A BILL TO BE ENTITLED
AN ACT TO ASSIGN THE DUTY OF INVESTIGATING AND RESOLVING INQUIRIES
CONCERNING THE QUALIFICATION OR CONDUCT OF JUDGES AND JUSTICES
TO THE STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 30 of Chapter 7A is repealed.

SECTION 2. G.S. 84-23(a) reads as rewritten:

(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article, take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals. The Council shall formulate and adopt rules of professional ethics and conduct for lawyers and State Bar certified paralegals. The Council shall investigate and prosecute matters of professional misconduct for lawyers and State Bar certified paralegals as provided in Article 5 of this Chapter. The Council shall grant or deny petitions for reinstatement. The Council shall resolve questions pertaining to membership status. The Council shall arbitrate disputes concerning legal fees. The Council shall certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs. The Council shall determine whether a member is disabled. The Council shall maintain an annual registry of interstate and international law firms doing business in this State. The Council shall investigate and resolve inquiries concerning the qualifications and conduct of any judge or justice of the General Court of Justice as provided in Article 5 of this Chapter. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17."
and formulate procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 3. Chapter 84 of the General Statutes is amended by adding a new Article to read:

"Article 5.  Investigation and Discipline."

SECTION 4. G.S. 84-28 through G.S. 84-32.1 and G.S. 84-36 through G.S. 84-37 are recodified in Article 5 of Chapter 84 as created in Section 3 of this act as G.S. 84-40 through G.S. 84-50 respectively.

SECTION 5. G.S. 84-40 as recodified in Section 4 of this act reads as rewritten:

"§ 84-40.  Discipline and disbarment. Investigation and discipline of judges and attorneys.

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided in G.S. 84-23. Any judge or justice of the General Court of Justice is subject to the disciplinary jurisdiction of the Council under the North Carolina Code of Judicial Conduct as adopted by the Supreme Court and under the procedures adopted by the Council."

SECTION 6. G.S. 84-43, as recodified in Section 4 of this act, reads as rewritten:

"§ 84-43.  Evidence and witnesses.

In any investigation concerning the qualifications and conduct of any judge or justice of the General Court of Justice or of charges of professional misconduct or disability or in petitions for reinstatement, reinstatement for attorneys, the Council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the Council or the chair of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the Council or its committee or a hearing committee of the disciplinary hearing commission through its chair pursuant to the procedures set out in Chapter 5A of the General Statutes, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the Council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the Council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the Council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted of the charges, the party shall be taxed with the cost of the hearings: Provided, however, that the bill of costs shall not include any compensation to the members of the Council or committee before whom the hearings are conducted."

SECTION 7. Article 5 of Chapter 84 as enacted by Section 3 of this act is amended by adding three new sections to read:

"§ 84-51.  Definitions.

With regard to any investigation concerning the qualifications and conduct of any judge or justice of the General Court of Justice conducted under this Article and unless the context clearly requires otherwise, the following definitions shall apply throughout this Article:
Censure. – A finding by the Supreme Court, based upon a written recommendation by the Council thereof, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

Council. – The government of the North Carolina State Bar as provided in G.S. 84-17 and includes any committee or the disciplinary hearing commission thereof.

Incapacity. – Any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

Investigation. – The gathering of information with respect to alleged misconduct or disability.

Judge. – Any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.

Letter of caution. – A written action of the Council that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

Public reprimand. – A finding by the Supreme Court, based upon a written recommendation by the Council that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor. A public reprimand may require that the judge follow a corrective course of action.

Removal or removal. – A finding by the Supreme Court, based upon a written recommendation by the Council that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

Suspend or suspension. – A finding by the Supreme Court, based upon a written recommendation by the Council that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court.

§ 84-52. Grounds for discipline by Council; public reprimand, censure, suspension, or removal by the Supreme Court.

(a) The Council, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of caution.

