

NORTH CAROLINA STATE BAR  
GRIEVANCE REVIEW COMMITTEE  
HISTORY

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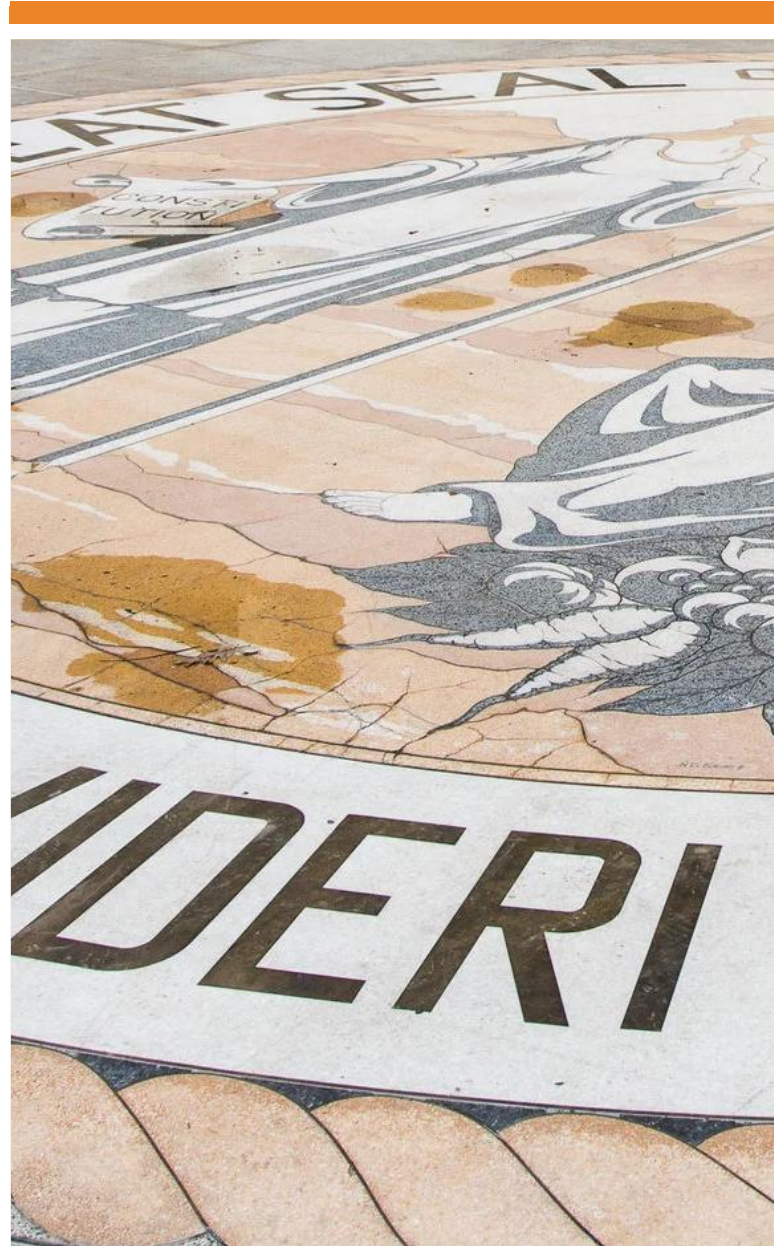
# TOPICS

SL 2022-61 (H869) – State Bar Grievance Process/Ethics Records

SL 2023-134 (H259) Creation of the Committee

SL 2024-25 (S790) State Bar Review Committee Recommendations

SL 2025-4 (H74) Revival of the Committee



# SL 2022-61 (H869) – Creation of the Grievance Review Panel

The General Assembly passed H869 in July 2022, and it was implemented that year by the State Bar. The act established the grievance review panel of the grievance committee, which consists of five members who review certain grievance committee actions that would impose public discipline upon an attorney respondent.

The State Bar adopted NCAC Rules to implement this process under 27 NCAC 01B .0113(m), approved by the North Carolina Supreme Court under G.S. 84-21.

