

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS15421-NBz-168B

Short Title: State Bar Review Committee Recommendations. (Public)

Sponsors: Senators Sawrey and Lee (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT A VEXATIOUS CONDUCT STANDARD FOR
3 COMPLAINANTS FILING GRIEVANCES BEFORE THE NORTH CAROLINA STATE
4 BAR, TO DEFINE A STANDING REQUIREMENT FOR THE FILING OF
5 GRIEVANCES, TO DIRECT THE NORTH CAROLINA STATE BAR TO ADOPT
6 RULES TO IMPLEMENT AN EXPUNGEMENT PROCESS FOR CERTAIN
7 DISCIPLINARY ACTIONS, AND TO DIRECT THE NORTH CAROLINA STATE BAR
8 TO ADOPT RULES TO IMPLEMENT THIS ACT, AS RECOMMENDED BY THE
9 STATE BAR REVIEW COMMITTEE.

10 The General Assembly of North Carolina enacts:

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

12 "§ 84-28. Discipline and disbarment.

13 (a) Any attorney admitted to practice law in this State is subject to the disciplinary
14 jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided
15 in G.S. 84-23.

16 (a1) If the North Carolina State Bar serves a letter of notice alleging attorney misconduct
17 upon a respondent attorney, the North Carolina State Bar shall include a copy of the complaint,
18 all non-privileged and non-work product material, financial audits, and exculpatory evidence that
19 is presented to the Grievance Committee. If work product of the North Carolina State Bar
20 contains exculpatory evidence, then the work product containing exculpatory evidence shall be
21 provided to the respondent attorney. If the North Carolina State Bar does not possess any
22 exculpatory evidence at the time the letter of notice is sent, then the North Carolina State Bar
23 shall certify that it does not possess exculpatory evidence.

24 (a2) The respondent attorney shall be provided an opportunity to address the Grievance
25 Committee at the initial hearing conducted to determine whether there is probable cause to
26 believe a respondent is guilty of misconduct justifying disciplinary action and to hear the Office
27 of Counsel's presentation of the respondent attorney's case to the Grievance Committee.

28 ...

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



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

"§ 84-28.3. Vexatious complainants.

(a) The Office of Counsel and chair of the Grievance Committee may designate a person a vexatious complainant if the complainant has initiated grievances to the North Carolina State Bar alleging attorney misconduct that even if proven, would fail to constitute a violation of the Rules of Professional Conduct, or if available evidence conclusively disproves the allegations, in a manner and volume that amounts to an abuse of the bar disciplinary process. An "abuse of the bar disciplinary process" includes inappropriate, repetitive, or frivolous actions or communications by the complainant, but goes beyond conduct that is merely contentious or unsuccessful. The Office of Counsel will mail a notice of the designation to the complainant at the complainant's last known address.

(b) A complainant designated as vexatious may seek review of the designation by filing a request for review with the chair of the Disciplinary Hearing Commission within 30 days of the mailing of the notice issued under subsection (a) of this section. The Office of Counsel may file and serve an answer to the complainant's request for review. Based upon the written submissions by the complainant and the Office of Counsel, the chair of the Disciplinary Hearing Commission may either concur in the decision of the Office of Counsel and the chair of the Grievance Committee or remand the matter to the Office of Counsel and the chair of the Grievance Committee for further consideration. If the chair of the Disciplinary Hearing Commission concurs with the prior decision, the designation remains in place. If the matter is remanded, the Office of Counsel and the chair of the Grievance Committee may affirm or vacate their decision. Upon remand, the designation remains in place until the matter is resolved. Notwithstanding subsection (h) of G.S. 84-28, a designation as vexatious under subsection (a) of this section shall be final and conclusive and not subject to review or reversal except by the North Carolina State Bar itself, in accordance with the rights of review under this subsection.

(c) The Office of Counsel may decline to review and process any subsequent grievances from a person designated as vexatious, unless the grievance is submitted with a verification signed by the complainant that the alleged misconduct is true under the penalty of perjury, and the grievance is submitted on the complainant's behalf by a member of the North Carolina State Bar who has an active license and is not currently the respondent in disciplinary proceedings before the North Carolina State Bar. If the vexatious complainant is an attorney licensed to practice law in this State, the grievance must be submitted on the vexatious complainant's behalf by a member of the North Carolina State Bar who (i) has an active license, (ii) is not designated as a vexatious complainant, and (iii) is not currently the respondent in disciplinary proceedings before the North Carolina State Bar."

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

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

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

- (1) An attorney or judge pursuant to their obligation to report misconduct in accordance with the Rules of Professional Conduct.
- (2) A judge, attorney, court staff member, or juror in the legal matter that is the subject of the grievance.
- (3) A family member of a ward in a guardianship proceeding that is the subject of the grievance.
- (4) A family member of a decedent in a probate matter that is the subject of the grievance.

- 1 (5) A trustee of a trust or an executor of an estate if the matter that is the subject
- 2 of the grievance relates to the trust or estate.
- 3 (6) A trustee in a bankruptcy that is the subject of the grievance.
- 4 (7) A person who has a cognizable individual interest in or connection to the legal
- 5 matter or facts alleged in the grievance.

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

9 **SECTION 2.(a)** The North Carolina State Bar (State Bar) shall adopt permanent
10 rules to implement an expungement process for certain disciplinary actions against respondent
11 attorneys by the State Bar. The State Bar shall follow the recommendations by the State Bar
12 Review Committee in drafting these rules.

13 **SECTION 2.(b)** The State Bar may adopt rules to implement Section 1 of this act.

14 **SECTION 2.(c)** This section is effective when it becomes law.

15 **SECTION 3.** Except as otherwise provided, this act becomes effective July 1, 2024.