

**TO:** The State Bar Grievance Review Committee (c/o Co-Chair Woody White)  
**FROM:** Carmen H. Bannon, Counsel, NC State Bar  
**DATE:** 6 February 2024  
**RE:** Information Requested from State Bar

The State Bar Grievance Review Committee requested the following information from the State Bar's Office of Counsel:

A chart of the number of grievances filed over the preceding 10 years, with the total numbers set out in categories of:

- Grievances dismissed before investigation.
- Grievances dismissed after investigation.
- Grievances where there were findings of 'probable cause.'
- Grievances where discipline was imposed without moving to the Disciplinary Hearing Commission.
- Grievances that moved forward to the DHC.

**See CHART 1(A) & (B) – Grievance Data below.**

- The number of hearings before the DHC that: (a) resulted in discipline; and (b) were dismissed.

**See CHART 2 – DHC Data below.**

- The number of FTE's in the Office of Counsel

**See CHART 3 – Office of Counsel Full Time Employees below.**

An overview of the OOC's role in the Grievance process.

**See narrative overview below.**

As it relates to the authorization language contained within the enabling legislation, the State Bar is invited to also provide any information it wishes that directly addresses subsections (1) through (6) of Section 27.11 (c).

**Some information related to these subsections is included in the last section of this memo. Additional information related to subsections (1) through (4) will be included in the State Bar Counsel's 9 February 2024 presentation to the Committee.**

## **CHART 1 - Grievance Data<sup>1, 2</sup>**

### **A. NON-DISCIPLINARY DISPOSITIONS**

(These categories of disposition represent matters in which the Grievance Committee did not find probable cause to believe the lawyer violated the Rules.)

<b>Year</b>	<b>Grievances Filed</b>	<b>Grievances Closed</b>	<b>Total Dismissals</b>	<b>Dismissals w/o Investigation</b>	<b>Dismissals After Investigation</b>	<b>Dismissals w. Letter of Warning or Caution</b>	<b>Sent to Deferral Programs (LAP, TAC, LOM)</b>
<b>2014</b>	1222	1291	1019	523	496	68	0
<b>2015</b>	1331	1289	963	454	509	80	8
<b>2016</b>	1384	1265	941	476	465	116	13
<b>2017</b>	1305	1387	1082	548	534	88	10
<b>2018</b>	1252	1250	948	497	451	68	15
<b>2019</b>	1258	1131	899	399	500	76	18
<b>2020</b>	927	763	538	274	264	71	33
<b>2021</b>	986	937	743	334	409	59	35
<b>2022</b>	1404	746	568	346	222	56	18
<b>2023</b>	1504	1032	837	604	233	44	15

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<sup>1</sup> A small number of grievances each year are resolved in ways not described on these charts. E.g., reciprocal discipline, abated (if lawyer is disabled), opened in error, dismissed and retained (if lawyer is disbarred).

<sup>2</sup> In each of these charts, the primary categories appear in bright colors; sub-categories are shown in pastel version of corresponding bright.

**B. DISCIPLINARY DISPOSITIONS:**

(These categories of disposition represent matters in which the Grievance Committee found probable cause to believe the lawyer violated the Rules.)

<b>Year</b>	<b>Grievances Filed</b>	<b>Grievances Closed</b>	<b>Total Resolved w/Written Discipline</b>	<b>Private Written Discipline</b>	<b>Public Written Discipline</b>	<b>Files Referred to DHC</b>	<b># of Lawyers Referred to DHC</b>
<b>2014</b>	1222	1291	61	33	28	113	47
<b>2015</b>	1331	1289	74	38	36	119	69
<b>2016</b>	1384	1265	82	46	36	78	47
<b>2017</b>	1305	1387	77	38	39	99	59
<b>2018</b>	1252	1250	64	23	41	114	44
<b>2019</b>	1258	1131	78	37	41	46	31
<b>2020</b>	927	763	62	40	22	73	37
<b>2021</b>	986	937	54	23	31	40	36
<b>2022</b>	1404	746	45	22	23	52	34
<b>2023</b>	1504	1032	38	18	20	46	28

