

NORTH CAROLINA GENERAL ASSEMBLY



STATE BAR REVIEW COMMITTEE

REPORT TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

MARCH 2024

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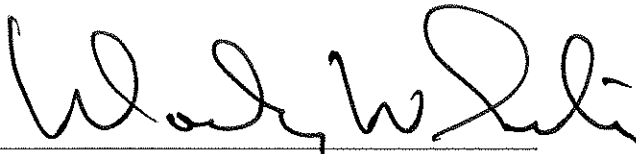
TRANSMITTAL LETTER

March 14, 2024

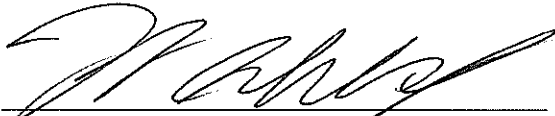
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TO THE MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON
GOVERNMENTAL OPERATIONS

The STATE BAR REVIEW COMMITTEE respectfully submits the following report
to the Joint Legislative Commission on Governmental Operations.



Woody White (Co-Chair)



Lawrence Shaheen (Co-Chair)

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COMMITTEE PROCEEDINGS

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The State Bar Review Committee met five times after the 2023 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 24, 2024 Meeting

The first meeting of the committee was held on Wednesday, January 24, 2024, at 2:30 p.m. in Room 423 of the Legislative Office Building, with Woody White, Co-Chair, presiding.

Co-Chair White called the meeting to order and introduced and thanked the Sergeant-at-Arms. Both he and Co-Chair Larry Shaheen made introductory remarks to the committee. Co-Chair White then presented the charge of the committee, after which members of the committee were recognized to introduce themselves. Co-Chair White suggested that, during its term, the committee consider various topics including the weaponization of the grievance process, confidentiality, and expunctions.

Co-Chair White recognized Christine Mumma, Executive Director of the Center for Actual Innocence, to give public comment. Ms. Mumma deferred her comments to another date after being advised that there would be future opportunities to speak.

With no further business before the committee, Co-Chair White adjourned the meeting.

February 9, 2024 Meeting

The committee held its second meeting on Friday, February 9, 2024, at 10:00 a.m. in Room 423 of the Legislative Office Building, with Woody White, Co-Chair, presiding.

After Co-Chair White called the meeting to order and introduced and thanked the Sergeant-at-Arms, Co-Chair Larry Shaheen made a motion for the committee to adopt the minutes of the January 24, 2024 meeting. With all members of the committee voting in favor of adoption, the minutes were adopted.

Co-Chair White then briefly reviewed the agenda, and the committee heard presentations from the following persons:

- Carmen Bannon, Counsel, North Carolina State Bar, gave a brief overview of the North Carolina State Bar (“the State Bar”) disciplinary process including the role of the Office of Counsel in the grievance process. She told the committee that the retirement of more experienced staff members in the Office of Counsel

and the hiring of newly-licensed lawyers may be a contributing factor to concerns expressed by the committee, including letters of notice, and asked that the committee keep this in mind. Ms. Bannon also explained that respondent attorneys do not have access to staff counsel's recommendations before those recommendations are presented to the grievance committee because the recommendations generally contain interviews conducted by staff investigators and written memorandum of those investigations, which are protected by the work product doctrine. A transcript of Ms. Bannon's presentation and discussion with the committee is included in the minutes of this meeting. See Appendix D for a copy of Ms. Bannon's presentation.

- Alan Schneider of Cheshire, Parker, Schneider, PLLC provided recommendations on the grievance and disciplinary hearing processes of the State Bar. He suggested selecting members of the Disciplinary Hearing Commission by direct vote of licensed North Carolina attorneys rather than by the State Bar Council, creating an expungement provision that allows certain written discipline to be erased from the State Bar's website upon application to the State Bar, modifying complainant notification letters so that complainants are no longer informed of the outcome of cases that are resolved privately, and addressing respondents' representation before the grievance committee. A transcript of Mr. Schneider's presentation and discussion with the committee is included in the minutes of this meeting. See Appendix D for a copy of Mr. Schneider's memorandum to the committee.
- Edwin L. West, III of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP discussed the State Bar hearing processes. He told the committee that it would be helpful to have more due process protections in place, so that respondent attorneys have an opportunity to address all issues prior to a complaint becoming public. Mr. West also said that it would be helpful for respondent attorneys to have complete file access, with certain protections in place, in order for respondent attorneys to better inform their responses. He then explained the settlement conference process and recommended adapting the process to resemble a civil mediation, by including an independent, third party. Mr. West addressed his concerns about the Grievance Review Panel, stating that the rules regarding the Grievance Review Panel do not comport with the statute completely, there is no clarity on who can speak before the Grievance Review Panel, and more robust Grievance Review Panel hearings would better accommodate some cases. A transcript of Mr. West's presentation and discussion with the committee is included in the minutes of this meeting.

Co-Chair White recognized Christine Mumma, Executive Director of the Center for Actual Innocence, to give public comment. Ms. Mumma spoke to the committee about her personal experience with the State Bar disciplinary process and made various suggestions to the committee.

With no further business before the committee, Co-Chair White adjourned the meeting.

February 29, 2024 Meeting

The committee held its third meeting on Friday, February 29, 2024, at 2:00 p.m. in Room 423 of the Legislative Office Building, with Woody White, Co-Chair, presiding.

After Co-Chair White called the meeting to order and introduced and thanked the Sergeant-at-Arms, Co-Chair Larry Shaheen made a motion for the committee to adopt the minutes of the February 9, 2024 meeting. With all members of the committee voting in favor of adoption, the minutes were adopted.

The committee then heard presentations from the following persons:

- Legislative central staff presented an overview of other state bars' disciplinary processes. Kristen Harris, Legislative Analysis Division, presented information on California and Florida. Jared Simmons, Legislative Drafting Division, presented information on Georgia, Indiana, South Carolina, and Tennessee. Karyl Smith, Legislative Analysis Division, presented information on New York and Virginia. See Appendix D for a copy of central staff's overview.
- Karyl Smith, Legislative Analysis Division, summarized House Bill 5010, "An Act Relating to the Classification of a Grievance Filed with the State Bar of Texas," which created a standing requirement to classify a grievance as a complaint with the State Bar of Texas. See Appendix D for a copy of Ms. Smith's summary.
- Kristen Harris, Legislative Analysis Division, gave an overview of California and Florida's rules on vexatious complainants, who abuse the attorney disciplinary process by filing inappropriate, repetitive, or frivolous complaints. See Appendix D for a copy of California and Florida's rules.
- Christine Mumma, Executive Director of the Center for Actual Innocence, discussed the North Carolina State Bar's role in justice. Ms. Mumma told the committee about her personal experience with the State Bar disciplinary process. She also explained how the justice system and the State Bar share similar issues, such as disproportionality, lack of transparency, and bias. She then made several recommendations, which include developing an expungement process, making all disciplinary options available to the Disciplinary Hearing Commission, performing a root cause analysis upon the dismissal of a grievance, and establishing separate grievance committees for civil, criminal, and trust account matters. A transcript of Ms. Mumma's presentation and discussion with the committee is included in the minutes of this meeting. See Appendix D for a copy of Ms. Mumma's presentation.

- Joshua Walthall of Boerema Blackton, LLP, presented collaborative proposals between the State Bar and defense counsel, which include creating a process for the expungement of disciplinary actions, establishing a standing requirement for filing grievances, allowing the Grievance Committee to consider a complainant's motive when filing a grievance, developing a gatekeeping mechanism for vexatious complainants, modifying the State Bar's complainant notification letter to prevent possible weaponization through publication, and providing an opportunity for respondents to address the Grievance Committee before it deliberates matters of misconduct. A transcript of Mr. Walthall's presentation and discussion with the committee is included in the minutes of this meeting. See Appendix D for a copy of the collaborative proposals between the State Bar and defense counsel.