AN ACT TO CREATE A GRIEVANCE REVIEW PANEL OF THE GRIEVANCE COMMITTEE OF THE NORTH CAROLINA STATE BAR AND TO PRESERVE THE CONFIDENTIALITY OF THE ETHICS PROCESS.

The General Assembly of North Carolina enacts:

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

"§ 84-28. Discipline and disbarment.

...  
(c1) There is created a grievance review panel of the Grievance Committee of the North Carolina State Bar. For each review, the chair of the Grievance Committee will appoint a panel consisting of the chair, two vice-chairs, and two other members of the Grievance Committee, including one member of the public. The grievance review panel shall operate pursuant to rules and procedures adopted by the Council and approved by the Supreme Court. Upon a request timely filed by a grievance respondent, the panel shall review a decision by the Grievance Committee that imposes public discipline upon the respondent. The respondent is entitled to be represented by counsel and to appear before and present oral argument to the grievance review panel. The respondent shall not have the right to compel the attendance of witnesses or the production of books, papers, and other writing and documents. The grievance review panel may concur in the decision of the Grievance Committee or may remand the grievance file to the Grievance Committee with its recommendation for a different disposition. Upon remand, the Grievance Committee may affirm its decision or may impose a different disposition of the grievance file. All proceedings of the grievance review panel are confidential. Documents, papers, recordings, electronic records, or other documentary materials in the possession of the grievance review panel are confidential and are not public records within the meaning of Chapter 132 of the General Statutes.

...."  
SECTION 1.(b) This section is effective when it becomes law and applies to grievances and proceedings existing on or commenced on or after that date.

SECTION 2. G.S. 84-32.1 reads as rewritten:

"§ 84-32.1. Confidentiality of records.

(a) All documents, papers, letters, recordings, electronic records, or other documentary materials, regardless of physical form or characteristic, in the possession of the State Bar or its staff, employees, legal counsel, councilors, and Grievance Committee advisory members concerning any investigation, inquiry, complaint, disability, or disciplinary matter in connection with the State Bar Grievance Committee, the grievance review panel, the State Bar's Trust Accounting Supervisory Program, or any audit of an attorney trust account shall not be considered public records within the meaning of Chapter 132 of the General Statutes.

...  
(e) All documents, papers, letters, recordings, electronic records, or other documentary materials, regardless of physical form or characteristic, in possession of the State Bar or its staff, employees, legal counsel, councilors, or Ethics Committee advisory members concerning any request for ethics advice shall not be considered public records within the meaning of Chapter 132 of the General Statutes unless the material, with the consent of the inquiring party, appears in a public agenda of the Ethics Committee of the North Carolina State Bar."

SECTION 3. The North Carolina State Bar shall adopt temporary rules to implement this act.

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of July, 2022.

## SL 2023-134 (H259) – Establishment of the North Carolina State Bar Grievance Review Committee

The General Assembly passed the State Budget in September 2023. Section 27.11 of the act established this Committee to examine a wide range of issues regarding the grievance process before the State Bar.

The Committee met five times between January and March 2024, ultimately transmitting a final Committee Report to the General Assembly on March 14, 2024, containing several findings and recommendations for reform.

### **NORTH CAROLINA STATE BAR GRIEVANCE REVIEW COMMITTEE, DISCIPLINARY HEARING COMMISSION, AND BAR FEES**

**SECTION 27.11.(a)** Establishment; Composition. – There is created the State Bar Review Committee (Committee). The Committee shall be composed of seven members as follows:

- (1) One member appointed by the President Pro Tempore of the Senate.
- (2) One member appointed by the Speaker of the House of Representatives.
- (3) One member appointed by the Governor.
- (4) Three members appointed by the Chief Justice of the Supreme Court of North Carolina, of which one shall be an Associate Justice of the Supreme Court of North Carolina and one shall be a Judge of the North Carolina Court of Appeals.
- (5) The President of the State Bar serving in that position on the date this section becomes law, who shall serve until the Committee terminates.

