a member by the Committee on Inquiry of the appropriate Judicial District or the Disciplinary Review Board which shall be in writing, signed by the Chairperson and Vice Chairperson, and directed to the member by United States certified mail, return receipt requested, but shall not be made public.

RELATOR The Counsel for Discipline of the Nebraska Supreme Court.

RESPONDENT A member charged with a violation of his or her oath, or the Nebraska Rules of Professional Conduct, or these rules.
Amended July 13, 2005, effective September 1, 2005.

RULES These rules as adopted by the Court or as the same may be hereafter amended.

RULES OF PROFESSIONAL CONDUCT The Nebraska Rules of Professional Conduct as adopted by the Court, together with such amendments thereto as may from time to time be approved by the Court.
Adopted July 13, 2005, effective September 1, 2005.

SERIOUS CRIME Any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

§ 3-301. Jurisdiction.

(A) Every attorney admitted to practice in the State of Nebraska, or required to register pursuant to Neb. Ct. R. §§ 3-1201 to 3-1204, is subject to the exclusive disciplinary jurisdiction of the Court.

(B) Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt.

(C) Time limitations for the Committees on Inquiry and Disciplinary Review Board as set forth herein are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

(D) Incumbent judges shall not be subject to the jurisdiction of the Counsel for Discipline.

(E) Every attorney admitted to practice in the State of Nebraska shall pay a disciplinary assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. The first disciplinary assessment shall be due on or before January 1, 2001. The disciplinary assessment shall be paid to the Treasurer of the Association and shall be used to defray the costs of disciplinary administration and enforcement as established by these rules. Different classifications of disciplinary assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Neb Ct. R. § 3-803. Members newly admitted to the practice of law in the State of Nebraska shall not pay a disciplinary assessment for the remainder of the calendar year in which they are admitted.

(F) Members who fail to pay the disciplinary assessment shall be subject to suspension from the practice of law as provided in Neb. Ct. R. § 3-803(E).

§ 3-301 amended October 26, 2011, effective January 1, 2012.

§ 3-302. Jurisdiction of disciplinary districts.

The Disciplinary District which shall have jurisdiction over a member shall be any District, as defined in § 3-307, in which the member maintains an office, or the District in which his or her conduct under investigation occurred. If the member resides in Nebraska but does not maintain an office in Nebraska, jurisdiction shall be in the District of the member's residence. If the member does not maintain an office or a residence in Nebraska and the conduct under investigation did not occur in Nebraska, the Disciplinary Review Board shall determine which District shall have jurisdiction and shall assign the investigation to the Counsel for Discipline.

§ 3-303. Grounds for discipline.

(A) The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and personally, in conformity with the standards imposed upon members as conditions for that privilege.

(B) Acts or omissions by a member, individually or in concert with any other person or persons, which violate the Nebraska Rules of Professional Conduct as adopted by the Court, the oath, or the provisions of

these rules, shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise.

Rule 3(B)(1) amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-303, effective July 18, 2008.

§ 3-304. Types of discipline.

(A) Misconduct shall be grounds for:

- (1) Disbarment by the Court; or
- (2) Suspension by the Court; or
- (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or
- (4) Censure and reprimand by the Court; or
- (5) Temporary suspension by the Court; or
- (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above.

Rule 4(A)(3) and (B) amended June 16, 2004. Renumbered and codified as § 3-304, effective July 18, 2008.

§ 3-305. Advisory Committee.

(A) The Court shall appoint a committee to be known as the Advisory Committee which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, a member at large to be Chairperson, and a member at large to be Vice Chairperson.

(B) When the Advisory Committee is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. The first person appointed Vice Chairperson shall serve for seven years. Thereafter the full regular term of each member of the Committee shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year; provided, however, that at no time shall the terms of the Chairperson and Vice Chairperson expire at the same time.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Members of the Advisory Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Advisory Committee shall have the following powers and duties:

(1) In its discretion, render to a member upon his or her written request an advisory opinion or an interpretation of the Nebraska Rules of Professional Conduct regarding anticipatory conduct on the part of the member. A member requesting an opinion from the Advisory Committee shall prepare and submit with his or her request a statement of the specific facts upon which the opinion is requested and a

memorandum directing the attention of the Committee to the pertinent Nebraska Rules of Professional Conduct and relevant case authority. The Chairperson of the Advisory Committee may waive this requirement in appropriate cases.

(2) Make appropriate arrangements, through its Chairperson, for publication and dissemination of such advisory opinions as the Committee deems of general interest to the members.

Rule 5(D)(1) amended February 22, 1996; Rule 5(A) and (B) amended July 23, 1997; Rule 5(D)(1) amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-305, effective July 18, 2008.

§ 3-306. Disciplinary Review Board.

(A) The Court shall appoint a committee to be known as the Disciplinary Review Board which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, one member of which shall be designated as Vice Chairperson; a member at large to be Chairperson; and three residents of Nebraska, not members, representing the public at large. The Vice Chairperson shall act as Chairperson if the designated Chairperson is absent or disqualified from acting in a particular proceeding. Neither the Chairperson nor the Vice Chairperson shall be nonlawyers.

(B) When the Disciplinary Review Board is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. Thereafter the full regular term shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year. Initially, one representative of the public shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. Thereafter the full regular term of the representative of the public shall be for three years. Representatives of the public may serve full regular consecutive terms.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Board, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the seven regular members of that Board. Members of the Disciplinary Review Board shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Disciplinary Review Board shall have the following powers and duties:

(1) If necessary, because of disqualification or unavailability, to direct that the Complaint be referred to some other Committee on Inquiry, in which case the Committee on Inquiry to which it is so referred shall have full power and jurisdiction to the same extent and in like manner as the Committee which had original jurisdiction.

