

# Reforming the North Carolina State Bar

Recommendations for the Disciplinary Hearing Commission

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**Troy D. Shelton**

Presented to the State Bar Grievance Review Committee  
of the General Assembly

# About the Presenter

## Troy D. Shelton

Dowling PLLC



### **Board-Certified Appellate Specialist**

Certified by the NC State Bar



### **20+ Active Appeals**

NC Court of Appeals and Supreme Court of North Carolina



### **Diverse Practice Areas**

Constitutional law, administrative law, licensing board appeals, commercial litigation



### **Represents Broad Interests**

Fortune 500 companies, U.S. Chamber of Commerce, elected officials, and individuals

*Direct experience representing defendants in appeals from DHC orders.*

# Constitutional Foundations

These reforms are rooted in principles enshrined in the North Carolina Constitution.

## Separation of Powers

Art. I, § 6

*“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”*

The Bar currently commingles all three powers — writing the rules, prosecuting violations, and appointing the judges who decide cases.

## Democratic Accountability

Art. I, § 2

*“All political power is vested in and derived from the people.”*

DHC members should be appointed by officials the public elects — not by a self-governing body of lawyers accountable only to other lawyers.

## Fruits of Their Labor

Art. I, § 1

*“We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are ... the enjoyment of the fruits of their own labor....”*

Lawyers have a constitutional right to earn a living. Disciplinary proceedings that threaten that right require fair, impartial adjudication.

# The Problem: How the DHC Works Today

## Structural Conflicts

- The Bar Council writes the rules, prosecutes violations, and appoints the majority of lawyer-judges on the DHC
- 12 of 18 lawyer members of the DHC are appointed by the Bar Council — the same body that approves prosecutions
- Public (non-lawyer) members lack the expertise to check prosecutorial overreach and defer to lawyer members
- U.S. Supreme Court recognizes these proceedings as quasi-criminal, requiring heightened due process protections

## Case Example

In a recent DHC proceeding, panelists — the majority appointed by the Bar — began questioning the defendant-lawyer on issues not before the panel, then invited the prosecutor to amend the complaint and add new charges mid-trial, in violation of due process.

The Chair of the panel was the former Chair of the Grievance Committee, the very body that decides whether to prosecute. This kind of role-blurring between prosecutor and judge is a predictable consequence of the current structure.

*The prosecutor is choosing the judges.*

# Recommendation 1: Restructure the DHC

*Remove the Bar's appointment power. Make the DHC independent and democratically accountable.*

## Current Structure

- 26 members: 18 lawyers + 8 public
- **Bar Council appoints 12 of 18 lawyers**
- Remaining 6 lawyers split among Senate, House, and Chief Justice
- Public members appointed by Governor, Senate, and House

## Proposed Structure

- 26 members: all active NC Bar attorneys
- 7 appointed by Senate
- 7 appointed by House
- 7 appointed by Governor
- 5 appointed by Chief Justice
- **Former Bar insiders disqualified**

# Recommendation 2: Confidentiality in DHC Proceedings

## The Anomaly Under Current Law

### Accepts Reprimand from Grievance Committee

The reprimand remains private discipline.  
No public record. Career intact.

**Result: PRIVATE**

### Rejects Reprimand, Goes to DHC Trial

Even if the DHC imposes the same reprimand, the entire proceeding becomes public record.

**Result: PUBLIC**

**Proposed Solution:** Amend N.C. Gen. Stat. § 84-32 to keep DHC records confidential unless and until a form of public discipline (disbarment, suspension, or censure) is imposed. Exercising the right to a hearing should not convert private discipline into public discipline.

# Recommendation 3: Enact a Statute of Limitations

**0**

**Current statute  
of limitations**

No meaningful time bar exists

**4yr**

**Proposed limit on  
conduct**

Matches malpractice repose

**2yr**

**Spur for  
prosecutors**

File or drop after grievance

## Key Provisions of Proposed § 84-28.5

- Four-year limitation period, mirroring the professional malpractice statute of repose
- Two-year spur: once a grievance is filed, prosecutors must act within two years
- Tolling for parallel criminal, civil, or administrative proceedings
- Tolling while the lawyer continues representing the complainant in the subject matter
- Exception for felony convictions showing professional unfitness
- Laches defense available even within the limitations period

# Recommendation 4: Bar Counsel Appointment

## Current System

The Bar Council appoints its own General Counsel, who in turn hires deputy counsel, investigators, and staff.

Restructuring the DHC alone does not change who investigates complaints, what gets presented to the Grievance Committee, or how cases are prosecuted.

## Proposed Change

Transfer the appointment authority for Bar Counsel to the Chief Justice of the Supreme Court.

This further separates prosecution from adjudication and ensures the office is accountable to a democratically elected official.

Aligns with ABA Recommendation 6.

*Changing the DHC without changing who prosecutes addresses only half the structural conflict.*

# Recommendations 5 & 6: Leveling the Playing Field

## Rec. 5 — Paying for Appeal Transcripts

- Transcripts cost \$1,500+ per trial day; DHC trials span multiple days
- Every other licensing board must pay for appeal transcripts under the Administrative Procedure Act (N.C.G.S. ch. 150B)
- **Proposal: Require the Bar to pay for or reimburse transcript costs**

## Rec. 6 — Mandatory Fee-Shifting

- Current N.C.G.S. § 6-19.1 allows discretionary fees only for actions “without substantial justification” — rarely awarded
- Bar investigations are prolonged and overly broad, making defense extremely expensive even when the lawyer prevails
- **Proposal: If a court grants any relief to the appealing attorney, fees and costs must be awarded**

# Summary of Recommendations

**1 Restructure the DHC** Remove Bar appointment power; all members appointed by elected officials

**2 Protect Confidentiality** Keep DHC records private unless public discipline is imposed

**3 Statute of Limitations** Four-year limit with two-year prosecutorial spur

**4 Bar Counsel Appointment** Transfer appointing authority to the Chief Justice

**5 Transcript Costs** Require the Bar to pay for appeal transcripts

**6 Fee-Shifting** Mandatory attorney's fees when the court grants relief

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*Fair proceedings. Democratic accountability. Constitutional fidelity.*