

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 790

Short Title: State Bar Review Committee Recommendations. (Public)

Sponsors: Senators Sawrey and Lee (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 2, 2024

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A VEXATIOUS CONDUCT STANDARD FOR  
COMPLAINANTS FILING GRIEVANCES BEFORE THE NORTH CAROLINA STATE  
BAR, TO DEFINE A STANDING REQUIREMENT FOR THE FILING OF  
GRIEVANCES, TO DIRECT THE NORTH CAROLINA STATE BAR TO ADOPT  
RULES TO IMPLEMENT AN EXPUNGEMENT PROCESS FOR CERTAIN  
DISCIPLINARY ACTIONS, AND TO DIRECT THE NORTH CAROLINA STATE BAR  
TO ADOPT RULES TO IMPLEMENT THIS ACT, AS RECOMMENDED BY THE  
STATE BAR REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

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

**"§ 84-28. Discipline and disbarment.**

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided in G.S. 84-23.

(a1) If the North Carolina State Bar serves a letter of notice alleging attorney misconduct upon a respondent attorney, the North Carolina State Bar shall include a copy of the complaint, all non-privileged and non-work product material, financial audits, and exculpatory evidence that is presented to the Grievance Committee. If work product of the North Carolina State Bar contains exculpatory evidence, then the work product containing exculpatory evidence shall be provided to the respondent attorney. If the North Carolina State Bar does not possess any exculpatory evidence at the time the letter of notice is sent, then the North Carolina State Bar shall certify that it does not possess exculpatory evidence.

(a2) The respondent attorney shall be provided an opportunity to address the Grievance Committee at the initial hearing conducted to determine whether there is probable cause to believe a respondent is guilty of misconduct justifying disciplinary action and to hear the Office of Counsel's presentation of the respondent attorney's case to the Grievance Committee.

...

(h) There shall be an appeal of right by either party from any final order of the Disciplinary Hearing Commission to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right.



1       ...."

2               **SECTION 1.(b)** Article 4 of Chapter 84 of the General Statutes is amended by  
3 adding a new section to read:

4       **"§ 84-28.3. Vexatious complainants.**

5       (a) The Office of Counsel and chair of the Grievance Committee may designate a person  
6 a vexatious complainant if the complainant has initiated grievances to the North Carolina State  
7 Bar alleging attorney misconduct that even if proven, would fail to constitute a violation of the  
8 Rules of Professional Conduct, or if available evidence conclusively disproves the allegations,  
9 in a manner and volume that amounts to an abuse of the bar disciplinary process. An "abuse of  
10 the bar disciplinary process" includes inappropriate, repetitive, or frivolous actions or  
11 communications by the complainant, but goes beyond conduct that is merely contentious or  
12 unsuccessful. The Office of Counsel will mail a notice of the designation to the complainant at  
13 the complainant's last known address.

14       (b) A complainant designated as vexatious may seek review of the designation by filing  
15 a request for review with the chair of the Disciplinary Hearing Commission within 30 days of  
16 the mailing of the notice issued under subsection (a) of this section. The Office of Counsel may  
17 file and serve an answer to the complainant's request for review. Based upon the written  
18 submissions by the complainant and the Office of Counsel, the chair of the Disciplinary Hearing  
19 Commission may either concur in the decision of the Office of Counsel and the chair of the  
20 Grievance Committee or remand the matter to the Office of Counsel and the chair of the  
21 Grievance Committee for further consideration. If the chair of the Disciplinary Hearing  
22 Commission concurs with the prior decision, the designation remains in place. If the matter is  
23 remanded, the Office of Counsel and the chair of the Grievance Committee may affirm or vacate  
24 their decision. Upon remand, the designation remains in place until the matter is resolved.  
25 Notwithstanding subsection (h) of G.S. 84-28, a designation as vexatious under subsection (a) of  
26 this section shall be final and conclusive and not subject to review or reversal except by the North  
27 Carolina State Bar itself, in accordance with the rights of review under this subsection.

28       (c) The Office of Counsel may decline to review and process any subsequent grievances  
29 from a person designated as vexatious, unless the grievance is submitted with a verification  
30 signed by the complainant that the alleged misconduct is true under the penalty of perjury, and  
31 the grievance is submitted on the complainant's behalf by a member of the North Carolina State  
32 Bar who has an active license and is not currently the respondent in disciplinary proceedings  
33 before the North Carolina State Bar. If the vexatious complainant is an attorney licensed to  
34 practice law in this State, the grievance must be submitted on the vexatious complainant's behalf  
35 by a member of the North Carolina State Bar who (i) has an active license, (ii) is not designated  
36 as a vexatious complainant, and (iii) is not currently the respondent in disciplinary proceedings  
37 before the North Carolina State Bar."

38               **SECTION 1.(c)** Article 4 of Chapter 84 of the General Statutes is amended by adding  
39 a new section to read:

40       **"§ 84-28.4. Standing requirements to file grievance.**

41       (a) To be considered by the North Carolina State Bar, a grievance must allege conduct  
42 that, if true, constitutes attorney misconduct by violation of this Chapter or under the Rules of  
43 Professional Conduct and be filed by one of the following:

- 44               (1) An attorney or judge pursuant to their obligation to report misconduct in  
45 accordance with the Rules of Professional Conduct.
- 46               (2) A judge, attorney, court staff member, or juror in the legal matter that is the  
47 subject of the grievance.
- 48               (3) A family member of a ward in a guardianship proceeding that is the subject of  
49 the grievance.
- 50               (4) A family member of a decedent in a probate matter that is the subject of the  
51 grievance.

- 1           (5)    A trustee of a trust or an executor of an estate if the matter that is the subject
- 2                   of the grievance relates to the trust or estate.
- 3           (6)    A trustee in a bankruptcy that is the subject of the grievance.
- 4           (7)    A person who has a cognizable individual interest in or connection to the legal
- 5                   matter or facts alleged in the grievance.

6           (b)    The North Carolina State Bar shall have the ability to open and investigate grievances  
7 upon its own initiative, if facts alleging attorney misconduct are discovered by the North Carolina  
8 State Bar."

9           **SECTION 2.(a)** The North Carolina State Bar (State Bar) shall adopt permanent  
10 rules to implement an expungement process for certain disciplinary actions against respondent  
11 attorneys by the State Bar. The State Bar shall follow the recommendations by the State Bar  
12 Review Committee in drafting these rules.

13           **SECTION 2.(b)** The State Bar may adopt rules to implement Section 1 of this act.

14           **SECTION 2.(c)** This section is effective when it becomes law.

15           **SECTION 3.** Except as otherwise provided, this act becomes effective July 1, 2024.