(2) Assume jurisdiction of and determine a matter to the same extent and with like power as a Committee on Inquiry when directed by the Court.

(3) Review motions to quash subpoenas.

(4) Review a dismissal of a Grievance by the Counsel for Discipline upon application of the Complainant filed within thirty days of receipt of notice of the dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Grievance, direct the Counsel for Discipline to further investigate, or direct the Counsel for Discipline to

file a Complaint with the appropriate Committee on Inquiry. Should the Disciplinary Review Board reverse the Counsel for Discipline's decision to dismiss a Grievance, a special prosecutor shall be appointed to prosecute the action.

(5) Review the private reprimand issued by the Committee on Inquiry in conformity to § 3-309(H) upon written application of the member against whom the reprimand was issued or the Counsel for Discipline filed within thirty days of issuance of the reprimand. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the issuance of the private reprimand, reverse the issuance of the private reprimand and dismiss the complaint, or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge.

(6) Review a dismissal of a Complaint by the Committee on Inquiry in conformity with § 3-309(H) upon written application of the Counsel for Discipline filed within thirty days of receipt of the notice of dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Complaint; determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the filing of a Formal Charge and, thereupon, prepare and issue a private reprimand; or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. If the Disciplinary Review Board determines that a Formal Charge is warranted, the Board shall direct the Counsel for Discipline to file the same with the Clerk.

(7) A review provided for in § 3-306(D)(4), (5), or (6) shall be completed within sixty days after it is received by the Disciplinary Review Board unless the Chairperson of the Disciplinary Review Board, because of the extent of the record or the complexity of the issues, determines that additional time is necessary.

(E) Reviews provided for in § 3-306(D)(4), (5), or (6) shall be conducted by a panel appointed by the Chairperson of the Board. The panel shall be composed of three members of the Disciplinary Review Board. One member of each panel shall be a nonlawyer. The Chairperson of the Board shall appoint one lawyer member of the panel to serve as Chairperson of the panel.

Rule 6(A) amended November 14, 1996; Rule 6(D)(4) amended November 22, 2000. Renumbered and codified as § 3-306, effective July 18, 2008.

§ 3-307. District Committee on Inquiry.

(A)(1) The Court shall appoint a Committee on Inquiry in each of six districts. For the purposes of these rules, such districts shall be coterminous with the Supreme Court Judicial District of the same number in effect at the time of the adoption of these rules, and as hereafter may be changed. The Committees on Inquiry shall contain the following number of members, one-third of whom shall be nonlawyers: districts 1 and 2 shall contain 12 members and districts 3, 4, 5, and 6 shall contain 6 members.

(2) The members of each committee shall be residents of, or have their principal law office in, the district in which they serve as herein described; provided, however, that members of the Committee on Inquiry for district 4 may reside in any part of Douglas County, and members of the Committee on Inquiry for district 2 may reside in Sarpy County.

(3) Members of the Committees on Inquiry as they exist as of the date of adoption of this rule amendment shall continue to serve out their terms on such committees; however, when those terms expire, replacement for such members shall be in accordance with the boundaries and residence requirements of these rules.

(B) The Court shall designate one member as Chairperson and two members as Vice Chairpersons, either of whom may serve as Chairperson in the event of the disqualification or unavailability of the Chairperson. Neither the Chairperson nor the Vice Chairpersons shall be nonlawyers.

(C) When a Committee on Inquiry is first appointed, one-sixth of its members shall be appointed for a term of one year, one-sixth for a term of two years, one-sixth for a term of three years, one-sixth for a term of four years, one-sixth for a term of five years, and one-sixth for a term of six years and thereafter all regular terms shall be six years. No member of the Committee shall serve consecutive terms but may, however, be reappointed after a lapse of one year.

(D) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Committee, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the regular members of that Committee. Members of the Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to performance of their duties.

(E) The Committee on Inquiry shall have the following powers and duties:

(1) Review the investigations and Complaint presented to it by the Counsel for Discipline.

(2) Dismiss the Complaint upon being satisfied it is without foundation and merit.

(3) Issue a private reprimand if the Complaint indicates a matter not appropriate for a Formal Charge.

(4) Make application to the Court requesting that a member be placed on disability inactive status or for an immediate temporary suspension of a member in conformity with §§ 3-311 or 3-312.

(F) An Inquiry regarding a Complaint filed with a Committee on Inquiry by the Counsel for Discipline shall be conducted by an Inquiry Panel composed of three members of the Committee appointed by the Chairperson of the Committee, one of whom shall be the Chairperson or a Vice Chairperson of the Committee, who shall serve as Chairperson of the Inquiry Panel. One member of each Inquiry Panel shall be a nonlawyer.

Rule 7(A)(2) amended November 23, 1994; Rule 7(A)(2) amended May 30, 1996; Rule 7(A)(2) amended November 12, 1998; Rule 7(A)(1)–(3) amended March 24, 2004. Renumbered and codified as § 3-307, effective July 18, 2008.

§ 3-308. Counsel for Discipline.

(A) The Counsel for Discipline shall be appointed by the Nebraska Supreme Court and his or her appointment and tenure of office shall be on such terms and for such period as may be designated by the Court. The Counsel for Discipline shall not be permitted to engage in the private practice of law except the Court may agree to a reasonable period of transition after his or her appointment.