(b) Upon recommendation of the Council, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Council, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for
physical or mental incapacity interfering with the performance of the judge's duties which is, or
is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue
to receive compensation during the period of the suspension. A judge removed for mental or
physical incapacity is entitled to retirement compensation if the judge has accumulated the years
of creditable service required for incapacity or disability retirement under any provision of State
law, but that retired judge shall not sit as an emergency justice or judge.

"§ 84-53. Procedures.

(a) Any citizen of the State may file a written complaint with the Council concerning the
qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon
the Council shall make such investigation as it deems necessary. The Council may also make an
investigation on its own motion. The Council shall not make an investigation, whether initiated
upon its own motion or by written complaint of a citizen of this State, when the motion or
complaint is based solely upon a superior court judge's legal ruling and that legal ruling has not
yet been reviewed and ruled upon by either the North Carolina Court of Appeals or the North
Carolina Supreme Court.

(a1) The Council thereof may issue process to compel the attendance of witnesses and the
production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall
be recommended for public reprimand, censure, suspension, or removal unless that judge or
justice has been given a hearing affording due process of law.

(b) Unless otherwise waived by the justice or judge involved, all papers filed with and
proceedings before the Council, including any investigation that the Council may make, are
confidential, and no person shall disclose information obtained from proceedings or papers filed
with or by the Council, except as provided herein. Those papers are not subject to disclosure
under Chapter 132 of the General Statutes.

(c) Information submitted to the Council or its staff, and testimony given in any
proceeding before the Council, shall be absolutely privileged, and no civil action predicated upon
that information or testimony may be instituted against any complainant, witness, or his or her
counsel.

(d) If, after an investigation is completed, the Council concludes that a letter of caution
is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the
matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of
this section.

(e) If, after an investigation is completed, the Council concludes that disciplinary
proceedings should be instituted, the notice and statement of charges filed by the Council, along
with the answer and all other pleadings, remain confidential. Disciplinary hearings ordered by
the Council are confidential, and recommendations of the Council to the Supreme Court, along
with the record filed in support of such recommendations are confidential. Testimony and other
evidence presented to the Council is privileged in any action for defamation. At least five
members of the Council must concur in any recommendation to issue a public reprimand,
censure, suspend, or remove any judge. A respondent who is recommended for public reprimand,
censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the
Supreme Court, and if the respondent has objections to it, to have the record settled by the
Council's chair. The respondent is also entitled to present a brief and to argue the respondent's
case, in person and through counsel, to the Supreme Court. A majority of the members of the
Supreme Court voting must concur in any order of public reprimand, censure, suspension, or
removal. The Supreme Court may approve the recommendation, remand for further proceedings,
or reject the recommendation. A justice of the Supreme Court or a member of the Council who
is a judge is disqualified from acting in any case in which he is a respondent.

(f) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme
Court, the notice and statement of charges filed by the Council along with the answer and all
other pleadings, and recommendations of the Council to the Supreme Court along with the record
filed in support of such recommendations, are no longer confidential.

(g) The Council may issue advisory opinions to judges, in accordance with rules and
procedures adopted by the Council.

(h) The Council has the same power as a trial court of the General Court of Justice to
punish for contempt, or for refusal to obey lawful orders or process issued by the Council."

SECTION 8. The authority, powers, duties and functions, records, personnel,
property, and unexpended balances of appropriations, allocations, or other funds, including the
functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement
functions of the Judicial Standards Commission are transferred as a Type I transfer to the Council
of the North Carolina Bar.

SECTION 9. This act becomes effective January 1, 2020. Any ongoing inquiry into
the conduct and qualifications of any judge or justice of the General Court of Justice pending
before the Judicial Standards Commission on December 31, 2019, shall not be affected by any
provision of this act, but the same may be prosecuted or defended in the name of the Council of
the North Carolina Bar. In these actions and proceedings, the Council of the North Carolina Bar
shall be substituted as a party upon proper application to the courts or other administrative or
quasi-judicial bodies. Prosecutions for offenses or violations committed before January 1, 2020,
are not abated or affected by this act, and the statutes that would be applicable but for this act
remain applicable to those prosecutions. Rules adopted by the Judicial Standards Commission
shall remain in effect unless subsequently modified by the Council.