**SECTION 27.11.(b)** Terms; Officers; Vacancies; Quorum. – Members shall serve until the Committee expires in accordance with this section. The members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall serve as cochaIRS for the duration of their terms. The Committee shall meet upon the call of the cochaIRS. Vacancies shall be filled by the original appointing authority for which the vacancy exists. A majority of the total membership of the Committee shall constitute a quorum of the Committee.

**SECTION 27.11.(c)** Duties. – The Committee shall review and examine the grievance review process of the North Carolina State Bar conducted in accordance with Article 4 of Chapter 84 of the General Statutes in an effort to improve the effectiveness, fairness, and process of disciplinary and grievance review procedures. The Committee shall review and examine the grievance and complaint process of the North Carolina State Bar, including any rules, procedures, and policies to address the following issues of concern:

- (1) The grievance process, including the role of the Grievance Committee, grievance review panel, and the Disciplinary Hearing Commission.
- (2) Right to due process, right to be heard, and other rights consistent with G.S. 84-30 of the accused person during the grievance and discipline process.
- (3) Sufficiency and thoroughness of the screening, decision making, and review of grievances and complaints.

- (4) The selection, composition, and role of the grievance review panel of the Grievance Committee and the Disciplinary Hearing Commission.
- (5) Role of the North Carolina State Bar Office of Counsel in the grievance process.
- (6) Any other area the Committee deems concerning or needing improvement.



## FINDING AND RECOMMENDATION #1 – DUE PROCESS

Over the course of the Committee's term, the Committee reviewed extensive materials and heard from multiple presenters about concerns regarding a lack of “due process” in the State Bar grievance process. From when State Bar counsel’s report and recommendation is presented to the Grievance Committee in closed session to when the discovery process initiates before the Disciplinary Hearing Commission, the Committee finds that the current grievance process fails to provide respondent attorneys with equitable access to evidence and the proceedings.

The Committee recommends that the General Assembly enact legislation to provide respondent attorneys with equitable access to material acquired in grievance investigations and the State Bar Grievance Committee, including amending G.S. 84-28. Discipline and disbarment., as necessary. The Committee recommends the General Assembly consider the recommendations provided by the State Bar and defense counsel in the handout and chart entitled “Respondent Access to Agency File” discussed and presented at the committee meeting on March 4, 2024. (See Appendix D).



## FINDING AND RECOMMENDATION #2 – VEXATIOUS COMPLAINTS

The Committee finds that the State Bar does not currently have a procedure to address complainants who file an excessive number of meritless or frivolous complaints. If such a process is created, complainants who serially file frivolous grievances with the State Bar will be discouraged, or prevented, from doing so, and the resources of the State Bar will be better utilized, and the interests of justice and the public better served.

The Committee recommends that the General Assembly enact legislation prohibiting individuals from abusing the disciplinary process by filing repetitive and inappropriate actions. The Committee recommends the General Assembly give consideration to Florida’s Rule 3-7.17. Vexatious Conduct and Limitations on Filings, California’s Rule 2605. Vexatious Complainants, and the recommendations provided by the State Bar and defense counsel in the handout entitled “Collaborative Working Proposals” discussed and presented at the committee meeting on February 29, 2024. (See Appendix D).



## FINDING AND RECOMMENDATION #3 – STANDING REQUIREMENT

The Committee finds that the State Bar does not currently have any standing requirements to file a grievance against a member of the State Bar. If standing requirements were implemented, the number of inconsequential complaints processed by the State Bar every year would be reduced, which saves resources and relieves North Carolina attorneys from the time-consuming burden of responding to an investigation initiated by someone with no personal legal interest in the underlying matter.

The Committee recommends that the General Assembly enact legislation limiting who may file a grievance with the State Bar. The Committee recommends the General Assembly consider the recommendations provided by the State Bar and defense counsel in the handout and chart entitled “Collaborative Working Proposals” discussed and presented at the committee meeting on February 29, 2024. (See Appendix D).