(B) The Counsel for Discipline shall have the following powers and duties:

(1) Review, investigate, or refer for investigation all matters of alleged misconduct called to his or her attention by Grievance or otherwise. The Counsel for Discipline may initiate Grievances.

(2) Notify a member in writing that he or she is the subject of a Grievance and furnish the member a copy thereof within fifteen days of receipt of the Grievance.

- (3) Dismiss a Grievance if, in his or her judgment, it is without foundation and merit.
- (4) Refer members to Attorney Assistance Programs under appropriate circumstances.
- (5) Prepare a Complaint and file it with the appropriate Committee on Inquiry if, in his or her judgment, there is sufficient evidence to substantiate such Complaint.
- (6) Confer with any Committee on Inquiry prior to dismissal of a Grievance or preparation of a Complaint if he or she is in doubt as to the proper disposition of the matter.
- (7) Provide research services for the Advisory Committee.
- (8) Maintain records as follows:
 - (a) Records of correspondence received by the Counsel for Discipline but not classified as a Grievance shall be maintained for a period of three years, after which time they may be destroyed.
 - (b) Records of Grievances which have resulted in referral to Attorney Assistance Programs shall be maintained for a period of three years, after which time they may be destroyed.
 - (c) Records of Grievances which have been dismissed by the Counsel for Discipline for lack of foundation and merit shall be maintained for a period of three years, after which time they may be destroyed.
 - (d) Records of Grievances in which Complaints have been filed and then dismissed shall be maintained for a period of five years after final disposition of the complaint, after which time they may be destroyed.
 - (e) Records of Grievances against attorneys that have resulted in a reprimand by the Committee on Inquiry or the Disciplinary Review Board or probation, a reprimand, censure, suspension, or disbarment of the attorney shall be maintained until the death of the attorney, after which time they may be destroyed.
- (9) Make a semiannual summary report to the Court of all disciplinary matters for each six-month period. Such report shall include the following information:
 - (a) Number of members complained against.
 - (b) The general nature of the Grievances.
 - (c) The disposition or status thereof and such other matters as the Court may, from time to time, request.
 - (d) A copy of the portion of the report relating to each Committee on Inquiry shall be submitted to the Chairperson of that Committee on Inquiry.
- (10) Assist the Court in any disciplinary matter then pending before the Court, if requested.

§ 3-309. Procedure: Committee on Inquiry; Counsel for Discipline; Disciplinary Review Board.

(A) All allegations of misconduct must be filed with the office of the Counsel for Discipline. All allegations of misconduct received by any other person shall be transmitted forthwith to the Counsel for Discipline.

(1) Upon receipt of information indicating an abuse of alcohol or drugs by a member or the existence of a mental health or gambling problem, the Counsel for Discipline shall release such information to the

Nebraska Lawyers Assistance Program. The release of this information shall not be a violation of the confidentiality requirements of § 3-318.

(2) Upon receipt of a grievance against a member arising out of conduct in a pending or closed federal case, including civil, criminal, bankruptcy, grand jury, or federal proceeding in which the lawyer may be a witness, Counsel for Discipline shall disclose and refer such grievance to the federal judge assigned to the case for consideration of discipline under the federal attorney discipline rules. Any investigation of such grievance by Counsel for Discipline shall be held in abeyance until the federal court resolves the matter, provided, however, that if the federal court fails to resolve the grievance in a timely manner, Counsel for Discipline may take further action without regard to the referral to the federal court. Discipline by the federal court under its disciplinary rules does not preclude discipline under these rules pursuant to the Nebraska Rules of Professional Conduct. Referral under this subsection shall not be a violation of the confidentiality requirements of § 3-318.

(B) All investigations, whether upon allegations of misconduct or otherwise, shall normally be initiated by the Counsel for Discipline.

(C) When it appears to the Counsel for Discipline that allegations of misconduct do not have merit or that the allegations, if true, would not constitute grounds for discipline, he or she may decline to investigate and shall so advise the Complainant in writing with a proper explanation. In making a determination, the Counsel for Discipline may make such preliminary inquiry regarding the underlying facts as he or she deems appropriate. This may include requests for information from the Complainant and the member. All doubts shall be resolved in favor of an investigation. The Counsel for Discipline shall decline to investigate allegations of misconduct against current court-appointed attorneys in active criminal and juvenile cases. Such allegations and allegations of conflict of interest and ineffective assistance of counsel should be considered within the context of the underlying case. A declination by the Counsel for Discipline to investigate and dismissal pursuant to this rule are not appealable to the Committee on Inquiry or the Disciplinary Review Board.

(D) If it appears to the Counsel for Discipline that allegations of misconduct may have merit and, if true, would constitute grounds for discipline, he or she shall notify the member against whom the allegations are directed that the member is the subject of a Grievance, and within fifteen days of its receipt furnish the member a copy thereof by certified mail, return receipt requested, at the member's last known address.

(E) Upon receipt of notice of a Grievance from the Counsel for Discipline, the member against whom the Grievance is directed shall prepare and submit to the Counsel for Discipline, in writing, within fifteen working days of receipt of such notice, an appropriate response to the Grievance, or a response stating that the member refuses to answer substantively and explicitly asserting constitutional or other grounds therefor. For good cause, the Counsel for Discipline may grant additional time for the filing of a response.

(F) If, upon conclusion of any investigation, the Counsel for Discipline determines there are not reasonable grounds for discipline of a member against whom a Grievance is directed, he or she shall dismiss the Grievance and shall so advise the Complainant in writing with a proper explanation. The Counsel for Discipline shall further advise such Complainant that an appeal may be taken to the Disciplinary Review Board pursuant to § 3-314(A).

