



# Brief Overview of Current State Bar Disciplinary Process

Carmen H. Bannon,  
Counsel



[www.ncbar.gov](http://www.ncbar.gov)



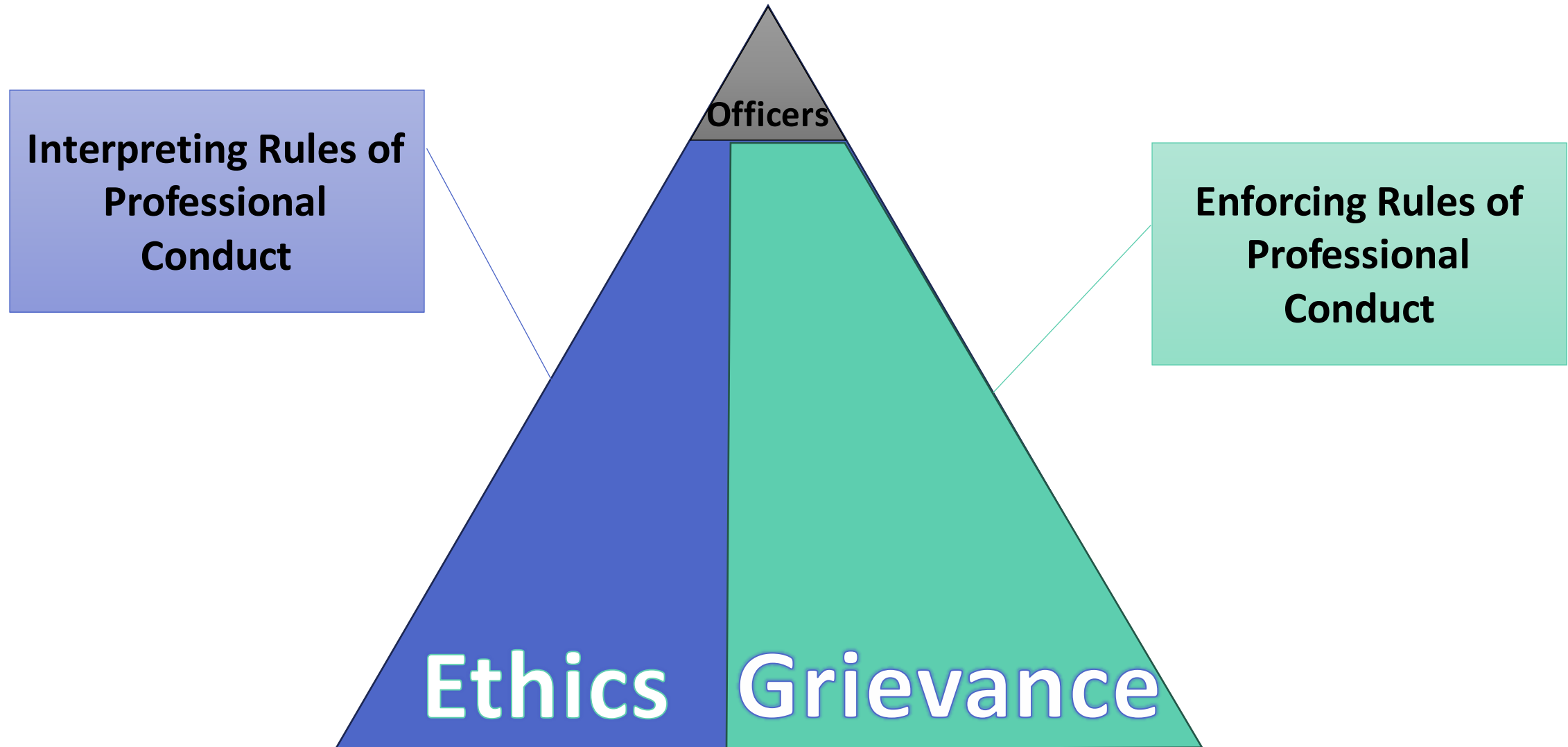
# The North Carolina State Bar Council

## 67 Members:

- 60 lawyers elected by peers
  - One from each of 43 judicial districts;
  - 17 additional Councilors from districts with most lawyers: Wake, Mecklenburg, Durham, Guilford, Forsyth
- 3 public members appointed by the Governor
- 4 Officers elected by the Council