**CHART 2 - DHC Data:**

<b>Year</b>	<b>DHC Cases Resolved</b>	<b>Cases Resulting in Discipline</b>	<b>Cases Dismissed</b>	<b>Stayed/ Disability Inactive</b>
<b>2014</b>	34	34	0	0
<b>2015</b>	44	40	2	2
<b>2016</b>	48	45	2	1
<b>2017</b>	34	29	2	3
<b>2018</b>	43	39	1	3
<b>2019</b>	31	31	0	0
<b>2020</b>	22	21	0	1
<b>2021</b>	25	23	1	1
<b>2022</b>	25	23	0	2
<b>2023</b>	19	14	3	2

**CHART 3 - Office of Counsel\* Full Time Employees:**

<b>Year</b>	<b>Lawyers</b>	<b>Investigators</b>	<b>Other Staff</b>	<b>Total</b>
<b>2014</b>	16	11	13	40
<b>2015</b>	18	11	14	43
<b>2016</b>	17	11	14	42
<b>2017</b>	17	10	14	41
<b>2018</b>	17	10	13	40
<b>2019</b>	16	10	13	39
<b>2020</b>	17	10	16	43
<b>2021</b>	17	11	15	43
<b>2022</b>	16	10	17	43
<b>2023</b>	18	11	16	45
<b>2024</b>	16	11	16	43

*\*The seven fee dispute mediators, public liaisons, and support staff that comprise the Attorney-Client Assistance Program are also under the umbrella of the Office of Counsel, but their work is separate from the grievance process so they are not included in the chart above.*

## **Overview of Office of Counsel's Role in the Grievance Process:**

### **Background**

By statute, the Councilors of the North Carolina State Bar appoint a Counsel to represent the agency. N.C.G.S. § 84-31. The Counsel is authorized “to employ such deputy counsel, investigators, and other administrative personnel in such numbers as the council may authorize.” 27 N.C. Admin Code Chapter 1B .0107(9). The Office of Counsel (OOC) is comprised of those Deputy Counsels, investigators, and support staff employed by the Counsel. In essence, the OOC is the in-house legal department for the agency; the State Bar (acting through its elected Bar Councilors and Officers) is the sole client of all lawyers in the OOC.

The primary State Bar function requiring legal analysis, advice, and advocacy from the OOC is the agency's core responsibility of enforcing the Rules of Professional Conduct for the protection of the public, the profession, and the administration of justice. Most of the OOC's time and resources are devoted to investigating and prosecuting alleged violations of the Rules.

### **Role in the Grievance Process**

Once a grievance is opened, it is assigned to one of the Deputy Counsel in the OOC. The Deputy Counsel is responsible for gathering information and documentation needed for the Grievance Committee to make an informed decision as to whether there is probable cause to believe the attorney violated the Rules of Professional Conduct and, if so, the appropriate disposition.

Some grievances do not, on their face, allege a violation of the Rules. In those instances, the Deputy Counsel will prepare a Report of Counsel<sup>3</sup> recommending that the file be dismissed without investigation. If the Chair of the Grievance Committee agrees with that recommendation, the file will be dismissed.

### **Investigation**

If the allegations of the grievance, taken as true, do allege a possible violation of the Rules of Professional Conduct, Deputy Counsel will investigate. In some instances, only minimal informal investigation (e.g., asking a quick question via phone call or obtaining one document from a court file) is necessary. Typically, however, the investigation will include communicating with the attorney against whom the

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<sup>3</sup> Reports of Counsel are attorney-client privileged communications in which OOC lawyers provide legal analysis and advice to the State Bar's Grievance Committee and/or the Chair and Vice-Chairs of the Committee about each grievance filed with the agency. Reports of Counsel are not merely Deputy Counsel's analysis: They include materials received from the complainant, the respondent's response to the Letter of Notice (if the lawyer was notified of the grievance and asked to respond), and additional documentation obtained through investigation, submitted by the complainant, or provided by the respondent.

grievance was filed (the “respondent”) and seeking a response from the attorney. Deputy Counsel is responsible for sending the respondent a summary of the allegations and an indication of which Rules may be implicated by the allegations. The summary of allegations and formal request for response from the lawyer is called a Letter of Notice. Deputy Counsel may include in a Letter of Notice a request for pertinent documents.

Often, the respondent-lawyer’s response to the Letter of Notice is the only information necessary to show that the lawyer did not violate the Rules. In cases where the lawyer has been asked to respond and Deputy Counsel concludes that—based on the investigation—there is no probable cause to believe the respondent-lawyer engaged in misconduct, the Deputy Counsel will prepare a Report of Counsel to that effect. The Report of Counsel for a file in which a Letter of Notice was sent is transmitted to the Chair and one of the Vice-Chairs of the Grievance Committee. If they both agree with Deputy Counsel’s recommendation, the file will be dismissed. If not, they will either direct the OOC to conduct additional investigation, or direct that the matter be placed on the Committee’s next quarterly agenda for review.