Following the presentations, the following members of the public were recognized to speak:

- Peter Romary, QVerity, spoke about his personal experience with the State Bar disciplinary process and made suggestions to improve the process.
- Linnea Mulder expressed her concerns with the grievance process including the length of time it takes to make decisions and the lack of transparency in communication, especially with status updates.
- Richard Polidi explained that State Bar prosecutors do not have a legal duty or an ethical obligation to disclose exculpatory evidence when responding to requests for discovery.
- Christine Mumma, Executive Director of the Center for Actual Innocence, made clarifying remarks concerning her presentation on the State Bar's role in justice.

With no further business before the committee, Co-Chair White adjourned the meeting.

March 4, 2024 Meeting

The committee held its fourth meeting on Monday, March 4, 2024, at 10:00 a.m. in Room 423 of the Legislative Office Building, with Woody White, Co-Chair, presiding.

Co-Chair White asked Kristen Harris, Legislative Analysis Division, to give the committee an overview of the committee report. Ms. Harris explained that the report would summarize all the committee's meetings and present the findings and recommendations of the committee to the General Assembly.

Co-Chair White then suggested each committee member say what they would like to include in the committee report.

- Co-Chair White proposed the following: enact legislation on vexatious complainants, expunctions of past State Bar violations, and standing requirements, amend G.S. 84-28. Discipline and disbarment., to provide respondent attorney with equal access throughout the grievance process and to stop *ex parte* communications, consider recommendations proposed by Ms. Christine Mumma, and conduct further study of the expenses associated with the grievance process.
- Co-Chair Larry Shaheen proposed the following: enact legislation on expunctions of past State Bar violations, standing requirements, and vexatious complainants modeled on Florida's Rule 3-7.17, provide each party with equal access to the Grievance Committee, revise the State Bar's notification letter to complainants, allow respondent attorneys to request a speedy trial, and provide funding for retired judges or administrative law judges to make evidentiary rulings at the Disciplinary Hearing Commission.
- Marcia Armstrong spoke on the following: address vexatious complainants modeled on Florida's Rule 3-7.17 and standing requirements based on recommendations made by the State Bar and defense counsel, continue to study expunctions of violations and exculpatory evidence issues, provide each party with more access to the Grievance Committee, determine which types of communications are privileged by looking at the definition of "work product," and allow a nominating committee to select members of the Disciplinary Hearing Commission as recommended by the State Bar and defense counsel.
- Honorable Andrew Heath proposed the following: require open-file discovery and the disclosure of exculpatory evidence and provide an opportunity for the parties to address the Grievance Committee before trial.
- Honorable Judge Valerie Zachary spoke on the following: expressed concerns regarding the State Bar and defense counsel's proposed composition of the Disciplinary Hearing Commission.
- Honorable Justice Tamara Barringer proposed the following: create a separate Grievance Committee to evaluate trust account violations and expedite enrollment into the Trust Accounting Compliance Program.
- Colon Willoughby, Jr. spoke on the following: address vexatious complainants modeled on Florida's Rule 3-7.17 and California's Rule 2605, expunctions of past State Bar violations, and standing requirements, allow a nominating committee to select members of the Disciplinary Hearing Commission as recommended by the State Bar and defense counsel, and continue to study the meaning of "work product," when discovery should begin, and issues concerning confidentiality such as when a complaint becomes public.

A transcript of the committee members' recommendations is included in the minutes of this meeting.

With no further business before the committee, Co-Chair White adjourned the meeting.

March 14, 2024 Meeting

The committee held its final meeting on Thursday, March 14, 2024, at 10:00 a.m. in Room 423 of the Legislative Office Building, with Woody White, Co-Chair, presiding.

After Co-Chair White called the meeting to order and introduced and thanked the Sergeant-at-Arms, Co-Chair Larry Shaheen made a motion for the committee to adopt the minutes of the February 29, 2024 and March 4, 2024 meetings. With all members of the committee voting in favor of adoption, the minutes were adopted.

Co-Chair White told the committee members that a copy of the committee report was in their folders. Co-Chair White recognized Co-Chair Shaheen to make a motion to adopt and approve the report. Co-Chair Shaheen said he spoke to the committee members and believed they were all in agreement to make one change to the report – on page 13, line 3, by deleting “respondent access to” and inserting “‘due process’ in.” Co-Chair Shaheen asked the committee members if there were any objections to the change. There were no objections.

Co-Chair Shaheen moved to adopt and approve the committee report to the Joint Legislative Commission on Governmental Operations with permission for staff to make technical corrections and changes as necessary.

Co-Chair White stated that the committee recently received a memorandum regarding the State Bar's pending rule about trust accounting, and, without objection, the memorandum would be added to the committee report. See Appendix D for a copy of the memorandum.

The committee then voted unanimously to adopt and approve the committee report.

With no further business before the committee, Co-Chair White adjourned the meeting.

FINDINGS AND RECOMMENDATIONS

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Recommendation #1 Due Process Legislation

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).

Recommendation #2 Vexatious Complainant Legislation

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).

Recommendation #3 Standing Requirement Legislation

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).

Recommendation #4 Expungement Rulemaking

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 Delaware, New Hampshire, and Rhode Island, have addressed the issue by adopting procedures to expunge certain prior disciplinary violations from an attorney’s record. Currently, North Carolina does not have an expungement procedure for prior disciplinary actions. If the State Bar were to create such an expungement procedure, then certain disciplinary actions would be eligible for expungement in certain cases in accordance with future proposed administrative rules adopted by the State Bar Council and certified and entered by the Supreme Court of North Carolina under G.S. 84-21(b).

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).

Recommendation #5 Continued Discussion on the Composition of the Disciplinary Hearing Commission and Certain Other Topics

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 further recommends that 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.

COMMITTEE MEMBERSHIP

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2023-2024

**President Pro Tempore of the Senate
Appointment:**

Woody White, Co-Chair

Governor Appointment:

Colon Willoughby, Jr.

Authorizing Legislation Appointment:

Marcia Armstrong

**Speaker of the House of Representatives
Appointment:**

Lawrence Shaheen, Co-Chair

**Chief Justice of the Supreme Court
Appointments:**

Honorable Justice Tamara Barringer

Honorable Judge Valerie Zachary

Honorable Andrew Heath

COMMITTEE CHARGE/STATUTORY AUTHORITY

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GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2023

SESSION LAW 2023-134 HOUSE BILL 259

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION

...

PART XXVII. GENERAL ASSEMBLY

...

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.

SECTION 27.11.(d) Compensation; Allowance. – Members of the Committee shall receive subsistence and travel allowances in accordance with G.S. 120-3.1, 138-5, and 138-6, as appropriate. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

SECTION 27.11.(e) Report. – 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 (c) 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.

...

SECTION 27.11.(k) Subsections (f) and (g) become effective July 1, 2024. The remainder of this section is effective when this act becomes law.

LEGISLATIVE PROPOSALS

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SUPPORTING DOCUMENTATION

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1. “A Brief Overview of the Current North Carolina State Bar Disciplinary Process,” Carmen Bannon, Office of Counsel North Carolina State Bar, February 9, 2024
2. “Information Request from the State Bar,” North Carolina State Bar, February 9, 2024
3. “Grievance and DHC Processes,” Alan Schneider, Cheshire, Parker, Schneider, PLLC, and Joshua Walthall, Boerema Blackton, LLP, February 9, 2024
4. “State Bar Disciplinary Proceedings Chart,” Kristen Harris and Karyl Smith, Legislative Analysis Division and Jared Simmons, Legislative Drafting Division, February 29, 2024
5. “Summary of Texas HB 5010,” Karyl Smith, Legislative Analysis Division, February 29, 2024
6. California Rule 2605. Vexatious Complainants, February 29, 2024
7. Florida Rule 3-7.17 Vexatious Conduct and Limitation on Filings, February 29, 2024
8. “Collaborative Working Proposals,” Carmen Bannon, Office of Counsel NC State Bar, Alan Schneider, Cheshire, Parker, Schneider, PLLC, and Joshua Walthall, Boerema Blackton, LLP, February 29, 2024
9. “The State Bar’s Role in Justice,” Christine Mumma, North Carolina Center on Actual Innocence, February 29, 2024
10. “State Bar Review Committee Public Comments Report,” February 29, 2024
11. “Respondent Access to Agency Materials (Discovery, Privilege, and Work Product),” Carmen Bannon, Office of Counsel North Carolina State Bar and Alan Schneider Cheshire, Parker, Schneider, PLLC, March 4, 2024
12. “DHC Selection- Nominating Committee,” Carmen Bannon, Office of Counsel North Carolina State Bar and Alan Schneider, Cheshire, Parker, Schneider, PLLC, March 4, 2024
13. “Report on the Recommendations of the Deferral Programs Subcommittee,” Alice Mine, Office of the Secretary, North Carolina State Bar, March 11, 2024

[A Brief Overview of the Current State Bar Disciplinary Process](#)

Carmen H. Bannon,
Counsel

North Carolina State Bar

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^{1,2}

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.)