# All Bar Councilors Serve on One of the Two Big Committees





# The North Carolina State Bar Grievance Committee

It is “the duty of the Grievance Committee to exercise the [following] disciplinary and disability functions and responsibilities”:

- (1) to direct the counsel to investigate any alleged misconduct or disability of a [lawyer] coming to its attention;
- (2) to hold preliminary hearings, find probable cause and direct that complaints be filed;
- (3) to dismiss grievances upon a finding of no probable cause;
- [(4) & (5) to dismiss grievances with Letters of Caution and Letters of Warning under specified circumstances]
- [(6) – (8) to issue proposed admonitions, reprimands, and censures under specified circumstances]
- (9) to direct that a petition be filed seeking a determination whether a [lawyer] is disabled;
- ....
- [(11) – (13) in its discretion, to refer grievances primarily attributable to unsound law office management, substance abuse or mental health problems, or unsound trust accounting techniques to deferral programs]
- (14) to operate the Attorney Client Assistance Program (ACAP)...
- (15) to consider and decide whether to follow the recommendation of a grievance review panel;
- ....

27 N.C.A.C. 1A .0701(a)(3) and 27 N.C.A.C. 1B .0106.



# The North Carolina State Bar Grievance Committee Chair

## .0105 CHAIR OF THE GRIEVANCE COMMITTEE: POWERS AND DUTIES

(a) The chair of the Grievance Committee will have the power and duty

(1) to supervise the activities of the counsel;

....

(4) to direct a letter of notice to a respondent or direct the counsel to issue letters of notice in such cases or under such circumstances as the chair deems appropriate;

(5) to issue, at the direction and in the name of the Grievance Committee, a letter of caution, letter of warning, an admonition, a reprimand, or a censure to a member;

(6) to notify a respondent that a grievance has been dismissed, and to notify the complainant in accordance with Rule .0125 of this subchapter;

(7) to call meetings of the Grievance Committee;

(8) to issue subpoenas in the name of the North Carolina State Bar or direct the secretary to issue such subpoenas;

....

(11) to determine whether proceedings should be instituted to activate a suspension which has been stayed;

(12) to enter orders of reciprocal discipline in the name of the Grievance Committee;

(13) to direct the counsel to institute proceedings in the appropriate forum to determine if an attorney is in violation of an order of the Grievance Committee, the commission, or the council;

(14) to rule on requests for reconsideration of decisions of the Grievance Committee regarding grievances;

....

[(16) – (19) to dismiss grievances under various circumstances]

....

(21) to appoint the members of a grievance review panel;



**Subcommittee 1**

Gordon Brown, *Vice-Chair*—**Business/Commercial Litigation** (Dist. 18 – Chapel Hill)  
Thomas D. Anglim – **District Attorney** (Dist. 2-Washington)  
W. Allen Cobb Jr. – **Retired Judge** (Dist. 6 - Wrightsville Beach)  
Evin L. Grant—**Government** (Dist. 10 – Raleigh)  
Patrice A. Hinnant – **Retired Judge** (Dist. 24 – Greensboro)  
Bobby Khan—**Criminal/Domestic** (Dist. 28 – Monroe)  
Michael R. Neece—**Criminal** (Dist. 38 – Gastonia)  
Meredith Nicholson—**Domestic** (Dist. 16 – Durham)  
Kathleen E. Nix—**Domestic** (Dist. 24H – High Point)  
Michael Peters—**County Attorney** (Dist. 8 – Tarboro)  
Rebecca J. Pomeroy—**Real Estate/Probate**(Dist. 39 – Lincolnton)  
Jason Ramey—**District Attorney** (Dist. 22-Wentworth)  
Damon Seils (Public Member, Durham)  
Jerry Oliver—**Labor/Employment** (Advisory Member, Raleigh)  
Sharon Wall (Public Advisory Member)

**Current Composition of Grievance Committee**

Commercial, Business, or Civil Litigation	Domestic	Criminal Defense	General Practice
District Attorney	Government	Retired Judge	In-House
Real Estate	Personal Injury	Probate	Labor/ Employment