#### Trust Account Related Grievances

In grievances involving potential theft of entrusted funds or severe trust account mismanagement (such that the funds in the lawyer’s trust account cannot be identified), Deputy Counsel may ask the Chair of the Grievance Committee to issue a subpoena for cause audit requiring the lawyer to produce trust account records for inspection and audit. If the Chair concludes that there is reasonable cause to issue such a subpoena, it shall issue in the name of the Grievance Committee. (*See* 27 N.C.A.C. 1B .0132(a) for description of circumstances that constitute “reasonable cause.”) Upon receipt, the account records are analyzed by OOC investigators with input from Deputy Counsel.

If—while investigating a grievance—the available evidence suggests that it is necessary to maintain the status quo in a lawyer’s trust account until all entrusted funds are accounted for and/or identified, Deputy Counsel may apply to the Wake County Superior Court for an injunction prohibiting the lawyer from handling entrusted funds. Such relief is sought according to the usual procedures for TRO/preliminary injunction. N.C.G.S. 84-28(f) (“Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of the conduct is pending. The application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65”).

If Respondent-Lawyer is Unresponsive:

If a respondent-lawyer does not respond to formal notice of a grievance, Deputy Counsel uses several methods to attempt to obtain a response. First, the respondent-lawyer is reminded via follow-up letter (or email, if the OOC has previously communicated with the lawyer about the grievance via email). If the lawyer is entirely unresponsive, Deputy Counsel will ask a member of the Grievance Committee (from the respondent-lawyer's judicial district if possible) to personally remind the lawyer that s/he is obligated to respond. If those methods are unavailing, Deputy Counsel may file a petition in the DHC seeking to have the respondent-lawyer's license interim suspended for non-compliance with a grievance investigation. Proceedings on this type of petition are in the form of a show cause proceeding before the Chair of the DHC, in which the respondent lawyer is entitled to appear and be heard in response. The DHC Chair will only enter an order of interim suspension if it finds (a) that the OOC has established non-compliance by clear, cogent and convincing evidence and; (b) that the respondent has not proven any of the following: (1) the respondent was and is fully in compliance; (2) the respondent has fully cured all noncompliance; or (3) there is good cause for the respondent's noncompliance. *See 27 N.C.A.C. 1B .0135.*

Grievances Against Impaired, Disabled, Disappeared, and Deceased Lawyers:

If—while investigating a grievance—the available evidence suggests that the respondent-lawyer is experiencing substance abuse or mental health issues, Deputy Counsel will—at minimum—contact the Lawyers Assistance Program to request that the LAP offer support for the lawyer. In some instances, Deputy Counsel enlist Bar Councilors and/or local judges in an effort to persuade a lawyer to address their substance or mental health related challenges.

If a grievance investigation reveals that a lawyer is disappeared, disabled, or deceased, the OOC will petition the Senior Resident Superior Court Judge in the respondent-lawyer's district for an order appointing a trustee to protect the lawyer's clients and wind down the lawyer's practice. G.S. § 84-28(j).

Depending on the nature of the allegations, Deputy Counsel may conduct additional

investigation beyond requesting a response from the respondent-lawyer such as witness interviews, obtaining court records, and obtaining documents from banks or other third parties.<sup>4</sup> If a lawyer is convicted of a serious criminal offense demonstrating professional unfitness, the OOC may petition the DHC to enter an order of interim suspension of the lawyer's license. The respondent-lawyer is entitled to appear and be heard in opposition to any such petition.

#### Report and Recommendation to Grievance Committee

If—when the investigation is concluded—the available evidence indicates that there is probable cause to believe the respondent-lawyer violated the Rules, Deputy Counsel will prepare a Report of Counsel summarizing the allegations, response, and any additional information obtained. The Report of Counsel indicates which Rules are implicated by the lawyer's conduct and includes a recommendation regarding the appropriate outcome if the Committee finds that the respondent violated the Rules. That Report of Counsel is first transmitted to the Chair and one of the Vice-Chairs of the Grievance Committee. If they agree that the information in the file constitutes probable cause to believe the respondent-lawyer violated the Rules of Professional Conduct, the grievance will be placed on the agenda for review by the Grievance Committee at its next quarterly meeting.