## FINDING AND RECOMMENDATION #4 – EXPUNGEMENT RULES

The Committee finds that the impact of professional discipline against an attorney has changed with the advent of the internet and social media. Other states, including Del., N.H., and R.I., have addressed the issue by expunging certain prior disciplinary violations from an attorney’s record. North Carolina does not have an expungement procedure for disciplinary actions. If the State Bar were to create an expungement procedure, certain disciplinary actions would be eligible for expungement in certain cases in accordance with future proposed rules adopted by the State Bar and certified and entered by the Supreme Court.

The Committee recommends that the General Assembly direct the State Bar to adopt rules to implement an expungement process for certain disciplinary or administrative actions against respondent attorneys by the State Bar. In drafting the rules, the State Bar is to consider the recommendations provided by the State Bar and defense counsel in the handout and chart entitled “Collaborative Working Proposals” discussed and presented at the committee meeting on February 29, 2024. (See Appendix D).



## FINDING AND RECOMMENDATION #5 – CONTINUED DISCUSSION

Over the course of the Committee's term, the Committee heard presentations and received materials from the State Bar, defense counsel, individuals who had previously been before the State Bar, and legislative staff. The Committee received in-person public comments and comments through an on-line portal on the General Assembly website. The Committee participated in hours of discussion and debate on many topics as summarized in the committee minutes. It is apparent that there remain many areas of interest and concern to be further explored including the current composition of the Disciplinary Hearing Commission and the methods by which members are chosen to hear adversarial disputes between the parties.

The Committee recommends that the General Assembly continue to discuss the composition of the Disciplinary Hearing Commission, taking into consideration the presenters' suggestions that the current selection methods create an appearance of potential bias, and reform is necessary to ensure that all formal hearings are conducted in such a manner as to eliminate bias and the appearances of conflict among those sitting in judgment of the respondents. The Committee recommends the General Assembly continue to discuss and seek input from the State Bar and defense counsel on issues concerning confidentiality (i.e. revisions to the State Bar's complainant notification letter), the handling of different types of rules violations (i.e. trust account, civil, criminal), and costs and expenses associated with the grievance process.

# SL 2025-4 (H74) – Revival of the North Carolina State Bar Grievance Review Committee

The General Assembly passed H74 (SL 2025-4) in January 2025. Section 6.4 of the act revived and expanded this Committee to continue to examine a wide range of issues regarding the grievance process before the State Bar. Additionally, the Committee may review any other aspect or area of the State Bar the Committee deems concerning, needing improvement, or necessary in fulfilling its duties as authorized under SL 2025-4. This Committee is due to expire at the end of calendar year 2026.

## NORTH CAROLINA STATE BAR GRIEVANCE REVIEW COMMITTEE EXTENSION

SECTION 6.4. Section 27.11 of S.L. 2023-134 reads as rewritten:

### "NORTH CAROLINA STATE BAR GRIEVANCE REVIEW COMMITTEE

"SECTION 27.11.(a) Establishment; Composition. – There is created the State Bar Review Committee (Committee). The Committee shall be composed of seven members as follows:

- (1) One member appointed by the President Pro Tempore of the Senate.
- (2) One member appointed by the Speaker of the House of Representatives.
- (3) One member appointed by the Governor.

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- (4) Three members appointed by the Chief Justice of the Supreme Court of North Carolina, of which one shall be an Associate Justice of the Supreme Court of North Carolina and one shall be a Judge of the North Carolina Court of Appeals.
- (5) The President of the State Bar serving in that position on the date this section becomes law, who shall serve until the Committee terminates. Bar or his or her designee.

...

"SECTION 27.11.(c1) Additional Duties. – In addition to the duties described in subsection (c) of this section, the Committee may review any other aspect or area of the North Carolina State Bar the Committee deems concerning, needing improvement, or necessary in fulfilling its duties under this section.

...

"SECTION 27.11.(e) Report-Expiration. – By April 1, 2024, the Committee shall submit a report to the Joint Legislative Commission on Governmental Operations containing any legislative recommendations to address and alleviate the concerns listed in subsection (e) of this section of the grievance review process. The report shall also contain any potential improvements and changes in oversight of the North Carolina State Bar. The Committee shall expire upon submitting the report under this subsection. The Committee shall expire on December 31, 2026.

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