(G) If, upon conclusion of any investigation, the Counsel for Discipline determines there are reasonable grounds for discipline of a member against whom a Grievance is made, he or she shall reduce the Grievance to a Complaint specifying with particularity the facts which constitute the basis thereof and the grounds for discipline which appear to have been violated. The Complaint shall be forwarded by the Counsel for Discipline to the member by regular mail at the member's last known address. The member

shall have ten working days from the date the Complaint is mailed to submit an additional written explanation of the facts or circumstances for inclusion in the Counsel for Discipline's investigative file. The Complaint and either the investigation file, or a copy thereof, shall then be immediately forwarded to the proper Committee on Inquiry.

(H) Upon receipt of the Complaint and file from the Counsel for Discipline, the Chairperson of the Committee on Inquiry shall appoint an Inquiry Panel pursuant to § 3-307(F) which shall within thirty days review the Complaint and either:

(1) Determine that the Complaint, if true, would not constitute grounds for discipline and dismiss the Complaint.

(2) Determine that there are not reasonable grounds for discipline of the Respondent, and dismiss the Complaint.

(3) Determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the institution of a Formal Charge. The Panel thereupon shall prepare and issue to the Respondent a private reprimand which shall be made a permanent part of the file in the office of the Counsel for Discipline, and this reprimand shall be received as evidence in any subsequent disciplinary proceeding against the Respondent only after a finding of misconduct in the subsequent disciplinary proceeding.

(4) Determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. The Counsel for Discipline shall thereafter prepare and sign Formal Charges for filing with the Court. The Formal Charge shall be made in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court.

(I) The Respondent or the Counsel for Discipline may appeal the actions of the Inquiry Panel to the Disciplinary Review Board in conformity with §§ 3-306(D)(5) and (6), and 3-314(D).

Rule 9(C) and (D) amended March 13, 1998; Rule 9(A) and (B) amended February 28, 2001; Rule 9(C) amended June 25, 2008, effective July 9, 2008. Renumbered and codified as § 3-309, effective July 18, 2008; § 3-309(A)(1)-(2) amended March 16, 2011.

§ 3-310. Procedure: Nebraska Supreme Court.

(A) Proceedings for discipline of members shall be considered civil in their nature and for the purpose of protecting the public and the good name of the members, and may be instituted against any person who has been licensed to practice in the courts of the State of Nebraska.

(B) Proceedings for discipline of members may be instituted and prosecuted in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court without leave of court.

(C) Proceedings shall be initiated by the Counsel for Discipline filing a Formal Charge setting forth the grounds thereof with reasonable definiteness. The Formal Charge shall be filed with the Clerk who shall then docket the cause as an original proceeding in the Court. No initial filing fee shall be charged in these actions.

(D) Upon the filing in the Court of a Formal Charge as contemplated and provided for by these rules against any member, Counsel for Discipline shall prosecute the Formal Charge against the Respondent. If the Court is advised by Counsel for Discipline by written notice or by a motion filed by the Respondent that, for reasons specified therein, a conflict exists or Counsel for Discipline cannot otherwise carry out

such duty, the Court within ten days, in its discretion, may appoint any member to prosecute the Formal Charge.

(E) The Counsel for Discipline or any member so appointed may within thirty days, in his or her discretion, prepare and file an amended Formal Charge. Within five days after the time fixed for filing an amended Formal Charge, service shall be made upon the Respondent as provided for in § 3-310(G).

(F) If the Counsel for Discipline or the member so appointed has in his or her possession evidence which, in his or her opinion, warrants any additional Charge or Charges, the Counsel for Discipline or the member so appointed may incorporate such additional Charge or Charges in the Formal Charge and prosecute the same, despite the fact that they may not have been presented to the Committee on Inquiry or the Disciplinary Review Board.

(G) Service upon the Respondent may be had by serving upon him or her a copy of the Formal Charge or any amended Formal Charge and notice of the time for answer in the same manner as service of summons is had in civil proceedings in the district courts of the State, in which case it shall be proved by the official return of the officer making such service. Service shall be deemed to have been waived if the Respondent shall sign a written receipt for a copy of the Formal Charge and notice. Service may likewise be had by the mailing by the Clerk of a certified copy of said Formal Charge and notice by certified mail, return receipt requested, to the Respondent at his or her last known address; and in that event the official return card of the United States mail, signed by the Respondent, acknowledging receipt of the envelope containing the copy of said Formal Charge and notice, shall be deemed sufficient proof of service. In the event that it shall appear by affidavit that personal service cannot be had upon the Respondent and that letters to the Respondent's last known address are returned unclaimed, service may be had upon the Respondent by publication of notice for two successive weeks in some legal newspaper published in the county wherein the Respondent last resided. Such notice shall state that Formal Charge for disciplinary action has been filed in the Court against the Respondent and shall give the date of filing and the time within which Respondent is required to answer.

(H) The answer of the Respondent shall be filed within thirty days after service of summons and a copy of the Formal Charge or within thirty days after service by publication, as herein provided, shall have been completed. For good cause shown the Court may extend the time to answer.

(I) If no answer be filed within the time limited therefor, or if the answer raises no issue of fact or of law, the matter may be disposed of by the Court on its own motion or on a motion for judgment on the pleadings, but in either case there shall be an opportunity for oral argument prior to entry of an order of disbarment by the Court.