#### The Grievance Committee:

The Grievance Committee meets during each of the State Bar's quarterly meetings. All elected State Bar Councilors serve on either the Ethics Committee or the Grievance Committee. Although the State Bar President assigns Councilors to committees each year, Councilor requests to serve on either Ethics or Grievance are generally honored. The Grievance Committee is thus representative of North Carolina lawyers, with members from geographically diverse rural and urban districts, government and private sector, varying levels of experience, and all areas of practice. Members of the Grievance Committee are assigned to one of three subcommittees, and in-depth discussion of a given grievance takes place in one of the three subcommittees. The subcommittee will then recommend a proposed disposition of the matter for vote by the full Committee. At the full Committee meeting, any member of the Committee, regardless of which subcommittee they serve on, can initiate full Committee discussion of a grievance before the whole Committee votes.

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<sup>4</sup> If a subpoena is required to obtain information from a bank or a third party, it must be issued by the Chair of the Grievance Committee. 27 N.C.A.C. 1B .0105(8). When obtaining bank records by subpoena, Deputy Counsel is responsible for complying with the Financial Privacy Act, N.C. Gen. Stat. § 53B-1 et seq.

Grievance Committee members review all Reports of Counsel and attached written materials (including the respondent's response) for matters on the quarterly agendas. During the quarterly Grievance meeting, Deputy Counsels report to one or more of the three Grievance Sub-Committees to answer questions members of the Committee may have about their investigation, analysis, recommendation, or documentary materials in the files. The Vice-Chair leading the subcommittee may ask Deputy Counsels to give brief recaps of the files they investigated.

While OOC staff are present, the Committee may vote to dismiss a grievance (entirely or with a Letter of Warning or Letter of Caution), defer consideration to a later meeting so the OOC can conduct additional investigation, or recommend that the lawyer be offered the opportunity to participate in a deferral program. (These are the outcomes shown in Chart 1(A), above.) If the subcommittee intends to deliberate on whether there is probable cause to believe the lawyer engaged in misconduct, it does so in closed session (called "preliminary hearing"). Only members of the Committee and State Bar Officers may be present during preliminary hearing: OOC lawyers and staff are not privy to the deliberations.

While the Grievance Committee values the OOC's expertise in the Rules of Professional Conduct and experience in investigating attorney misconduct, it is not beholden to the recommendations of Deputy Counsels. The Councilors who serve on the Committee bring valuable perspective and represent the interests of the practicing attorneys who are their constituents to ensure that the agency's enforcement process is consistent with the following: "The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself." N.C. R. Prof'l Cond. 0.2 – Scope.

The following decisions by the Grievance Committee are final: Dismissal, dismissal with a Letter of Caution, or referral of a matter involving serious misconduct to the Disciplinary Hearing Commission for trial (although—at the request of the respondent or the OOC—the Committee occasionally entertains a request to reconsider its decision to refer a matter to the DHC).

#### Role of OOC in Post-Grievance Committee Process

If the Committee decides that Dismissal with Letter of Warning, Admonition, Reprimand, or Censure is the appropriate outcome of a grievance, the Deputy Counsel assigned to the file will—shortly after the quarterly meeting—draft the proposed Letter of Warning or written discipline. These documents are reviewed and approved (or modified) by the Chair of the Grievance Committee before they are sent to the respondent-lawyer. Upon receipt, the respondent may either accept the

Letter of Warning or written discipline, reject it in favor of a hearing on the alleged misconduct in the DHC, or—in the case of reprimands and censures—request further review of the file by a Grievance Review Panel (GRP).

#### Grievance Review Panel Process

A respondent may request GRP review of a matter in which the Committee determined public discipline was appropriate by submitting a written request for review that may include additional supporting documentation not previously submitted to the Grievance Committee. If the additional information or documentation changes the OOC's analysis or recommendation regarding the grievance, Deputy Counsel may submit a supplemental Report of Counsel to the GRP. The Grievance Review Panel consists of the Chair of the Committee, two Vice Chairs, and two other members of the Grievance Committee, one of whom must be a public member. G.S. § 84-28(c1). The respondent is entitled to appear (personally or through counsel) and present argument to the GRP. The OOC attends the respondent's presentation to the GRP, responds to any questions by Panel members, and may offer additional comment based on the respondent's presentation, but the GRP deliberates in private: No OOC staff are privy to the GRP's deliberations. The Panel's review is based upon the written record and the additional arguments and information presented. The GRP may concur in the Grievance Committee's original disposition or may remand the grievance to the Committee with a recommendation for a different disposition. The Chair of the Committee notifies the OOC of the GRP's recommendation so the OOC can prepare a notice to the respondent, which is sent shortly after GRP review. Upon remand from the GRP review, the Grievance Committee may affirm its original disposition or approve a different disposition of the grievance.