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

¹ 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).

² 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.)

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

CHART 2 - DHC Data:

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

CHART 3 - Office of Counsel* Full Time Employees:

Year	Lawyers	Investigators	Other Staff	Total
2014	16	11	13	40
2015	18	11	14	43
2016	17	11	14	42
2017	17	10	14	41
2018	17	10	13	40
2019	16	10	13	39
2020	17	10	16	43
2021	17	11	15	43
2022	16	10	17	43
2023	18	11	16	45
2024	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 Counsel³ 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

³ 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.

communicating with the attorney against whom the 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.⁴ 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.

⁴ 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.

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.

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.⁵

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.

⁵ 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.

To: Woody White
From: Alan Schneider and Joshua Walthall
Re: Grievance and DHC Processes
Date: January 25, 2024

Thank you for inviting our input on the Grievance and DHC processes at the North Carolina State Bar. After careful consideration and receiving feedback from several of our clients, here are the primary areas that our clients think need to be addressed:

1. **Selection of the DHC members.** Some clients and other defense counsel have expressed concerns about how DHC members are appointed. Some of the attorney members of the DHC pool are appointed by the State Bar Council. The defense bar is not asked for input on the appointments. One proposed alternative is for DHC members to be selected by direct vote of the attorneys in NC, rather than by the State Bar Council, such that DHC members are selected in the same fashion as Councilors. A sitting or retired superior court judge or ALJ in North Carolina would be appointed by the Supreme Court (or AOC) to each case as soon as the complaint is filed and would rule on motions prior to trial and objections / evidentiary issues during the trial. The judge would not vote on the outcome of the trial with the panel.

2. **Expungement.** Because of the internet and social media, written professional discipline is more impactful than ever. When the State Bar rules were created, a Reprimand wouldn't be all that public and certainly wouldn't have been viewable forever by anyone with electricity. But that's the world we live in now. We should have an expungement provision allowing written discipline to be erased from the Bar's website upon application to the State Bar Council and if certain conditions are met.

3. **Information provided to complainants.** Because of the internet and social media, when a complainant is informed that an attorney has been privately disciplined, that information is no longer private - it can immediately go on social media for the world to see. Complainants should no longer be informed of the outcome of cases that are resolved privately. For example, they could receive something noting: "This matter did not warrant public disciplinary action and therefore was resolved privately, either by dismissal, deferral, or private action."

4. **Representation before the Grievance Committee.** As you know, the prosecutors at the Bar present their grievances to the Grievance Committee once a quarter; then the Grievance Committee votes on what to do with a given grievance, under a probable cause standard. The Committee is dependent upon the Deputy Counsel for an accurate and complete understanding of the facts and circumstances of each grievance. The respondents are not present, nor are their counsel. We understand it has been the practice for decades to present cases without respondents present because the Grievance Committee is the client of the Bar staff. But because the decisions of the Grievance Committee are more impactful now than they ever have been (because the internet and social media make grievance decisions more public than ever before), the Grievance Committee is more an adjudicatory body than a client. Thus, many clients feel that

increased due process and/or a higher standard than probable cause is necessary in the proceedings.

- a. Some possible solutions:
 - i. Allow respondents or their counsel to participate in the presentation of the grievance to the Committee when written discipline or DHC referral is recommended. They would only be present during the presentation of their matter – not others, to preserve confidentiality. We are not envisioning allowing the respondents to make an argument, but merely to be present and offer corrections or additions to the facts as presented to the Committee. A strict time limit could be enforced, along with a limitation on the subject matter. The Real Estate Commission does this with great success.
 - ii. Make the standard for issuing discipline higher than probable cause.
 - iii. Some combination of the above.
- b. Another possible remedy is to reduce the types of resolutions that can be issued by the Grievance Committee such that the Grievance Committee can issue private discipline or refer a case to the DHC with authorization to settle it, pre-suit, with written public discipline – the terms of which are negotiated by the lawyer and the Deputy Counsel. That way, instead of receiving a Reprimand with the effectual message of “accept this, or we will file a public complaint against you,” a lawyer would receive a note saying that the Grievance Committee has approved the filing of a public complaint but has also authorized the Deputy Counsel to settle the case, pre-suit for a Reprimand; then the parties could negotiate the language of the Reprimand, and if nothing can be agreed upon, charges will be filed. Private discipline could still be rejected, and any pre-suit resolutions would still be subject to approval by the Panel. Ultimately, this is not terribly different from what is done now, but the slight changes to the semantics of it and the process would likely make most respondents feel more involved in the process, which is a laudable goal on its own. It would also make the language of any public written discipline a negotiated resolution in lieu of public charges rather than a “take it or leave it” proposition. Moreover, if this were implemented with the other items on this list, it would add a significant amount of due process to the grievance framework. This largely mirrors the Medical Board process.

Various State Bar Disciplinary Proceedings

State	Relevant Rules, Statutes and Links	State Bar Disciplinary Board Structure	Notice to Respondent Attorney	Right to Counsel and Due Process	Confidentiality
California	<p>Rules of Procedure of the State Bar of California</p> <p>Filing a Complaint against an Attorney Overview Flowchart</p> <p>Complaint Review Process Flowchart</p>	<p>The Office of Chief Trial Counsel (OCTC) and the Office of General Counsel (OGC) review and investigate complaints. The Hearing Department consists of 5 full-time judges appointed by the Supreme Court, legislature, and governor and determines whether or not discipline should be imposed. If either the respondent attorney or the State Bar requests a review of the Hearing Department's decision, it is heard by the Review Department which is a presiding judge plus 2 judges appointed by the Supreme Court. If a State Bar Court Judge imposes suspension or disbarment, the decision must be reviewed and approved by the Supreme Court.</p>	<p>Before filing a Notice of Disciplinary Charges, the OCTC must notify the respondent attorney in writing of the allegations and must provide the attorney with a period of not less than two weeks within which to respond. Rule 2409. Attorney's Response to Allegations</p> <p>However, the respondent attorney may receive notice prior to the filing of charges. <i>During the review process</i>, if the complaint indicates misconduct, the attorney may be directed to take certain action to resolve the matter without investigation. <i>During the investigation process</i>, even if the complaint does not indicate misconduct, the Bar may write to the attorney to suggest resources to address the conduct that led to the complaint.</p>	<p>The respondent attorney has an implied right to counsel.</p> <p>Counsel of record in any proceeding before the court may be changed by any party in the same manner as provided under the Code of Civil Procedure. Rule 5.31 Change of Counsel of Record</p> <p>The OCTC may compel the appearance of a witness at deposition. A notice of deposition must be served on each attorney whose conduct is being investigated and such attorneys shall have the right to appear and participate at the deposition. Rule 2502. Investigation Depositions</p>	<p>Matters become public when the OCTC files a Notice of Disciplinary Charges. The OCTC may file charges when it finds 1) there is reasonable cause to believe an attorney has committed a violation and 2) the attorney has received a fair, adequate, and reasonable opportunity to deny or explain the matters which are the subject of the notice. Rule 2604. Filing Notice of Disciplinary Charges</p> <p>The filing of charges typically comes after the review and investigation period and after the attorney has received notice of the complaint and there has been an attempt to settle the case, all of which are private.</p>