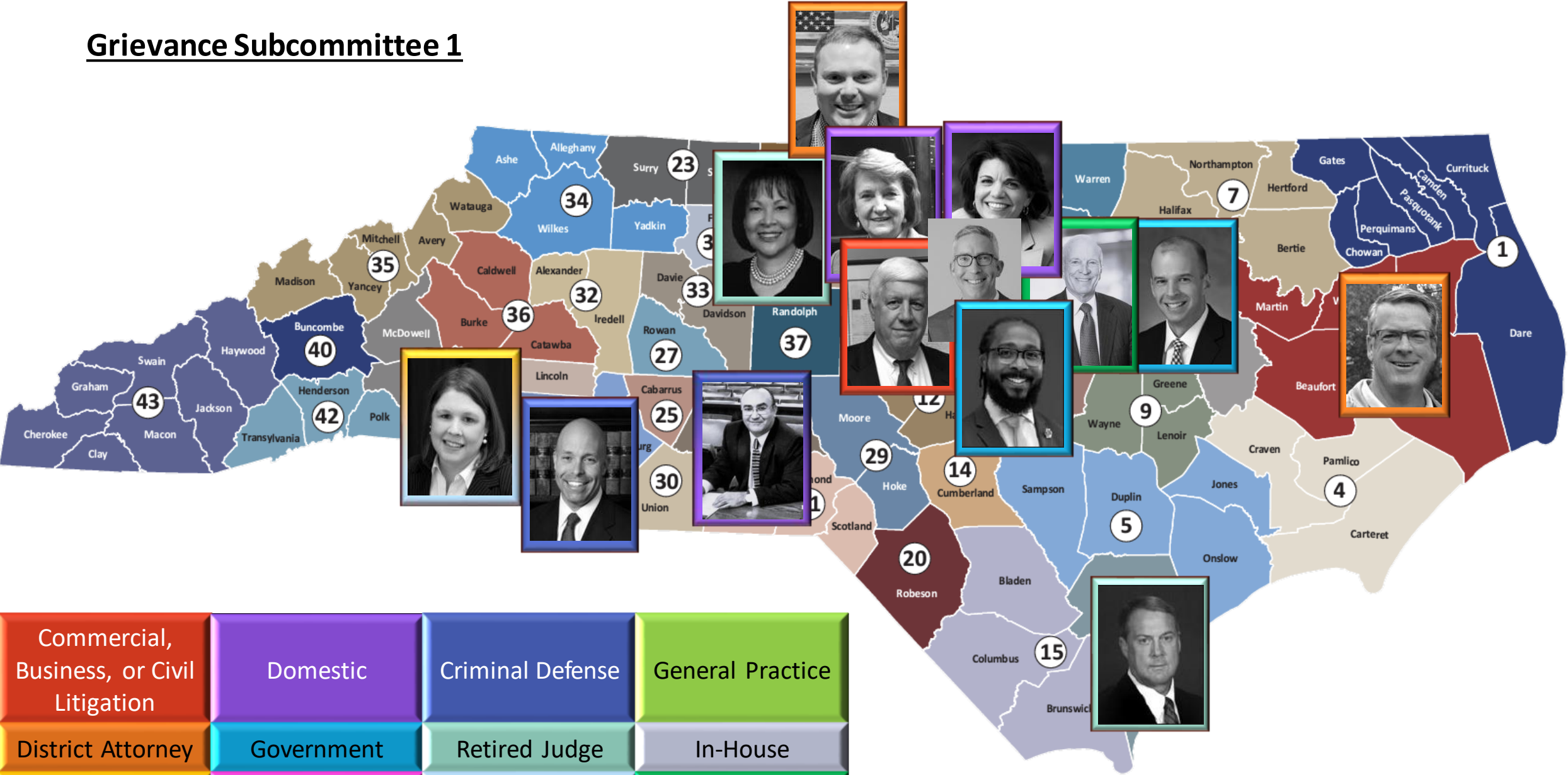
**Subcommittee 2**

Andrea Capua, *Vice-Chair* – **Domestic, Real Estate** (Dist. 35 – Boone)  
Clark R. Bell—**Criminal** (Dist. 37 – Asheboro)  
Harold Lee Boughman Jr. – **Personal Injury/Domestic** (Dist. 14 – Fayetteville)  
H. Ligon Bundy—**Personal Injury** (Dist. 30 – Monroe)  
Daryl G. Davidson—**Criminal/Domestic** (Dist. 32 – Statesville)  
Scott C. Hart—Mediation/**Civil Litigation** (Dist. 4 – New Bern)  
J. Mark Herring – **District Attorney** (Dist. 9-Kinston)  
George V. Laughrun II—**Criminal** (Dist. 26 – Charlotte)  
Michael Allen Lovejoy—**Criminal** (Dist. 42 – Hendersonville)  
Merrimon Burwell Oxley—**General Practice** (Dist. 41 – Forest City)  
Manisha Patel—**Domestic** (Dist. 24 – Greensboro)  
Eddie S. Winstead III—**Real Estate/General Practice** (Dist. 12 – Sanford)  
Katie Clary—**Criminal** (Advisory Member, Charlotte)  
Debbie Harris (Public Advisory Member)  
Yolanda Smith (Public Advisory Member)