#### Confidentiality and Complainant Notification

All aspects of the grievance investigation process are presumptively confidential unless and until a respondent accepts proposed public discipline from the Committee. 27 N.C.A.C. 1B .0133.

The OOC is responsible for notifying complainants of the Grievance Committee's disposition of grievances they filed. Most of those notification letters (70% - 80%) inform complainants that the grievance was dismissed. That message is frequently not well-received, and complainants freely direct their anger, frustration, and aggression towards OOC staff. The Office of Counsel spends a great deal of time receiving, archiving, and responding to outraged missives from unhappy complainants.

If a respondent accepts proposed public discipline from the Committee, the OOC sends the complainant a form notification letter enclosing a copy of the public

discipline. If a respondent accepts an admonition or Letter of Warning from the Committee (or if a file is dismissed with a Letter of Caution), the complainant does not receive a copy of the admonition or Letter; instead, the OOC sends a form letter to the complainant containing a very brief description of the outcome of the grievance.<sup>5</sup>

#### Role in Trials Before the Disciplinary Hearing Commission

If the Grievance Committee refers a matter for trial or if a respondent rejects proposed written discipline or a proposed Letter of Warning from the Grievance Committee, the Office of Counsel files a complaint in the DHC on behalf of the State Bar setting forth the alleged misconduct. Proceedings before the DHC are civil in nature and include the standard components of civil litigation: The filing of a complaint and answer, discovery, depositions, motions practice pursuant to the Rules of Civil Procedure, and hearing on the merits. The North Carolina Rules of Evidence apply at hearings before the DHC. DHC hearings are public, as is any order issued by the DHC. Either party can appeal the DHC's order to the Court of Appeals.

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<sup>5</sup> This practice was developed in the pre-internet age. The State Bar recognizes that—given complainants' willingness to publish any document from the agency indicating that the lawyer violated the Rules (no matter how minor the violation)—this practice should be modernized to ensure that “private” grievance outcomes remain private.

### **Information Related to Topics Described in Enabling Legislation:**

- (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.**

#### **Selection and Composition of Grievance Review Panel**

As indicated in G.S. § 84-28(c1), when a respondent-lawyer requests review of the Grievance Committee's determination that public written discipline is the appropriate disposition of a grievance, "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." Since the Grievance Committee's agenda is divided among three sub-committees, led by the three Vice-Chairs, each GRP must include the two Vice-Chairs who were not in the subcommittee that originally reviewed the grievance. To select the remaining GRP members, the Chair of the Grievance Committee identifies the public members and lawyer-members of the Committee who were not on the subcommittee that originally reviewed the matter and identifies one of each who will be available during the scheduled GRP review.

#### **Selection and Composition of Disciplinary Hearing Commission**

The DHC was created by statute. The number of seats on the Commission, what number are to be occupied by lawyers vs. non-lawyers, and who has appointment power for seats on the DHC are all specified by statute. *See* N.C. Gen. Stat. § 84-28.1. Three-person panels of the DHC (two lawyers and one non-lawyer) preside over each case before the Commission. The composition of the panels is determined by the Chair of the Commission with assistance from the Clerk. The parties are not involved in decisions relating to which DHC members will serve on a given panel.

- (5) Role of the North Carolina State Bar Office of Counsel in the grievance process.**

*[See narrative above]*

**(6) Any other area the Committee deems concerning or needing improvement.**

The State Bar welcomes the opportunity to provide additional information if the Committee identifies additional areas of concern.

The OOC itself deems the current average turn-around time for grievances to be an area needing improvement. Last July, the State Bar Council approved an allocation for major grievance process improvements targeting (a) improved intake, screening, and assignment; (b) elimination of current grievance backlog; and (c) reduced average time from filing to disposition. In the fall of 2023, OOC staff in all roles received professional training in process improvement and project management. In late January, selected members of the staff continued our concerted effort to improve efficiency and modernize the grievance process by working with consultants at in-person workshops. The proposals developed in those workshops are currently being piloted.