<p style="text-align: center;">Florida</p>	<p style="text-align: center;"> Rules Regulating the Florida Bar Chapter 3 of the Rules of Discipline Florida Bar Lawyer Discipline Process Flowchart </p>	<p>A complaint is reviewed by Intake Counsel of the Bar. If further investigation is warranted, it is referred to a Bar branch office and then to a local grievance committee which is made up of volunteers from the community, at least one-third of whom are non-lawyers. The committee determines whether there is probable cause and if found, a complaint is filed. The elected members of the Florida Bar Board of Governors serve in an oversight role in all stages of the process. A judge appointed by the Supreme Court hears disciplinary proceedings and files a report. The report is reviewed by the BOG. Both the BOG and attorney may appeal the report. The Supreme Court has final authority on judgments and consent orders.</p>	<p>An attorney is notified if Bar counsel decides not to pursue an inquiry and the reasons why the inquiry was closed. This occurs in the screening process. Rule 3-7.3. Review of Inquires, Complaint Processing, and Initial Investigatory Procedures</p> <p>If Intake Counsel determines that the allegations constitute a violation, a file is opened, and the respondent attorney is notified that a response is due in 15 days.</p>	<p>The respondent attorney has the right to counsel at grievance committee proceedings.</p> <p>The Bar must advise the respondent of the conduct being investigated and the rules that may have been violated at a reasonable time before any finding of probable cause or minor misconduct is made. The Bar must provide all materials considered by the committee and give the respondent an opportunity to make a written statement, explaining, refuting, or admitting the alleged misconduct. Rule 3-7.4. Grievance Committee Procedures</p>	<p>Disciplinary cases become public when a case is closed at the staff or grievance committee level or when probable cause is found.</p> <p>Unless otherwise ordered by the court, nothing in the rules prohibits a complainant, respondent, or witness from disclosing documents or correspondence served on or provided to those persons except where it is prohibited by the rules of professional conduct, statute, caselaw, or attorney- client privilege. Rule 3-7.1. Confidentiality</p> <p>All disciplinary sanctions in cases opened after March 16, 1990 are public, will be disclosed on inquiry, and may be published in print or electronic media. Rule 3-5.4. Publication of Discipline</p>
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<p>Georgia</p>	<p>State Bar Handbook, Part IV, Georgia Rules of Professional Conduct</p>	<p>The State Disciplinary Board consists of volunteer members appointed by the Supreme Court of Georgia and the State Bar president. The Board and Office of General Counsel investigate each complaint. Complaints may be referred to the Client Assistance Program if the complaint is resolvable without a grievance or a situation not rising to a violation of rules. If there is a formal complaint filed that requires a probable cause hearing, the Court appoints a special master to hear the case if facts are still in dispute, and a review board may review facts and conclusions and discipline. The Supreme Court reviews the case and enters its judgment.</p>	<p>Respondent attorney shall be given reasonable notice by a “notice of investigation” and a reasonable opportunity to respond to the charges alleged. Rule 4-204.1. Notice of Investigation. Respondent has 30 days to deliver a written response. Rule 4-204.3. Answer to Notice of Investigation Required. A letter of instruction may be issued to respondent if the Board deems the complaint does not allege a violation or the violation has resulted in no harm or injury to a third party. Rule 4-204.5. Letters of Instruction.</p>	<p>Implied right to counsel for all proceedings before the Board and Supreme Court, as evidenced by the Uniform Service Rule. “Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent’s lawyer.” Rule 4-203.1. Uniform Service Rule.</p>	<p>All investigations and proceedings pending at the screening or investigative stage are confidential generally. If the Supreme Court appoints a special master after a finding of probable cause, the hearings become public. Respondent and complainant may discuss the proceedings publicly. Rules 4-209. Docketing by Supreme Court, 4-221.1. Confidentiality of Investigations of Proceedings, 4-221.3. Pleadings and Communications Privileged.</p>
<p>Indiana</p>	<p>2021 Annual Report of the Disciplinary Commission of the Supreme Court of Indiana. Rule 23 of the Indiana Rules of Court. 2021 Annual</p>	<p>The Disciplinary Commission consists of 7 attorneys and 2 public members appointed by the Supreme Court. The Commission inquires into claims of attorney misconduct with the assistance of an Executive Director and staff. Rule 23 § 7. Organization of the Disciplinary Commission. If a grievance is not</p>	<p>Written notice is mailed to the respondent attorney if a complaint is dismissed during a preliminary inquiry. Rule 23 § 11. Disciplinary Commission Consideration of Grievances. If not dismissed on its face, the respondent is notified and given 30 days to respond. The respondent is also notified if the complaint is dismissed</p>	<p>The respondent has the right to counsel before the Commission and in proceedings. Rule 23 § 14. Proceedings Before the Hearing Officer. The counsel may appear in all proceedings and correspondence, including a disciplinary hearing.</p>	<p>If a respondent attorney is subject to discipline from the Supreme Court or Disciplinary Commission, a public record is generated. A Private Administrative Admonition (PAA) is only issued if agreed to between the Commission and the respondent, subject to approval by the Court. This generates a public record of the PAA, but facts of the case are not published. A private reprimand is issued by the Court through a public order, but no public opinion describing the case. Other sanctions, such as public reprimands, suspensions, and</p>

	Report of the Disciplinary Commission – Overall Process	dismissed initially, Commission staff will direct the respondent attorney to respond in writing within 30 days of receipt. Rule 23 § 10. Investigatory Procedures. If reasonable cause is found, then (i) the complaint is filed with the Clerk of Supreme Court, (ii) an answer by respondent, (iii) evidentiary hearing, and (iv) appointment of a hearing officer. The Court will issue a sanction if warranted.	after an investigation and consideration by the Disciplinary Commission. Rule 23 § 12. Prosecution of Attorney Misconduct.		disbarment are public and generate an opinion issued by the Court. Rule 23 § 3. Types of Discipline and Suspension; Notice of Orders and Opinions.
New York	NY Rules for Attorney Disciplinary Matters (22 NYCRR Part 1240) §90 of Article 4 of Chapter 30 of the Consolidated Laws of NY An Overview of the Attorney Disciplinary Process by the	There are four Appellate Divisions of the NY Supreme Court, one in each of the State's four Judicial Departments. Each department appoints one or more Attorney Grievance Committees (Committee) within its jurisdiction as it deems appropriate. Each Committee is comprised of at least 21 members, of which no fewer than 3 members shall be non-lawyers. Committee staff reviews and investigates complaints. If the Committee finds that there is probable cause, the	The Chief Attorney shall provide to the respondent a copy of any complaint (not otherwise disposed of) within 60 days of receipt of that complaint. Rule 1240.7. Proceedings Before Committees Unless otherwise directed by the Court, in a formal disciplinary proceeding, the Committee shall serve upon the respondent a notice of petition and petition in a manner consistent with Judiciary Law §90(6) , on no less than 20 days' notice. Rule 1240.8. Proceedings in the	Respondent has an implied right to counsel (inferred from Rule 1240.6. Conflicts; Disqualifications from Representation).	All disciplinary investigations and proceedings shall be kept <i>confidential</i> by Court personnel, Committee members, staff, and their agents. Rule 1240.18. Confidentiality All papers, records and documents upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of any respondent under these Rules are sealed and deemed <i>private and confidential</i> pursuant to Judiciary Law §90(10) . ¹ This provision is not intended to proscribe the free interchange of information among the Committees. Rule 1240.18. Confidentiality

¹ *But see C.R. Corps v. Pestana*, No. 21 CIV. 9128 (VM), 2022 WL 2118191, at *8 (S.D.N.Y. June 13, 2022) ("The First Amendment prohibits a state from banning complainants from publishing their own attorney grievance complaints.").