**Subcommittee 3**

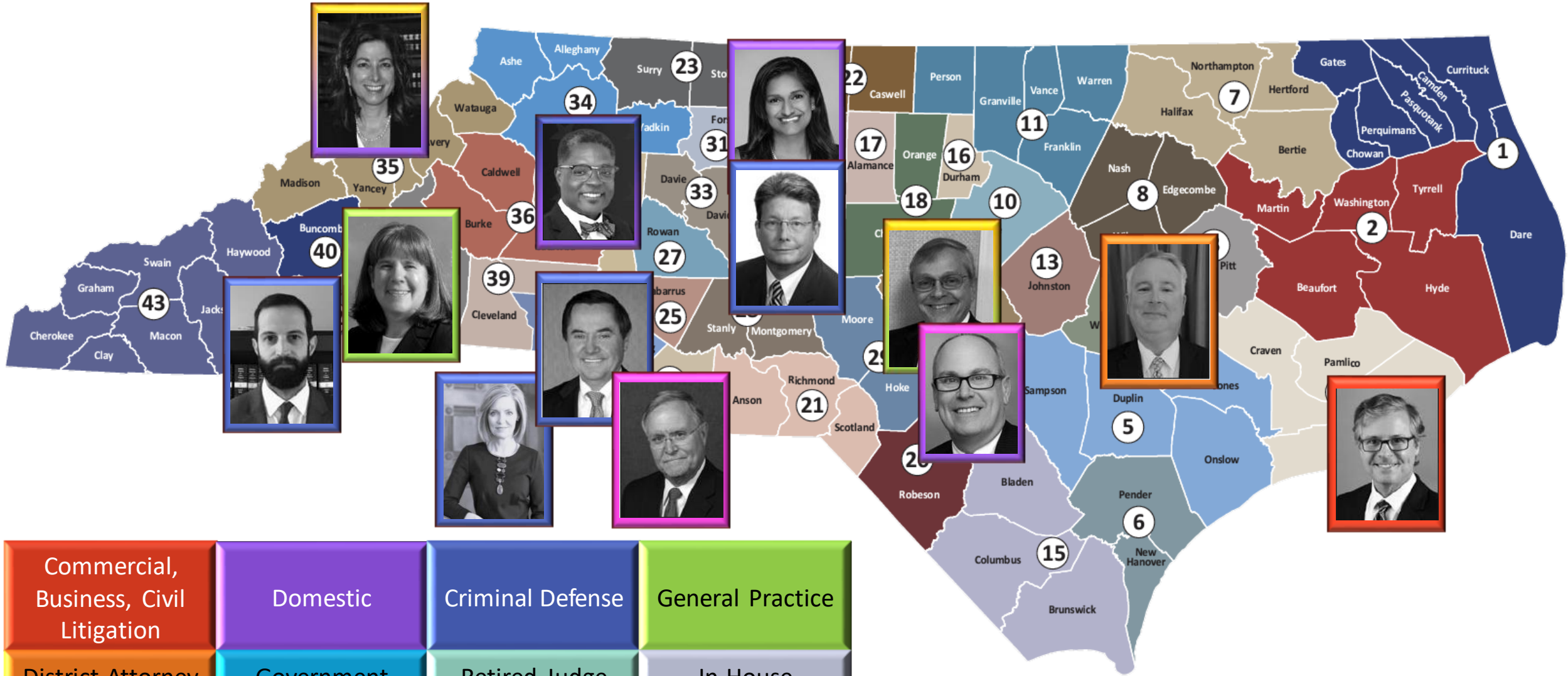
Walter E. Brock Jr., *Vice-Chair*—**Civil Litigation** (Dist. 10 – Raleigh)  
Robert C. Bowers—**Commercial Litigation** (Dist. 26 – Charlotte)  
James Thomas Burnette – **General Practice** (Dist. 11 – Oxford)  
Fred DeVore—**Civil Litigation** (Dist. 26 – Charlotte)  
Dionne Fortner—**Domestic** (Dist. 13 – Smithfield)  
Greg Jones—**Criminal** (Dist. 27 – Salisbury)  
M. Alan LeCroy—**General Practice** (Dist. 36 – Morganton)  
Joshua D. Malcolm – In House/**General Practice** (Dist. 20 – Pembroke)  
Zeyland G. McKinney Jr. – **Criminal** (Dist. 43 – Murphy)  
Kimberly Moore – **Federal Criminal** (Dist. 10 – Raleigh)  
Robert B. Rader—**Retired Judge** (Dist. 10 – Raleigh)  
Timika Shafeek-Horton—In-House (Dist. 26 – Charlotte)  
Samantha Holmes (Public Member, Morrisville)  
Nana Asante-Smith—**Business Litigation** (Advisory Member, Raleigh)  
John Burns (Public Advisory Member)

