

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 790
Judiciary Committee Substitute Adopted 5/14/24

Short Title: State Bar Review Committee Recommendations.

(Public)

Sponsors:

Referred to:

May 2, 2024

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA STATE BAR TO PROVIDE CERTAIN INFORMATION TO A RESPONDENT ATTORNEY WHEN DISCIPLINARY ACTION HAS BEEN RECOMMENDED, TO ALLOW A RESPONDENT ATTORNEY TO ADDRESS THE GRIEVANCE COMMITTEE AND TO HEAR THE OFFICE OF COUNSEL'S PRESENTATION TO THE COMMITTEE, TO IMPLEMENT A VEXATIOUS CONDUCT STANDARD FOR COMPLAINANTS FILING GRIEVANCES BEFORE THE NORTH CAROLINA STATE BAR, TO DEFINE A STANDING REQUIREMENT FOR THE FILING OF GRIEVANCES, TO DIRECT THE NORTH CAROLINA STATE BAR TO ADOPT RULES TO IMPLEMENT AN EXPUNGEMENT PROCESS FOR CERTAIN DISCIPLINARY ACTIONS, AND TO ALLOW THE NORTH CAROLINA STATE BAR TO ADOPT RULES TO IMPLEMENT THIS ACT, AS RECOMMENDED BY THE STATE BAR REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 84-28 reads as rewritten:

"§ 84-28. Discipline and disbarment.

(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.

(a1) If the North Carolina State Bar serves a letter of notice alleging attorney misconduct upon a respondent attorney, the North Carolina State Bar shall, upon the request of the respondent attorney, provide the respondent attorney with a complete copy of the complaint, including supporting materials submitted with the complaint. For complaints submitted by an attorney or judge pursuant to the obligation to report misconduct in accordance with the Rules of Professional Conduct, the North Carolina State Bar may redact the complainant's identifying information.

(a2) If the North Carolina State Bar's Office of Counsel recommends disciplinary action against a respondent attorney, the North Carolina State Bar shall, pursuant to rules adopted by the Council, provide the attorney with the following:

(1) All non-privileged, non-work product material and financial audits provided to the Grievance Committee in the respondent attorney's matter, and any evidence in the North Carolina State Bar's possession which indicates the respondent attorney did not engage in the alleged misconduct, or a certification that no such evidence is in the North Carolina State Bar's possession. The materials provided pursuant to this section shall be provided



1 at least 30 days prior to the Grievance Committee's consideration of the Office
2 of Counsel's recommendation.

3 (2) An opportunity to address the Grievance Committee or a subcommittee
4 thereof and to hear the Office of Counsel's presentation of the factual basis for
5 its recommendation.

6 ...

7 (h) There shall be an appeal of right by either party from any final order of the
8 Disciplinary Hearing Commission to the North Carolina Court of Appeals. Review by the
9 appellate division shall be upon matters of law or legal inference. The procedures governing any
10 appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which
11 imposes disbarment or suspension for 18 months or more shall not be stayed except upon
12 application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order
13 imposing suspension for less than 18 months or any other discipline except disbarment shall be
14 stayed pending determination of any appeal of right.

15"

16 **SECTION 1.(b)** G.S. 84-28.1(b) reads as rewritten:

17 "(b) The disciplinary hearing commission of the North Carolina State Bar, or any
18 committee of the disciplinary hearing commission, may hold hearings in discipline, incapacity
19 and disability matters, make findings of fact and conclusions of law after these hearings, enter
20 orders necessary to carry out the duties delegated to it by the Council, and tax the costs to an
21 attorney who is disciplined or is found to be incapacitated or ~~disabled~~-disabled, and comply with
22 the requirements of this Chapter."