	Second Judicial Department and the Third Judicial Department	Committee may authorize a formal disciplinary proceeding before the department. If a hearing is required, a referee may be appointed to hear the disciplinary proceedings.	Appellate Division		
South Carolina	Supreme Court Rules for Lawyer Disciplinary Enforcement , Section 413	The Commission on Lawyer Conduct hear grievances composed of 34 attorneys and 16 public members. The Office of Disciplinary Counsel investigates and prosecutes allegations. The burden of proof is on the disciplinary counsel to prove violation of the rules by clear and convincing evidence. Rule 8. Proof . The counsel may dismiss or recommend to an investigative panel that formal charges be filed or the matter be concluded with a letter of caution or confidential admonition. Rule 19. Screening and Investigation . This structure is under the jurisdiction and review of the South Carolina Supreme Court .	Complaints not alleging a violation or that are dismissed without action do not require notification to the respondent attorney. If a complaint raises allegations that would constitute lawyer misconduct, disciplinary counsel will investigate and shall issue and serve a notice of investigation to the respondent attorney, notifying the respondent shall provide a response within 15 days. Rule 19. Screening and Investigation .	The respondent attorney has a right to counsel at every stage of the proceedings, or to have a counsel appointed during incapacity proceedings. The counsel may only withdraw by leave of the Supreme Court if the matter is before the Court. Rule 10. Right to Counsel .	All proceedings, complaints, and dispositions are confidential generally, unless public hearings commence with formal charges. Letters of Caution and confidential admonitions are not public, unless public hearings have already commenced, in which some documents may be public. Permissive disclosure is allowed by waiver of the respondent, complainant, or by the Commission to protect the public. Rule 12. Access to Disciplinary Information .

Tennessee	<p>Rule 9 of the Rules of the Supreme Court of Tennessee</p>	<p>The Board of Professional Responsibility is composed of nine attorneys and three public members, appointed by the Supreme Court. District Committees hear grievances and recommend disposition to the Board. District committees consist of 5 or more attorneys in various geographic areas and review recommendations by the disciplinary counsel. Formal hearings before a district committee panel are conducted and recommendations are sent to the Board for disposition. Parties may appeal to the circuit court or Supreme Court for review.</p>	<p>The disciplinary counsel shall not recommend any disposition against an attorney until the attorney has been afforded the opportunity to “state a position with respect to the allegations against the attorney.”</p> <p>Rule 9, § 7.3. Disciplinary Counsel.</p> <p>Frivolous appeals may be dismissed without notice. The respondent attorney has 30 days to file a response from receipt of a petition of alleging a violation. Rule 9, § 15.2(b). Initiation, Investigation, and Hearing.</p>	<p>Implied right to counsel before the district committee, Board, and Supreme Court. An order at a pre-hearing conference will advise the respondent that they are entitled to counsel. See Rule 9, § 15.2(f). Initiation, Investigation, and Hearing.</p> <p>No explicit prohibition of retaining counsel at any point during the disciplinary process.</p>	<p>All proceedings are confidential and privileged before formal public hearings occur. Once public hearings commence, hearings and certain documents are available for public inspection, including complaints, answers, pleadings, etc. This does not apply to disability proceedings. The respondent attorney or complainant may discuss the proceedings publicly. Rule 9, § 32. Confidentiality.</p>
Virginia	<p>Part 6, Section 4, Paragraph 13 of the Rules of the VA Supreme Court</p> <p>Article 6 of Chapter 39 of Title 54.1 of the VA Code</p> <p>VA Guide to Lawyer Discipline</p>	<p>The intake attorney reviews the complaint, and bar counsel oversees the preliminary investigation. A district committee made up of volunteer lawyers and nonlawyers conducts further investigation, if needed. Bar counsel makes a recommendation to a subcommittee composed of two volunteer lawyers and one nonlawyer. If the subcommittee decides that the respondent’s conduct should result in a hearing,</p>	<p>If the subcommittee determines that a hearing should be held before a district committee, bar counsel must, <i>at least 42 days</i> prior to the date fixed for the hearing, serve upon the respondent by certified mail the charge of misconduct, a copy of the investigative report considered by the subcommittee and any exculpatory materials in the possession of bar counsel. Rule 13-16. District Committee</p>	<p>A respondent may be represented by a member of the Bar, or any member of the bar of any other jurisdiction while engaged <i>pro hac vice</i> in the practice of law in Virginia, at any time with respect to a Complaint. Rule 13-13. Participation and Disqualification of Counsel</p>	<p>All district committee, Board, and three-judge circuit court hearings and all determinations imposing public discipline and orders of summary, interim, or administrative Suspension are <i>public</i>. Rule 13-30. Confidentiality</p>

		<p>the Bar will schedule an evidentiary hearing before a district committee. If the district committee determines that the respondent violated an ethics rule, it will impose discipline or, in cases of serious misconduct, send the case to a higher body, the Disciplinary Board (Board). The respondent may appeal the district committee's determination to the Board or to a three-judge circuit court.</p>	<p>Proceedings</p>		
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HB 5010 – Standing Requirement in Texas

HB 5010 created a standing requirement to classify a grievance filed with the State Bar of Texas as a complaint and became law on June 18, 2023. The bill took effect September 1, 2023, and applies to a grievance filed on or after that date.

Before HB 5010 became law, the sole requirement to classify a grievance as a complaint was alleging conduct in the grievance that, if true, constituted professional misconduct. HB 5010 added a standing requirement, stating that a grievance must be submitted by one of the following individuals to be classified as a complaint:

- A family member of a ward in a guardianship proceeding that is the subject of the grievance.
- A family member of a decedent in a probate matter that is the subject of the grievance.
- A trustee of a trust or an executor of an estate if the matter that is the subject of the grievance relates to the trust or estate.
- The judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the grievance.
- A trustee in a bankruptcy that is the subject of the grievance.
- Any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the grievance. [[Rule 1.06\(G\)](#)]

HB 5010 clarified that a grievance submitted by an individual other than one described above must be classified as an inquiry, and therefore dismissed. [[Rule 1.06\(T\)](#), [Rule 2.10\(A\)](#)] The bill requires that certain dismissed inquiries be referred to the State Bar's voluntary mediation and dispute resolution procedure (The Client-Attorney Assistance Program).

HB 5010 authorized an attorney against whom a grievance is filed to appeal the classification of a grievance to the Board of Disciplinary Appeals, an independent 12-attorney tribunal appointed by the Supreme Court of Texas. [[Rule 2.10\(B\)](#)]

Rules of Procedure of the State Bar of California

Rule 2605. VEXATIOUS COMPLAINANTS

(a) The Office of Chief Trial Counsel may designate a person a vexatious complainant if, in the preceding two-year period, the complainant has submitted to the State Bar 10 or more communications alleging attorney misconduct that have been finally closed at the inquiry stage without investigation because the communications did not allege sufficient factual or legal grounds to indicate a potential disciplinary violation. The Office of Chief Trial Counsel will mail notice of the designation and a copy of this rule to the complainant at the complainant's last known address.

(b) For purposes of this rule, a complainant's communication has been "finally closed" if: (i) the complainant failed to seek reopening of the complaint by the Complaint Review Unit of the Office of General Counsel within 90 days of the closure of the communication; or (ii) the Complaint Review Unit denied the complainant's request to reopen the communication and the complainant did not timely file an accusation arising from the communication with the Supreme Court in compliance with California Rules of Court, rule 9.13(d) through (f); or (iii) the Supreme Court denied an accusation arising from the communication.

(c) A complainant designated as vexatious under this rule may seek review of the designation by filing a request for review with the Presiding Judge of the Review Department of the State Bar Court within 30 days of the mailing of the notice issued pursuant to subdivision (a). The request for review must include a copy of the vexatious complainant designation notice and be accompanied by proof of service on the Office of Chief Trial Counsel, Intake Unit, at the Los Angeles office of the State Bar, and on the Clerk of the State Bar Court at the Los Angeles office. The Office of Chief Trial Counsel may file and serve an answer to the complainant's request for review within 20 days of service of the complainant's request for review. Based upon these written submissions, the State Bar Court will confirm whether the complainant has, in the two-year period preceding the notice of vexatious complainant designation, submitted 10 or more communications alleging attorney misconduct that have been finally closed. If the State Bar Court finds that the requirement of 10 or more finally closed communications, as specified in subdivision (a), was not met, the vexatious complainant designation will be vacated; otherwise, the designation will remain in place. The State Bar Court will not review the merits of the 10 or more communications on which the vexatious complainant designation is based. The Executive Committee of the State Bar Court may adopt rules of practice for these proceedings.