# Grievance Subcommittee 1



Commercial, Business, or Civil Litigation	Domestic	Criminal Defense	General Practice
District Attorney	Government	Retired Judge	In-House
Real Estate	Personal Injury	Probate	Labor/ Employment

## Grievance Subcommittee 2



Commercial,  
Business, Civil  
Litigation

Domestic

Criminal Defense

General Practice

District Attorney

Government

Retired Judge

In-House

Real Estate

Personal Injury

Probate

Labor/  
Employment



# Grievance Subcommittee 3



Commercial, Business, Civil Litigation	Domestic	Criminal Defense	General Practice
District Attorney	Government	Retired Judge	In-House
Real Estate	Personal Injury	Probate	Labor/ Employment

# Investigation by Agency Staff (Office of Counsel)

**Investigation Authority** - Subject to the policy supervision of the council and the control of the chair of the Grievance Committee, the counsel, or other personnel under the authority of the counsel, will investigate the grievance and submit to the chair a report detailing the findings of the investigation. 27 N.C.A.C. 1B .0112(a)

ALL OUTCOMES DETERMINED BY  
GC OR DHC; DISCIPLINE AT GC  
LEVEL IS ONLY WITH LAWYER'S  
CONSENT

Dismissals  
Before & After  
Investigation

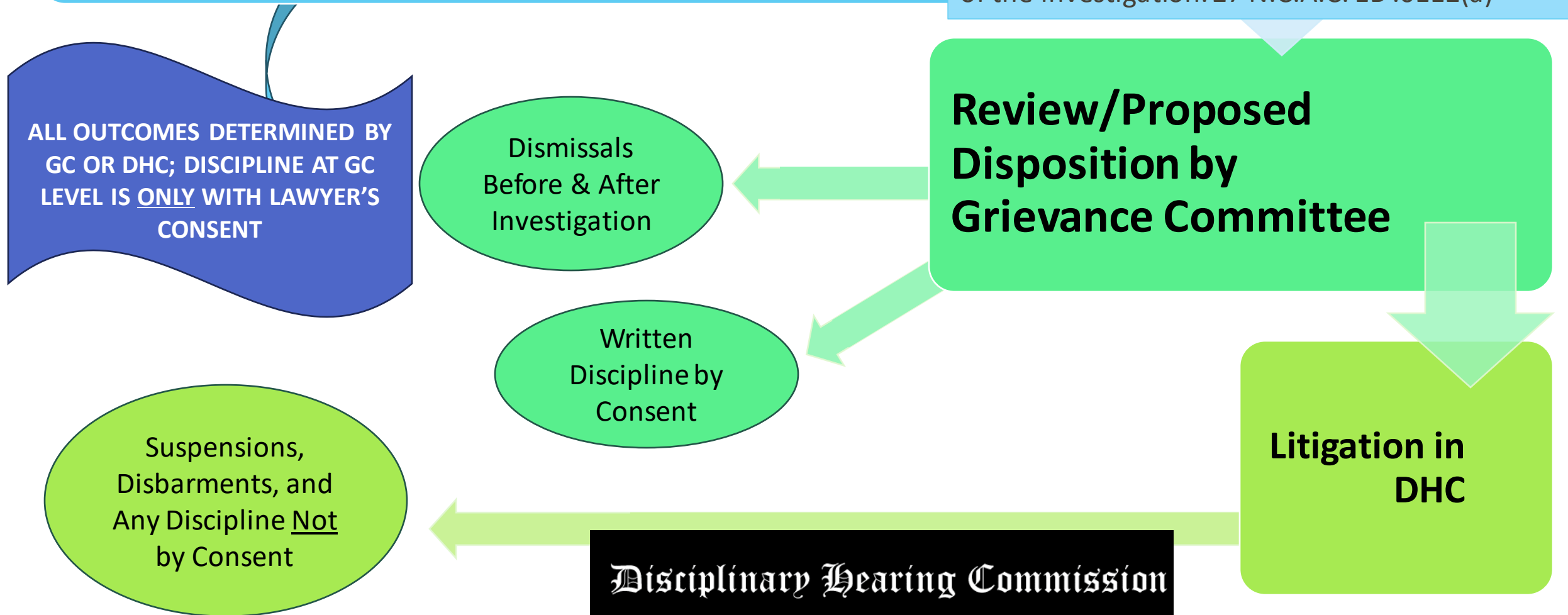
Written  
Discipline by  
Consent

Suspensions,  
Disbarments, and  
Any Discipline Not  
by Consent