(J) Upon the filing of an answer raising an issue of fact, the Court shall refer the matter to a member as referee. It shall be the duty of such referee to fix an early date for hearing, notify the relator and the Respondent or their respective attorneys of record, and without delay to hear such testimony as may be introduced under the pleadings. The referee shall have all powers of a referee in civil actions in the courts of Nebraska. The referee shall observe the rules of evidence, discovery rules, and motion practice applicable in civil actions in the district courts of the State of Nebraska. The standard of proof in hearings before the referee shall be clear and convincing. The referee shall have a competent reporter present who shall take in shorthand or by any mechanical device and transcribe in typewriting all oral evidence adduced at the hearing had before the referee. The referee may continue the hearing from time to time as circumstances may require, but shall not delay his or her proceedings unless justice and equity so require. The referee shall make a written report within four months of the referee's appointment, unless extended by order of the Court, stating his or her findings of fact and recommendations. The typewritten record of the proceedings shall have attached to it all of the exhibits offered at the hearing, and shall be certified by the referee. The referee shall promptly transmit to the Court the referee's report, together with such record so certified, and shall transmit a copy of the report to the Respondent.

(1) When the transcription of oral evidence, exclusive of exhibits, exceeds 250 pages in length, the reporter shall prepare one or more write-protected 3½-inch computer disks containing the transcription of proceedings. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the reporter. The first line of the label shall be left blank. Such disk(s) shall be transmitted to the Court by the referee at the same time that the typewritten record of proceedings and any attached exhibits are filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any reporter who lacks the technological capability to comply with this requirement shall include in the transcription of oral evidence a separate certificate so stating.

(2) In addition to the written report of the referee, he or she shall also prepare one or more write-protected 3½-inch computer disks, DVD's, or CD's containing the report. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the referee. The first line of the label shall be left blank. The referee shall transmit such disk(s) to the Court at the same time that the referee's written report is filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any referee who lacks the technological capability to comply with this requirement shall include in the report a separate certificate so stating.

(K) Upon the filing of an answer raising an issue of law only, the Court may, in its discretion, refer the matter to a member as referee for such action in relation thereto as the Court may by its order of reference direct.

(L) Within ten days after the filing of the report of the referee, any party thereto may file written exceptions to such report. If no exceptions are filed, the Court, in its discretion, may consider the findings final and conclusive, and on motion shall enter such order as the evidence and law require.

(M) If exceptions be filed to the findings or report of the referee, briefs and arguments shall be filed and oral arguments made in the Court as required by the rules of the Court in civil cases. The party filing exceptions to the findings and report of the referee shall serve and file his or her brief within thirty days after the filing of such report and the brief of the adverse party shall be served and filed within thirty days thereafter. The case shall thereupon be placed upon the Court call for hearing.

(N) The Court may disbar, suspend, censure, or reprimand the Respondent, place him or her on probation, or take such other action as shall by the Court be deemed appropriate. All orders of public discipline shall be forwarded by the Clerk to the membership secretary of the Nebraska State Bar Association.

(O) Any party thereto may file a motion for rehearing at any time within twenty days from the filing of the opinion or rendition of the judgment of the Court.

(P) Costs of these actions may be taxed by the Court as the Court shall see fit.

(Q) The Counsel for Discipline shall prosecute any case referred to him or her by the Court for prosecution.

(R) No application for modification of judgment pursuant to § 3-304 shall be made prior to the expiration of one year after the final order in such proceedings shall have been entered except in cases where the only service upon Respondent has been by publication, and no appearance has been made by Respondent, and except where the application is made under the terms of Neb. Rev. Stat. §§ 25-2001 to 25-2009.

(S) No application for reinstatement from an order of suspension shall be made prior to the expiration of the period of suspension unless otherwise provided by the Court in said order.

(T) No application for reinstatement from an order of disbarment shall be made prior to the expiration of five years after the final order in such proceedings shall have been entered.

(U) A member seeking reinstatement must inform the Counsel for Discipline of all prior discipline taken against him or her in any jurisdiction.

(V) Copies of every such application shall be furnished the Relator, the Counsel for Discipline, the current Chairperson of the Committee on Inquiry for the District which exercised original jurisdiction, and the Chairperson of the Disciplinary Review Board, any one or more of whom may appear and resist such application. Any other persons may likewise appear upon obtaining leave of the Court and make such resistance. Within twenty days thereafter, the Counsel for Discipline and the District Committee on Inquiry, by its Chairperson, shall each file a written statement recommending the application be granted or denied and the reasons therefor. The Court may deny such application without a hearing if justice and equity require it. If the application or the showing in resistance thereto shall require the taking of evidence, the matter may be referred to a referee and the proceedings shall be the same as in the case of original disciplinary proceedings.

Rule 10(H) amended October 30, 1996; Rule 10(D) amended September 11, 2002; Rule 10(J) amended November 14, 2002; Rule 10(B), (C), (I) and (P) amended August 27, 2003; Rule 10(J) amended August 31, 2005. Renumbered and codified as § 3-310, effective July 18, 2008.

§ 3-311. Disability inactive status: Incompetency or incapacity.

(A) Upon a Grievance that a member is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, the appropriate Committee on Inquiry, with the assistance of the Counsel for Discipline, may prepare and submit to the Court an application requesting that the member be placed on disability inactive status. Such application shall be signed by the Chairperson of such Committee, and shall set forth grounds clearly indicating a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under § 3-310(G), except that service may not be accomplished by publication.

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine whether the member is incapacitated from continuing the practice of law, including a direction for an examination of the member by such qualified medical experts as the Court shall designate at the cost of the member.