(d) The Office of Chief Trial Counsel may decline to review and process any subsequent communications from a person designated a vexatious complainant under this rule unless the communication is verified by the complainant under penalty of perjury and the communication is submitted on the complainant's behalf by an attorney who holds an

active license to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation. If the vexatious complainant is an attorney licensed to practice law in the State of California, the communication must be submitted on the vexatious complainant's behalf by another attorney who is actively licensed to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation and is not designated as a vexatious complainant pursuant to this rule.

(e) This rule shall apply retroactively to January 1, 2018.

(f) This rule does not apply to complaints filed pursuant to [Business and Professions Code section 6158.4](#).

Eff. September 19, 2019 (Resolution adopted January 24, 2020, effective nunc pro tunc to September 19, 2019.)

Rules Regulating the Florida Bar

RULE 3-7.17 VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a) Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process, including the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies.

(b) Authority of the Court. The Supreme Court of Florida has the sole authority to enter an order under the provisions of this rule.

(c) Procedure.

(1) Commencement. Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct.

(2) Order to Show Cause. The court, acting on its own motion, or on the recommendation of the referee or petition of the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order will be served on the referee, if one has been appointed, the respondent, and The Florida Bar.

(3) Response to Order to Show Cause. The individual alleged to have engaged in vexatious conduct has 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, is deemed a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response must be served on a referee, if one has been appointed, the respondent, and The Florida Bar.

(4) Reply. The referee, if one has been appointed, the respondent, and The Florida Bar have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided without good cause prohibits a reply.

(5) Referral to Referee. The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under

this subdivision will be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules.

(d) Court Order.

(1) Rejection of Communications. An order issued under this rule may contain provisions permitting the clerk of the Supreme Court of Florida, referee, The Florida Bar, and/or any other individual(s) or entity(ies) specified in the order to reject or block vexatious communications as specifically designated in the order. The order may authorize the individual(s), entity(ies), or group(s) specified in the order to block telephone calls made or electronic mail sent by an individual subject to an order issued under the authority of this rule.

(2) Denial of Physical Access. The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations.

(3) Prohibition of or Limitation on Filings. The order of the court may include a requirement that an individual subject to an order issued under the authority of this rule may be prohibited from submitting any future filings unless they are submitted solely by a member of The Florida Bar who is eligible to practice law or another person authorized to appear in the proceedings. If a person who is subject to an order issued under this rule is a member of The Florida Bar, that member may be prohibited from co-signing and submitting future filings.

(e) Violation of Order. Violation of an order issued under this rule will be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar.

Comment

This rule is enacted to address circumstances involving repetitive conduct of the type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system, which must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, “every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution’s limited resources. A part of the court’s responsibility is to see that these resources are allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180, 184 (1989).

This concept has also been recognized in bar disciplinary proceedings by the Supreme Court of Florida when the court stated: “Kandekore’s actions create a drain on the Court’s limited time, for with each filing the Court has, as it must, reviewed and considered repetitious and meritless arguments. Therefore, we conclude that a limitation on Kandekore’s ability to file repeated challenges to his long-final sanctions would further the constitutional right of accesbecause it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others.” *The Florida Bar re Kandekore*,

932 So. 2d 1005, 1006 (Fla. 2006). Kandekore engaged in vexatious conduct after the court entered an order of disbarment.

The Supreme Court of Florida has also limited the ability of a lawyer to file further pleadings while that lawyer's disciplinary case(s) were in active litigation. *The Florida Bar v. Thompson*, 979 So. 2d 917 (Fla. 2008).

New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

To: Legislative Committee to Review State Bar Disciplinary Process

Date: 29 February 2024

Re: Collaborative Working Proposals (State Bar and defense counsel)

<u>EXPUNGEMENT OF DISCIPLINARY ACTIONS</u>				
Misconduct Not Eligible for Expungement:				
Rule 1.19: Sexual Conduct with Clients Prohibited				
Rule 3.3(a): False statement of material fact or law to a tribunal				
Rule 8.4(b): Criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness*				
Rule 8.4(c): Conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness				
<i>*Criminal violations solely for personal income tax violations would be eligible for expunction or sealing</i>				
	Eligibility	Effect	Timing	Process
Expungement – Grievance Committee Discipline	Written discipline not involving violations of Rules 1.19, 3.3(a), or 8.4(b)* and (c); no additional discipline since; no pending grievances	Removal from lawyer's disciplinary record & State Bar website; cannot be used in future proceedings	5 years – Admonitions 10 years – Reprimands & Censures	Request to Grievance Committee Chair certifying eligibility; showing of rehabilitation.
Expungement – Disciplinary Hearing Commission Written Discipline	Written discipline not involving violations of Rules 1.19, 3.3(a), or 8.4(b)* and (c); no additional discipline since; no pending grievances	Removal from lawyer's disciplinary record & State Bar website; cannot be used in future proceedings	5 years – Admonitions 10 years – Reprimands & Censures	Petition filed in DHC certifying eligibility; showing of rehabilitation.

Sealing Orders of Stayed Suspension entered by DHC	Entirely- stayed suspensions not involving violations of Rules 1.19, 3.3(a), or 8.4(b)* and (c); no additional discipline since; no pending grievances	DHC file sealed; record of discipline removed from State Bar website; confidential record of disciplinary action maintained and may be used/considered in any future disciplinary action.	10 years after period of stay ends	Motion to Seal filed in DHC certifying eligibility; showing of rehabilitation
Discipline Ineligible for Expungement or Sealing	Disbarments, active suspensions, any other discipline involving violations of Rules 1.19, 3.3(a), or 8.4(b)* and (c)	N/A	N/A	N/A
Upon Lawyer's Death	One year after a lawyer is deceased, disciplinary record automatically removed from State Bar website.			
<p>For administrative purposes due to records-retention requirements, the State Bar would maintain confidential internal records of expunged disciplinary actions, but they would not appear on the State Bar's website nor would the agency acknowledge their existence in response to public inquiry. Expunged discipline could not be used or considered in any future investigation or proceeding against the lawyer.</p> <p>Sealed DHC discipline would not appear on the State Bar's website or be available for public inspection but <u>could</u> be used and considered in any future investigation or proceeding against the lawyer.</p>				

Implementation:

- Statutory impact: Add authority for expungement to G.S. 84-23: Powers of Council?
- Significant Administrative Rule Amendments

Resources:

- New Hampshire: <https://www.courts.nh.gov/rules-supreme-court-state-new-hampshire#page-id-3636>
- Delaware: <https://courts.delaware.gov/forms/download.aspx?id=160798>
- Rhode Island: <https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article3.pdf>
- NC Criminal Expunction Act: https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-145.5.pdf

COMPLAINANTS

1. Standing Requirement for Filing Grievances

Grievances against lawyers may be filed by:

1. A lawyer or judge pursuant to their professional obligation to report misconduct;
2. A judge, lawyer, 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 or family member of a decedent in a probate matter when the guardianship or probate matter is the subject of the grievance;
4. A trustee of a trust or an executor of an estate if the trust or estate is the subject of the grievance relates to the trust or estate;
5. A trustee in a bankruptcy that is the subject of the grievance;
6. Any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the grievance;
7. The State Bar shall retain the ability to open and investigate grievances on its own initiative upon receipt of information indicating that a lawyer may have violated the Rules.

Implementation:

- Statutory Impact: Add at G.S. 84-28(a1)?
- Administrative Rule Amendment

Resources:

Texas: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB05010F.pdf#navpanes=0>;
<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=HB5010>

2. GRIEVANCES FILED IN BAD FAITH

Proposal: Modify administrative rule to provide that Grievance Committee shall consider complainant’s motive in filing grievance.

Note: Additional possible edits to this rule unrelated to complainant motive are also included in the modifications highlighted below.