**Review/Proposed  
Disposition by  
Grievance Committee**

**Litigation in  
DHC**

**Disciplinary Hearing Commission**



# Stages of Professional Development



Novice → Initiate → Apprentice → Journeyman → Expert → Master

Office of Counsel Lawyers

# Responsibilities of the OOC

Grievance  
Investigation

DHC  
Prosecution

Outside  
Litigation

Unauthorized  
Practice  
Investigation

Appeals

Advise  
Subcommittees  
& Boards

Rule  
Amendments

Assist Judicial  
Discipline

Client Security  
Fund

Trustees

Random Audits

TACP

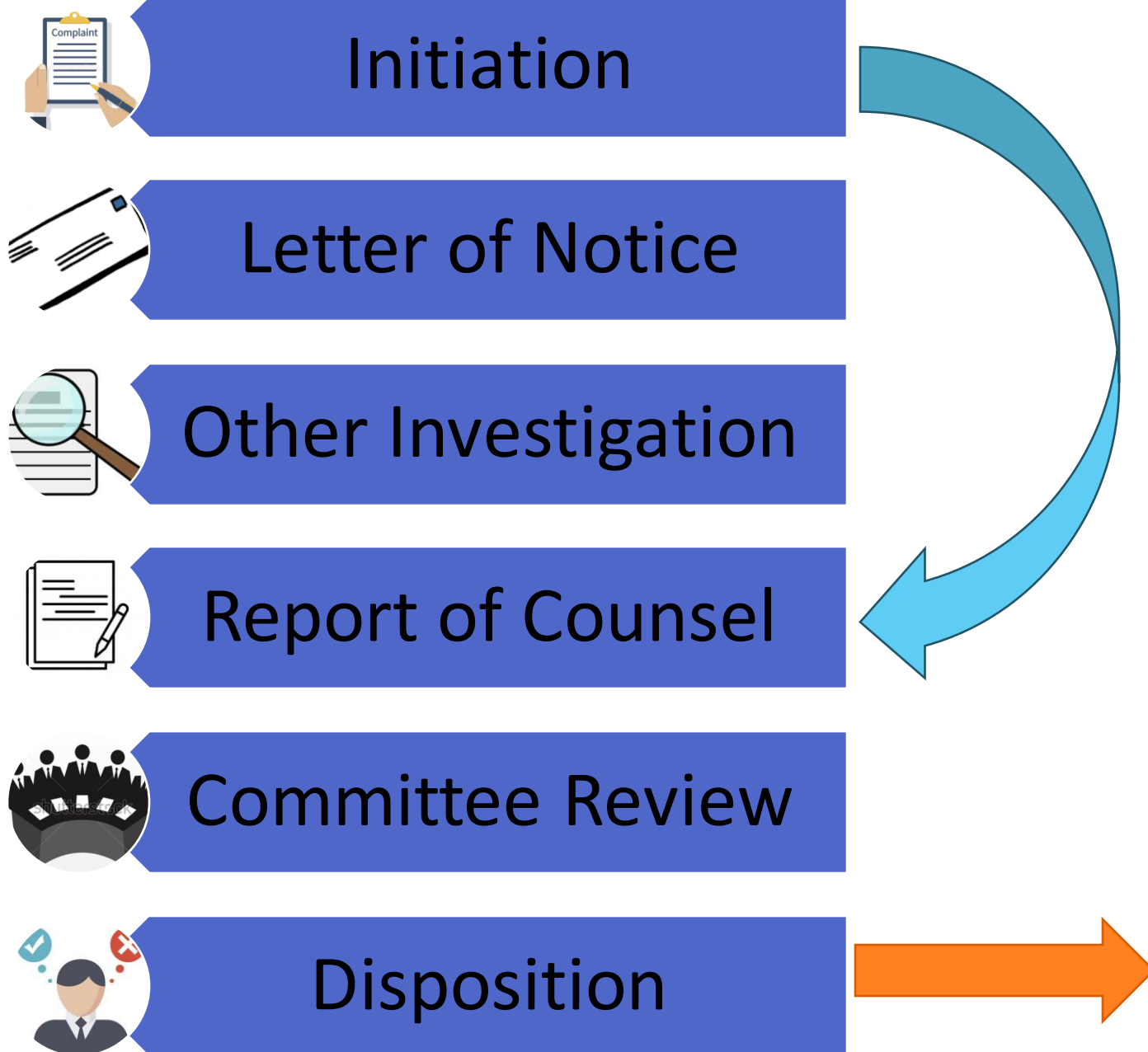
NSF  
Investigation

Trust Account  
Injunctions

Disbursements



# Phases of Grievance Processing



- 1200-1500 grievances/year
- ~75% dismissed
- Anyone can initiate (no standing requirement)
- 6-year limitations period (w/limited exceptions)

- Dismiss
- Dismiss with Letter of Caution/Warning
- Proposed Written Discipline (public/private)
- Referral to DHC for trial

# Primary Investigative Tool: The Letter of Notice



The North Carolina State Bar  
Grievance Committee

Michael L. Robinson, Chair  
217 East Edenton Street (27601)  
Post Office Box 25908

This is to advise that a grievance alleging misconduct on your part as an attorney was received in this office from the above-named individual. To assist you in preparing a response to this letter, I am enclosing the “Substance of the Grievance”. It is not a pleading of any sort but is simply a summary of what appears to be the basis of the grievance.

Under 27 N.C. Admin. Code, Chapter 1, Subchapter B, Rule .0112(c) of the Discipline and Disability Rules of The North Carolina State Bar, you are required to respond to this letter within 15 days of its receipt. Such response must be a full and fair disclosure of all of the facts and circumstances pertaining to your alleged misconduct. If you fail to respond within 15 days, the Chairman of the Grievance Committee may proceed under Rule .0112(f) of the rules.

Rules of The North Carolina State Bar, you are required to respond to this letter within 15 days of its receipt. Such response must be a full and fair disclosure of all of the facts and circumstances pertaining to your alleged misconduct. If you fail to respond within 15 days, the Chairman of the Grievance Committee may proceed under Rule .0112(f) of the rules.

**Under Rule .0112(d), a copy of your response may be provided to the complaining party unless you object thereto in writing. Please note your objection in your written response to the grievance.**

**IF YOU WISH TO DISCUSS THIS MATTER, PLEASE CONTACT CARMEN H. BANNON, THE STAFF ATTORNEY ASSIGNED TO YOUR FILE AT (919)828-4620.**

Please give this matter your immediate attention.