(D) If, upon due consideration of the matter, the Court concludes the member is incapacitated from continuing to practice law, it shall enter an order placing the member on disability inactive status on the grounds of such disability until further order of the Court, and any pending disciplinary proceeding against the member shall be held in abeyance. Members on disability inactive status shall not be required to pay annual dues or disciplinary assessments to the Nebraska State Bar Association.

(E) If, in the course of a proceeding under this rule, the Court shall determine the member is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of any disciplinary proceedings being held in abeyance.

(F) Any member on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement by filing with the Court an application supported by clear and convincing evidence the member's disability has been removed and the member is capable of resuming the practice of law. Upon such application, the Court may take or direct such actions as it deems necessary and proper to determine if the disability of such member has been removed, including a direction for an examination of the member by such qualified medical experts as the Court shall designate. The Court may direct the expense of such an examination shall be paid by the member.

(G) The filing of an application for reinstatement by a member suspended under this rule shall be deemed to constitute a waiver of any physician-patient privilege with respect to any treatment of the member during the period of his or her disability. The member shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or institution by whom, or in which, the member has been examined or treated since his or her placement on disability inactive status, and the member shall furnish to the Court written consent and waiver to each such person and institution to furnish such information and records as requested by court-appointed medical experts.

Rule 11(B) amended September 11, 2002; Rule 11(H) deleted September 11, 2002. Renumbered and codified as § 3-311, effective July 18, 2008.

§ 3-312. Temporary suspension: Continuing damage to the public and members, nonpayment of support orders, or conviction of a crime.

(A) Upon a Grievance that a member is engaging in conduct that, if allowed to continue until final disposition of disciplinary proceedings, will cause serious damage to the public and members, or upon certification or notice that a member is delinquent on or is failing to pay a court-ordered obligation under a support order, or when a member has been convicted of a serious crime, the appropriate Committee on Inquiry with the assistance of the Counsel for Discipline may prepare and submit to the Court an application for the temporary suspension of the member from the practice of law until final disposition of any pending disciplinary proceedings. Such application shall be signed by the Chairperson of the Committee and shall set forth grounds clearly indicating that a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application for temporary suspension, the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under § 3-310(G).

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine if the member should be suspended pending the final disposition of the disciplinary proceedings.

(D) If, upon due consideration of the matter, the Court concludes the member should be suspended pending final disposition of the disciplinary proceedings, it shall enter an order suspending the member until the further order of the Court.

(E) Any member suspended under the provisions of this rule shall be entitled to apply for termination of the temporary suspension by filing with the Court an application supported by clear and convincing evidence that the member is no longer engaging in conduct which, if allowed to continue until final disposition of any disciplinary proceedings, would cause serious continuing damage to the public and members, and that there is no reasonable likelihood that such conduct will recur.

(F) Any temporary suspension order issued under this rule shall automatically terminate at the final disposition of the disciplinary proceedings or upon application to and order of the Court that the reason for the temporary suspension of the member no longer exists.

Rule 12 amended September 9, 1999; Rule 12(B) amended September 11, 2002. Renumbered and codified as § 3-312, effective July 18, 2008.

§ 3-313. Conditional admission of grievance, complaint, or formal charge.

(A) At any time prior to the Clerk's entering a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of a Grievance or of a Complaint in exchange for a stated form of consent judgment of discipline as to all or a part of the Grievance or Complaint pending against him or her as determined to be appropriate by the Counsel for Discipline and the appropriate Committee on Inquiry; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(C) No publicity will be given to any such conditional admission of a Grievance, Complaint, or Formal Charge described in § 3-313(A) and (B) until approval of the conditional admission by the Court.

Rule 13(A) - (C) amended January 24, 2002. Renumbered and codified as § 3-313, effective July 18, 2008.

§ 3-314. Right of appeal.

(A) Complainant may appeal to the Disciplinary Review Board a dismissal of the Grievance by the Counsel for Discipline. Allegations of misconduct dismissed by the Counsel for Discipline pursuant to § 3-309(C) are not appealable to the Committee on Inquiry or the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of such dismissal. Said Board may then take such action as it deems appropriate.

(B) In cases where the Counsel for Discipline prepares a Complaint and files it with the appropriate Committee on Inquiry pursuant to § 3-309(G), the Counsel for Discipline shall notify the Complainant by mail of the findings of the Committee on Inquiry.

(C) If the Committee on Inquiry Panel dismisses the Complaint pursuant to § 3-309(H), the Counsel for Discipline may appeal the decision to the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of the dismissal of the Complaint by the Committee on Inquiry. In the

event of an appeal, the Chairperson of the Disciplinary Review Board shall obtain from such Committee on Inquiry the Complaint, investigative file of the Counsel for Discipline, and any report prepared by the Committee.

(D) Either the Respondent or the Counsel for Discipline may appeal to the Disciplinary Review Board a reprimand issued to the Respondent by the Committee on Inquiry upon written application filed with the Chairperson of the Disciplinary Review Board within thirty days of issuance of the reprimand. Either the Respondent or the Counsel for Discipline may appeal to the Court the action of the Disciplinary Review Board.

Rule 14(A), (C), and (D) amended Dec. 13, 1995; Rule 14(A) amended February 28, 2001. Renumbered and codified as § 3-314, effective July 18, 2008.

§ 3-315. Voluntary surrender of license.

(A) Once a Grievance, a Complaint, or a Formal Charge has been filed, suggested, or indicated against a member, the member may voluntarily surrender his or her license.

(1) The voluntary surrender of license shall state in writing that the member knowingly admits or knowingly does not challenge or contest the truth of the suggested or indicated Grievance, Complaint, or Formal Charge and waives all proceedings against him or her in connection therewith.