27 N.C.A.C. 1B Rule .0113(k): Admonitions, Reprimands, and Censures

(1) If ~~probable cause~~ **there is clear and convincing evidence of misconduct** ~~is found~~ but it is determined by the Grievance Committee that a complaint and hearing are not warranted, the committee shall ~~issue~~ **propose resolution of the matter with a private** admonition in cases in which the respondent has committed a minor violation of the Rules of Professional Conduct, a reprimand in cases in which the respondent’s conduct has violated one or more provisions of the Rules of Professional Conduct and caused harm or potential harm to a client, the administration of justice, the profession, or members of the public, or a censure in cases in which the respondent has violated one or more provisions of the Rules of Professional Conduct and the harm or potential harm caused by the respondent is significant and protection of the public requires more serious discipline. **The Grievance Committee shall consider the motive of a complainant in determining the disposition of a grievance.** To determine whether more serious discipline is necessary to protect the public or whether the violation is minor and less serious discipline is sufficient to protect the public, the committee shall consider the factors delineated in subparagraphs (2) and (3) below....

3. VEXATIOUS COMPLAINANTS

Proposal: Establish a gatekeeping mechanism (similar to California’s “Vexatious Complainants” rule) based on objective criteria for complainants who serially file frivolous grievances.

Implementation:

- Statutory impact: Include in new G.S. 84-28(a1) with standing requirements discussed above?
- Administrative Rule Amendments

Resources:

- California: <https://www.statebarcourt.ca.gov/Portals/2/documents/Rules/Rules-of-Procedure.pdf#page=197>

- Florida (3-7.17): https://www-media.floridabar.org/uploads/2024/02/2024_08FEBChapter3RRTFB2-15-2024.pdf

ENSURING THAT PRIVATE DISCIPLINE REMAINS PRIVATE

Proposal: Modify complainant notification to prevent publicizing of private discipline:

Current Form Letter Language	Proposed Revised Form Letter Language
<p>This is to advise that your grievance against the above attorney was considered by the Grievance Committee at its meeting on <Date>. The Committee determined that there was probable cause to believe that the attorney violated the Rules of Professional Conduct by <insert blurb> in violation of Rule <insert Rule>. The Committee further determined that the attorney should be disciplined by an admonition. Accordingly, I signed an admonition which has been served upon the attorney.</p> <p>An admonition is a written form of discipline issued in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct. A copy of the admonition will be maintained in the permanent files of the North Carolina State Bar.</p> <p>Since you filed a grievance and a violation of the Rules of Professional Conduct was found, you are hereby notified of this action. This admonition is considered confidential under the Rules and Regulations of the North Carolina State Bar.</p> <p>You are the only person other than the attorney receiving a communication from this office indicating that this action was taken.</p>	<p>As the complainant in the above-captioned grievance, you are receiving notice of its disposition. The Grievance Committee carefully reviewed the file, including all evidence and information you submitted. The Committee determined the matter did not warrant public disciplinary action and the grievance therefore was resolved privately, either by dismissal, deferral, or private action.</p>

OPPORTUNITY FOR RESPONDENTS TO ADDRESS THE GRIEVANCE COMMITTEE

Proposal: Add additional process whereby Respondents (a) are notified in advance that a grievance will be reviewed by the Committee and what disposition is recommended by staff counsel; (b) receive a copy of the materials that will be before the Committee (except work product/attorney-client privileged report from staff counsel to Committee); and (c) are afforded an opportunity to address the Committee before it deliberates on whether there is sufficient evidence of misconduct to warrant disciplinary action.

Question:

Would this process replace or be in addition to the current Grievance Review Panel process?

Implementation

- Statutory impact: G.S. 84-28(c1) amendment if GRP modified; add opportunity to address Committee elsewhere in 84-28?
- Extensive Administrative Rule Amendments

The State Bar's Role in Justice

Christine Mumma

North Carolina Center on Actual Innocence

State Bar Review Committee Public Comments Report - LINC

Date Submitted	Name	Address	County	Email	Comments
02/08/2024 10:04 AM	Thomas Beckett	PO Box 12408, Durham, NC 27709	Durham	thomas@commonenterprise.coop	What is the problem this committee is trying to fix? I have been a licensed attorney here for 33 years and have seen no politicizing of the bar discipline process. Let's keep it that way.
02/09/2024 09:27 AM	Mark Atkinson	107 W Geer St, Durham, NC 27701	Durham	mark@atkinson.legal	<p>I appreciate and respect the desire of the State Bar to be fair and just to all parties: the public and the lawyers involved in a disciplinary/grievance process. In reading a summary of possible approaches, I saw a reference to an expunction process. This seems a good and reasonable approach in some cases. However, we must be careful to not overcompensate and fall into a trap of privileging ourselves. In a WRAL article - and I grant that they may be selectively misquoting - it reads: "...there could also be a separate process to erase lawyers' disciplinary records after they die, to save embarrassment for future generations of their family. Some of the issues that can lead to discipline include lawyers misusing their clients' finances, abusing drugs or alcohol, or having sexual relationships with clients. 'Should a grandchild be able to look up her grandmother, 20 years later, and see things?' White said."</p> <p>That's an emotional appeal but if the facts show that the grandmother warranted the discipline because she mishandled client's money, violated ethical rules, or mistreated clients then I am not sure she needs to be shielded from public scrutiny, in life or in death.</p> <p>Let's base an expunction process on fairness to ALL parties: the disciplined attorney and the public who oftentimes have a legitimate right to know.</p>
02/14/2024 10:01 PM					<p>Thank you for the opportunity to submit comments for consideration. Is the committee able to review dismissed grievances during this process? The private selection of a rare few persons for public prosecution is concerning. Certainly the most egregious misconduct is worthy of some measure of discipline.</p> <p>What was so different about 95% of cases - 435 of 466 alleged instances of misconduct dismissed - such that the public will never know about the alleged misconduct of those hundreds of other lawyers?</p> <p>Certainly there were some among the hundreds who "got away with it" - in other words, lawyers who the State Bar chose not to prosecute (concealing their alleged conduct after it was brought to their attention) when other similarly situated lawyers were singled out and selected for prosecution.</p> <p>Data such as race, sex, religion, political affiliation, gender, area of practice of law, and other information, may reveal whether certain lawyers are being appropriately selected for prosecution or whether the State Bar is selectively enforcing rules in a manner which violates the Constitution and/or other state and federal laws.</p> <p>"During the quarter, the Grievance Committee considered 466 files. The committee dismissed 435 files. Five files were dismissed and retained. One file was continued. Five lawyers were referred to the Trust Accounting Compliance Program; one lawyer was</p>

Date Submitted	Name	Address	County	Email	Comments
					referred to the Lawyer Assistance Program; three lawyers received letters of caution; four lawyers received letters of warning; one lawyer received an admonition; five lawyers received reprimands; one lawyer received a censure; and three lawyers were referred to the Disciplinary Hearing Commission for trial."

RESPONDENT ACCESS TO AGENCY FILE
 (DISCOVERY, PRIVILEGE, AND WORK PRODUCT)

MOST ACCESS LEAST ACCESS

	Medical Board	Dental Board	Current State Bar	Proposed State Bar
During Investigation	No Access, except board must provide respondent a copy of complainant's complaint.	No Access	No Access, except Respondent can request a copy of complainant's complaint.	Access to complainant's complaint and some work- product (audits of accounts)
At Determination of Whether Evidence Warrants Agency Action	No Access Privileged attorney recommendation submitted to Investigative Committee, discussed in closed session	No Access, unless in informal proceedings (see below). Privileged report or discussion by agency attorney provided to Investigative Panel and discussed in closed session	No Access Privileged Report of Counsel submitted to Grievance Committee, discussed in closed session	Provided in advance with all non-privileged/non- work-product materials (plus financial audits) presented to Grievance Committee. Provided with any work product that contains exculpatory information OR certification by counsel that State Bar is not in possession of exculpatory information. Privileged Report of Counsel submitted to Grievance Committee and discussed in closed session, but respondent has opportunity to address Grievance Committee.