Sincerely yours,

Katherine E. Jean  
Counsel

KEJ/bc  
Enclosure

Precedent Distinguishing Investigative Phase  
from Adjudicative Phase:

*State Bar v. Braswell*, 67 N.C. App. 456 (1984)

“There is no requirement that a letter of notice must be issued before formal action is taken.

Once the Grievance Committee has determined that there is probable cause to believe that a violation of the disciplinary rules has occurred, a formal complaint is filed. The filing of a formal complaint satisfies defendant's right to be informed of and respond to the charges against him. These rights are enumerated in Article IX, Section 14 *supra*.

In support of his contention that he had a right to be informed at an earlier stage of the proceeding, defendant cites *In re Trulove*, 54 N.C. App. 218, 282 S.E.2d 544 (1981), *disc. rev. denied*, 304 N.C. 727, 288 S.E.2d 808 (1982). This case is inapposite to this issue. In *Trulove*, the court vacated a decision of the North Carolina Board of Registration for Professional Engineers and Land Surveys revoking respondent's license. The basis for this decision was the board's failure to give respondent a short and plain statement of the allegations against him. In *Trulove*, because of the insufficiency of the statement of charges, respondent was unable to prepare his defense at his adjudicatory hearing.

In this case, defendant does not contend that he was unable to prepare for his adjudicatory hearing, but rather he argues that he should have had an opportunity for more input during the investigatory phase of the proceeding. We find no authority to support his position and cannot accept it as valid. This assignment of error is overruled.”

# Confidentiality of Grievances

## Rule .0133(a):

Generally, “proceedings involving allegations of misconduct by or alleged disability of a [lawyer] will remain confidential until...”

- (1) the lawyer accepts public written reprimand;
- (2) a disciplinary complaint is dismissed;
- (3) the respondent is found not guilty of the charges;
- (4) a petition for reinstatement is granted by the general courts of justice;
- (5) the lawyer files an affidavit of surrender of license; or
- (6) the lawyer consents to transfer to disability inactive status

**By statute, documents related to Grievance Committee investigations & deliberations are not public records. (N.C.G.S. § 84-32.1)**

## Rule .0113

(e) **Closed Meetings** - The counsel and deputy counsel . . . may be present while the committee is in session and deliberating, but no other than members of the committee.

**Before the Committee** - The results of deliberation by the Grievance Committee will be disclosed to the counsel and the secretary for use in the performance of their duties. Otherwise, a member of the committee [and] the staff of the North Carolina State Bar . . . may disclose matters occurring before the committee only when so directed by the committee or a court of record.



# Agency Obligations to Complainants

27 N.C.A.C. 1B .0112(d): **Request for Copy of Respondent's Response** - The counsel may provide to the complainant a copy of the respondent's response to the letter of notice unless the respondent objects thereto in writing.

## .0125 NOTICE TO COMPLAINANT

- (a) **Notice of Discipline** - If the Grievance Committee finds probable cause and imposes discipline, the chairperson of the Grievance Committee will notify the complainant of the action of the committee.
- (b) **Referral for Disciplinary Commission Hearing** - If the Grievance Committee finds probable cause and refers the matter to the commission, the chairperson of the Grievance Committee will advise the complainant that the grievance has been received and considered and has been referred to the commission for hearing.
- (c) **Notice of Dismissal** - If the Grievance Committee finds that there is no probable cause to believe that misconduct occurred and votes to dismiss a grievance, the chairperson of the Grievance Committee will advise the complainant that the committee did not find probable cause to justify imposing discipline and dismissed the grievance.
- (d) **Notice of Letter of Caution or Letter of Warning** - If final action on a grievance is taken by the Grievance Committee in the form of a letter of caution or a letter of warning, the chairperson of the Grievance Committee will so advise the complainant. The communication to the complainant will explain that the letter of caution or letter of warning is not a form of discipline.

# Disciplinary Hearing Commission



- Independent Commission charged solely with deciding attorney discipline cases
- Created by statute (G.S. 84-28.1)
- 20 Appointed Members: 12 Lawyers, 8 Non-lawyers
- A 3-member hearing panel decides each case
- Trials resemble superior court bench trial
- Rules of Evidence & Civil Procedure apply
- Only DHC or court can suspend or disbar a lawyer
- Appeal directly to COA: No Superior Court review, as in other administrative tribunals