23 **SECTION 1.(c)** Article 4 of Chapter 84 of the General Statutes is amended by adding
24 a new section to read:

25 **§ 84-28.3. Vexatious complainants.**

26 (a) The chair of the Grievance Committee may designate a person a vexatious
27 complainant if the complainant has initiated grievances to the North Carolina State Bar alleging
28 attorney misconduct that even if proven, would fail to constitute a violation of the Rules of
29 Professional Conduct, or if available evidence conclusively disproves the allegations, in a manner
30 and volume that amounts to an abuse of the bar disciplinary process. An "abuse of the bar
31 disciplinary process" includes inappropriate, repetitive, or frivolous actions or communications
32 by the complainant, but goes beyond conduct that is merely contentious or unsuccessful. The
33 North Carolina State Bar will mail a notice of the designation to the complainant at the
34 complainant's last known address. If the complainant does not request review of the designation
35 pursuant to subsection (b) of this section, the designation by the chair of the Grievance
36 Committee shall be final and not subject to further review.

37 (b) A complainant designated as vexatious may seek review of the designation by filing
38 a request for review with the chair of the Disciplinary Hearing Commission within 30 days of
39 the mailing of the notice issued under subsection (a) of this section. The Office of Counsel may
40 file a response to the complainant's request for review. Based upon the written submissions by
41 the complainant and the Office of Counsel, the chair of the Disciplinary Hearing Commission
42 may either uphold or vacate the designation. Notwithstanding subsection (h) of G.S. 84-28, a
43 designation as vexatious under this section shall be final and conclusive and not subject to review
44 or reversal.

45 (c) The Office of Counsel may decline to review and process any subsequent grievances
46 from a person designated as vexatious, unless the grievance is submitted with a verification
47 signed by the complainant that the allegations are true under the penalty of perjury, and the
48 grievance is submitted on the complainant's behalf by a member of the North Carolina State Bar
49 who (i) has an active license, (ii) is not currently designated as a vexatious complainant, and (iii)
50 is not currently the respondent in a pending grievance investigation or the defendant in a
51 disciplinary proceeding. If the vexatious complainant is an attorney licensed to practice law in

1 this State, the grievance must be submitted on the vexatious complainant's behalf by a member
2 of the North Carolina State Bar who (i) has an active license, (ii) is not designated as a vexatious
3 complainant, and (iii) is not currently the respondent in a pending grievance investigation or the
4 defendant in a disciplinary proceeding."

5 **SECTION 1.(d)** Article 4 of Chapter 84 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 84-28.4. Standing requirements to file grievance.**

8 (a) To be considered by the North Carolina State Bar, a grievance must allege conduct
9 that, if true, constitutes attorney misconduct by violation of this Chapter or under the Rules of
10 Professional Conduct and be filed by any of the following:

11 (1) An attorney or judge pursuant to their obligation to report misconduct in
12 accordance with the Rules of Professional Conduct.

13 (2) A judge, attorney, court staff member, juror, party, or client in the legal matter
14 that is the subject of the grievance.

15 (3) A person who has a cognizable interest in or connection to the legal matter or
16 facts alleged in the grievance, or that person's representative.

17 (b) The North Carolina State Bar shall have the ability to open and investigate grievances
18 upon its own initiative, if facts alleging attorney misconduct are discovered by the North Carolina
19 State Bar."

20 **SECTION 1.(e)** The North Carolina State Bar may adopt rules to implement this
21 section.

22 **SECTION 2.(a)** The North Carolina State Bar shall adopt temporary rules to
23 implement an expungement process for certain disciplinary actions against respondent attorneys
24 by the State Bar by October 31, 2024, and permanent rules by January 31, 2025. The North
25 Carolina State Bar shall follow the recommendations by the State Bar Review Committee in
26 drafting these rules.

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

28 "(a) The Council is vested, as an agency of the State, with the authority to regulate the
29 professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers,
30 the Council shall administer this Article; take actions that are necessary to ensure the competence
31 of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and
32 conduct; investigate and prosecute matters of professional misconduct; expunge disciplinary
33 actions; grant or deny petitions for reinstatement; resolve questions pertaining to membership
34 status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge
35 fees to applicants and participants necessary to administer these certification programs;
36 determine whether a member is disabled; maintain an annual registry of interstate and
37 international law firms doing business in this State; and formulate and adopt procedures for
38 accomplishing these purposes. The Council may do all things necessary in the furtherance of the
39 purposes of this Article that are not otherwise prohibited by law."

40 **SECTION 3.** This act is effective August 1, 2024, and applies to grievances filed on
41 or after that date.