<p>During Negotiations re: Resolution by Consent without Charges Filed</p>	<p>Respondent is entitled to informal nonpublic pre-charge conference, before which the board must provide the following so long as it would not identify an anonymous complainant or expert reviewer: (i) all relevant information obtained during an investigation, including exculpatory evidence and (ii) the substance of any written expert opinion that the Board relied upon. (G.S. 90-14(j))</p>	<p>No Access to privileged communications or work product, but forecast of evidence—including expert reports—often provided during informal proceedings</p>	<p>No Access</p>	<p>Respondent already provided with all non- privileged/non-work- product materials presented to Grievance Committee (plus financial audits and any exculpatory information).</p>
<p>After Formal Charges Are Filed (Trial Stage)*</p>	<p>Entitled to complete file <u>except privileged communications and attorney mental impressions.</u></p>	<p>Entitled to all material discoverable pursuant to Rules 26, 33, 34, and 36 of the Rules of Civil Procedure.</p> <p>Board rules on objections based on attorney-client privilege and work product.</p>	<p>Entitled to all material discoverable pursuant to Rules 26, 33, 34, and 36 of the Rules of Civil Procedure.</p> <p>DHC rules on objections based on attorney-client privilege and work product.</p>	<p>Entitled to all material discoverable pursuant to Rules 26, 33, 34, and 36 of the Rules of Civil Procedure, plus financial audits and exculpatory work product (or certification that no such work product exists).</p> <p>DHC rules on objections based on attorney-client privilege and work product.</p>

*The State Bar is unique among regulatory agencies in that formal charges are adjudicated by a separate, independent tribunal (the DHC). Most formal professional disciplinary charges are adjudicated by the same board (or a different subset of the board) that made the preliminary determination that there was sufficient information to warrant agency action.

§ 84-28.1. Disciplinary hearing commission.

(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 26 members. Eighteen of these members shall be members of the North Carolina State Bar **in good standing**, with 12 appointed by the Council **in accordance with Paragraph (b)**, two members by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S.120-121, two members by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S.120-121, and two members by the Chief Justice of the Supreme Court of North Carolina. The other eight shall be citizens of North Carolina not licensed to practice law in this or any other state, four of whom shall be appointed by the Governor, two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and two by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The Council shall designate one of its appointees as chair and another as vice-chair. The chair shall have actively practiced law in the courts of the State for at least 10 years. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The Council, the Governor, the Chief Justice of the Supreme Court of North Carolina, and the General Assembly respectively, shall appoint members to fill unexpired terms when vacancies are created by resignation, disqualification, disability or death, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chair may serve one additional three-year term in that capacity. No member of the Council may be appointed to the commission.

(b)The Council shall appoint members to the Disciplinary Hearing Commission from a list approved by majority vote of the Disciplinary Hearing Commission Nominating Committee, which list shall contain no less than two nominees for each vacancy and which list must be submitted to the Secretary of the Council at least 30 days before the next regular meeting of the Council prior to the occurrence of the vacancy. The Nominating Committee shall consist of eight members who are attorneys in good standing licensed by the North Carolina State Bar. The composition of the Nominating Committee shall be as follows:

- (1) Two members, one of whom shall be the chair of the Committee, who are members of the Council, appointed by the President of the State Bar;**
- (2) Two members who regularly represent respondents before the Disciplinary Hearing Commission, appointed by the President of the State Bar;**
- (3) One member appointed by the North Carolina Bar Association;**
- (4) One member appointed by the North Carolina Conference of District Attorneys;**
- (5) One member appointed by the North Carolina Advocates for Justice; and**
- (6) One member appointed by the North Carolina Association of Defense Attorneys.**

The terms of Nominating Committee members shall be two years, commencing on the first day of January of the year of their appointment. The appointing authority who made the original appointment shall appoint members to fill unexpired terms when vacancies occur for any reason. No member may serve more than three consecutive two-year terms. Any

member serving a partial term of 12 months or more is considered to have served a full term and shall be eligible to be appointed to only one additional consecutive two-year term. Any member serving a partial term of less than 12 months is eligible to be appointed to two consecutive two-year terms in addition to the partial term.

~~(c)~~ **(c)** The disciplinary hearing commission of the North Carolina State Bar, or any committee of the disciplinary hearing commission, may hold hearings in discipline, incapacity and disability matters, make findings of fact and conclusions of law after these hearings, enter orders necessary to carry out the duties delegated to it by the Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled.

~~(b)(1)~~ **(b)(1)** The disciplinary hearing commission of the North Carolina State Bar, or any committee thereof, acting through its chairman, shall have the power to hold persons, firms or corporations in contempt as provided in Chapter 5A.

~~(e)~~ **(d)** Members of the disciplinary hearing commission shall receive the same per diem and travel expenses as are authorized for members of State commissions under G.S. 138-5. (1975, c. 582, s. 6; 1979, c. 570, s. 8; 1983, c. 390, s. 4; 1995, c. 431, s. 19; c. 490, s. 51; 2003-116, s. 3; 2005-396, s. 3.)

To: Marcia Armstrong
From: Alice Mine
Date: March 11, 2024

Re: Report on the Recommendations of the Deferral Programs Subcommittee

This is an update on the work of the Deferral Programs Subcommittee which was established during your presidency at the January 2023 Quarterly Meeting of the Council. It is a subcommittee of the Issues Committee. The purpose of the subcommittee is to study both our existing deferral programs and possible other deferral programs that might be created. As you know, a deferral program is a program to which the Grievance Committee can refer a respondent in lieu of discipline; if the respondent successfully completes the deferral, the Grievance Committee can dismiss the grievance without further action. Our two existing deferral programs are the (eponymously named) Trust Account Compliance Program (TAC Program) and the Lawyer Assistance Program which helps lawyers with mental health or substance misuse problems.

The subcommittee has met nine times since January 2023. During this time, it has studied the following: our existing deferral programs, seeking improvements; deferral programs of the Medical Board; deferral programs of other states; law office management programs; and professionalism interventions. The subcommittee will continue to study whether to recommend the creation of a new deferral program(s), possibly to address law office management issues or professionalism issues of respondents. Another alternative under consideration is the creation of a deferral process that can be tailored to a respondent's particular need. I hope to have more specific information on these proposals after the subcommittee's next meeting.

I am, however, very pleased to report that, at its meeting earlier today, the subcommittee decided to proceed with a recommendation, at the April Quarterly Meeting of the Council, relative to the TAC Program. Specifically, the subcommittee will recommend that the Trust Account Compliance Program be restructured to make education the first response to trust accounting problems disclosed during random audits of trust accounts or other reports of trust account mismanagement. When a lawyer has demonstrated trust account mismanagement issues, a grievance file will not be opened unless (1) the lawyer declines to participate or fails to comply with remedial measures recommended by the TAC Program or (2) there is evidence of gross negligence, gross incompetence, possible misappropriation of entrusted funds, criminal conduct, or other dishonesty.

Instead of a grievance file, the lawyer will be offered the opportunity to voluntarily participate in "remedial measures" offered by the TAC Program. Lawyers will be offered different remedial measures depending upon the severity of the identified problem(s). For instances of minor violations of the trust accounting rules, the focus will be on providing education to the lawyer followed by a demonstration by the lawyer of understanding the requirement at issue. For more serious violations of



Ms. Marcia Armstrong

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the trust accounting rules, voluntary participation in a remedial measure may be offered specifically in lieu of opening of a grievance file. Remedial measures will include the following: providing the lawyer with educational materials specific to the identified trust accounting problem; requiring the lawyer to attend CLE programming on trust accounting; requiring the lawyer to demonstrate that corrections have been made to specified trust accounting procedures; requiring the lawyer to provide quarterly proof of compliance with the trust accounting rules for a period of up to one year; and encouraging the lawyer to hire an accountant or bookkeeper trained in the trust accounting rules and procedures to assist the lawyer in setting up the accounting records properly and then providing annual reports to the TAC Program for a period of up to three years.

The subcommittee's proposal includes the reorganization of the Random Audit Program and TAC Program into one Trust Accounting Compliance Department. There are specific recommendations for the educational materials to be developed by the new TAC Department. To implement the proposal amendments will need to be made to the State Bar administrative rules. Those proposed rule amendments are ready for submission to the Issues Committee at its meeting during the April Quarterly Meeting.

Please let me know if you have any questions about the work of the subcommittee or the proposal on the TAC Program that will be submitted for consideration at the April Quarterly Meeting.