

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

(A) Status requested by Committee on Inquiry. Upon a Grievance or other information indicating 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) Status requested by a member. A member who is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, may request that the member be placed on disability inactive status. Such application shall be signed by the member and shall set forth grounds clearly indicating that the member should be placed on disability inactive status. The application and any documents shall be submitted by the member to the Attorney Services Division as provided in Neb. Ct. R. § 3-803(B)(2). The Administrator of Attorney Services shall provide notice of the application to the Counsel for Discipline and thereafter submit the application and all documents to the Clerk of the Supreme Court and Court of Appeals for filing. The member shall have the same rights of representation as set forth in § 3-311(B).

(D) 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.

(E) 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 mandatory membership assessments required by Neb. Ct. R. § 3-803(D).

(F) 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.

(G) Any member on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement by submitting to the Attorney Services Division 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. The Administrator of Attorney Services shall provide notice of the application to the Counsel for Discipline and thereafter submit the application and supporting documents to the Clerk of the Supreme Court and Court of Appeals for filing. 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.

(H) The filing of an application for reinstatement by a member placed on disability inactive status 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. § 3-311(D) amended December 3, 2013, effective January 1, 2014; § 3-311 amended July 2, 2014; § 3-311(A), (C), (G), (H) amended March 25, 2020.*

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