(2) A voluntary surrender of license shall not terminate such Grievance, Complaint, or Formal Charge unless an appropriate order is entered by the Court.

Rule 15 amended March 14, 2001. Renumbered and codified as § 3-315, effective July 18, 2008.

§ 3-316. Notification requirements by disbarred or suspended members.

(A) Whenever a member is disbarred or suspended from the practice of law or surrenders his or her license under § 3-315, such member shall:

(1) Notify in writing all of the member's present clients of such fact, and

(2) Assist each client in obtaining a member of the client's choice to complete all matters being handled by him or her, and

(3) Promptly refund all client funds and close all attorney trust accounts if the imposed sanction is greater than a 30-day suspension. A trust account may remain open if, after a reasonable search, the client or clients eligible to receive funds cannot be located, and

(4) Notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the member of his or her altered status, and

(5) Return to the Clerk the member's Nebraska State Bar Association membership card.

(6) Within thirty days from the date of said disbarment, suspension, or voluntary surrender, file an affidavit with the Court, stating full compliance with the requirements of this rule and shall simultaneously submit evidence of full compliance.

(7) Every order (judgment) of disbarment or suspension shall direct the Respondent to comply with § 3-316.

(8) The Clerk shall notify the Court, in writing, of the compliance or noncompliance of the Respondent with § 3-316. Noncompliance shall be contempt of court.

Rule 16 amended November 10, 2004. Renumbered and codified as § 3-316, effective July 18, 2008.

§ 3-317. Subpoena power.

(A) For investigative purposes, the Counsel for Discipline shall be empowered to issue writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska requiring the attendance and testimony of witnesses and parties and the production of records, books, and documents; to administer oaths to parties and witnesses; to take their sworn testimony or their unsworn statements; and to certify to the Court for appropriate action by the Court any refusal of a witness or party to comply with the requirements of a subpoena or subpoena duces tecum to testify, answer questions, or produce records, books, or documents.

(B) Such subpoena, including subpoena duces tecum described in this rule, may be served by certified mail, return receipt requested, by the Sheriff of any County of the State of Nebraska or by any person authorized by the Counsel for Discipline to do so.

(C) Any Respondent shall have the right to request writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska, by a written request therefor to the Referee, prior to ten days of any hearing. The Referee, with the assistance of the Clerk, shall, immediately, issue such subpoena or subpoena duces tecum and cause the same to be served in the same manner as provided in paragraph (B) of this rule; provided the testimony and evidence to be produced as a result of said subpoena or subpoena duces tecum shall be reasonably relevant and material to the matters on hearing. With said request the Respondent shall submit the last known address of the witnesses together with the witness and mileage fees for such witnesses in the same amount as are paid for witnesses in the district courts of Nebraska.

(D) Prior to the appointment of a Referee, the Disciplinary Review Board may quash or modify the subpoena if it is unreasonable or oppressive. The Referee, upon appointment, shall assume such authority.

Rule 17(B) amended November 12, 1997. Renumbered and codified as § 3-317, effective July 18, 2008.

§ 3-318. Publicity of disciplinary proceedings and sequestration of witnesses.

(A) The hearings, records, or proceedings of the Counsel for Discipline, the Committee on Inquiry, and the Disciplinary Review Board are confidential and shall not be made public except that the pendency, subject matter, and status of an investigation may be disclosed by the Committee on Inquiry involved or the Disciplinary Review Board if

(1) the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or

(2) the proceeding is based upon conviction of a crime.

(B) Unless the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceedings, willful violation of this rule shall be grounds for discipline.

(C) This rule is not intended to prohibit the exchange of confidential information with other agencies authorized by the Court to receive such information.

(D) The following provisions regarding the confidentiality of various disciplinary pleadings filed in the Supreme Court shall apply:

| TYPE OF PLEADING FILED | BECOMES PUBLIC RECORD |
|---|---|
| (1) Formal Charges. | Upon filing. |
| (2) Application for Disability Inactive Status based upon competency or incapacity pursuant to § 3-311. | Shall not be made public until status is entered by the Court. If Application is denied, the case remains confidential. |
| (3) Application for Reinstatement pursuant to § 3-311. | Upon filing. |
| (4) Application for Temporary Suspension based upon continuing damage to the public or conviction of a serious crime. | Upon filing. |
| (5) Application for Reinstatement after Temporary Suspension due to § 3-312. | Upon filing. |
| (6) Conditional Admission of Complaint or Formal Charges. | Remains confidential until the Court approves the Conditional Admission. |
| (7) Appeal of Disciplinary Review Board decision to issue Private reprimand. | Remains confidential unless Formal Charges are entered with the Court. |
| (8) Voluntary Surrender of License. | Upon filing. |

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| (9) Application for Reinstatement after Suspension or Disbarment. | Upon filing. |
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(E) The Counsel for Discipline may release confidential information to the Client Assistance Fund Claims Board of the Nebraska State Bar Association as needed to further the work of the Claims Board. Such information shall not be made public other than as necessary to discharge the duties of the Claims Board.

Rule 18(E) amended October 31, 2001. Renumbered and codified as § 3-318, effective July 18, 2008.

§ 3-319. Termination of disciplinary proceedings.

Neither unwillingness nor neglect of the Complainant to sign a Grievance or to assist in the prosecution of the Complaint, nor settlement, compromise, or restitution, shall, in itself, justify termination of any disciplinary proceedings.

§ 3-320. Related civil or criminal litigation.

(A) Similarity of the substance of a Grievance, Complaint, or Formal Charge to the material allegations of pending criminal or civil litigation shall not in itself prevent or delay disciplinary proceedings against the member involved in such litigation.

(B) The acquittal of the member on criminal charges or a verdict or judgment in the member's favor in civil litigation involving material allegations similar in substance to a Grievance, Complaint, or Formal Charge shall not in and of itself justify termination of disciplinary proceedings predicated upon the same or substantially the same material allegations.

§ 3-321. Reciprocal discipline.

(A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, suspend the member pending the imposition of final discipline in such other jurisdiction.

(B) In the event the discipline imposed in the other jurisdiction has been stayed, the entry of an order pursuant to the provisions of § 3-321(A) shall be deferred until such stay expires.

Rule 21(A) amended June 25, 1997. Renumbered and codified as § 3-321 effective July 18, 2008.

§ 3-322. Immunity and privileges.

(A) Reports of alleged misconduct and Grievances submitted to the Counsel for Discipline, Committees on Inquiry, and the Disciplinary Review Board or testimony with respect thereto are confidential and shall be absolutely privileged and no lawsuit predicated thereon may be instituted.

(B) The Counsel for Discipline, his or her representatives, and members of the Disciplinary Review Board, Committees on Inquiry, and Advisory Committee; the director and any members of the Nebraska Lawyer's Assistance Program; and all others (whether or not members of the Association) whose assistance is requested by any of the foregoing in connection with the enforcement of these rules shall be immune from suit for any conduct in the course of their official duties under these rules.

(C) The Complainant and all witnesses shall be immune from suit for any testimony given in the course of any proceedings under these rules.

§ 3-323. Expenses.

(A) Actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry or the Disciplinary Review Board in connection with any investigations or Inquiries, as provided by these rules and incurred prior to the filing of the Formal Charge in the Court, shall be paid by the Office of the Counsel for Discipline. If a private reprimand is issued to a member, the Court may enter judgment in favor of the Office of the Counsel for Discipline, for such costs and expenses upon request of and proof by the Counsel for Discipline.

(B) Upon request of and proof by the Counsel for Discipline, a disciplined member shall be required to reimburse the Office of the Counsel for Discipline for the actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry, or the Disciplinary Review Board in connection with any investigations, hearings, or proceedings leading to the imposition of a sanction, if the disciplinary action is heard by the Nebraska Supreme Court. The Court may enter judgment for court costs and costs and expenses approved by the Court.

§ 3-324. Rules are cumulative.

These rules shall be cumulative and not exclusive.

§ 3-325. Eligibility to serve on board or committee.

In determining eligibility to serve on any board or committee under these rules, an individual may be considered a resident of the district in which the individual either lives or maintains law offices. Provided, however, such offices must be the principal office for such individual and not merely a satellite office.

Rule 25 adopted November 23, 1994. Renumbered and codified as § 3-325, effective July 18, 2008.

§ 3-326. Lawyers convicted of a crime.

(A) For the purposes of Inquiry of a Complaint or Formal Charges filed as a result of a finding of guilt of a crime, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime, and the sole issue in any such Inquiry should be the nature and extent of the discipline to be imposed.

(B) A lawyer shall promptly notify the Counsel for Discipline if he or she is found guilty of a serious crime and must provide proof of that adjudication.

Rule 26 adopted September 13, 1995. Renumbered and codified as § 3-326, effective July 18, 2008.

§ 3-327. Effective date.

The amendments to these rules shall become effective on January 1, 2001. Formal Charges under review by the Disciplinary Review Board on the above-mentioned date shall be immediately forwarded and filed with the Clerk. Charges pending before the Committees on Inquiry on the above-mentioned date that have not been the subject of an Inquiry shall proceed in accordance with these rules. Appeals pending before the Committees on Inquiry on the above-mentioned date shall proceed as if under the former rules with the exception that there shall not be an additional appeal to the Disciplinary Review Board.

§ 3-328. Appointment of a trustee.

In addition to any of the foregoing procedures within these rules relating to disability inactive status, disbarment, or suspension of an attorney, the following measures may be taken for the protection of client interests:

(A) Appointment of a Trustee. If an attorney (i) has been suspended by an order of the Court placing the member on disability inactive status pursuant to § 3-311; (ii) is shown to be unable to properly discharge his or her responsibilities to clients due to disability, disappearance, death, or abandonment of a law practice and there is no showing that an arrangement has been made for another lawyer to discharge the responsibilities; or (iii) has been disbarred or suspended pursuant to §§ 3-310 or 3-312 or has surrendered his or her license under § 3-315 and there has been a failure to comply with § 3-316 client notification requirements, the Court may appoint a lawyer to serve as trustee to inventory the files, sequester client funds, and take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(1) Trustee Bound by Lawyer-Client Privilege. The trustee should be bound by the lawyer-client privilege with respect to the records of individual clients, except to the extent necessary to carry out the order of the Court.

(2) The trustee shall notify in writing all of the present clients of the disbarred or suspended member of the fact of such disbarment or suspension and shall also notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the disbarred or suspended member of his or her altered status.

(3) The trustee shall receive compensation for his or her services as established by the Court and may be reimbursed for travel and other expenses incidental to the performance of his or her duties.

Rule 28 adopted September 11, 2002. Renumbered and codified as § 3-328, effective July 18, 2008.

Disciplinary Rules amended September 27, 1995; Disciplinary Rule amended October 17, 2000, effective January 1, 2001. Renumbered and codified as § 3-301 to 3-328, effective July 18, 2008.