

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 309  
Committee Substitute Favorable 4/24/91

Short Title: State Bar/Attorneys.

(Public)

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Sponsors:

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Referred to:

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March 25, 1991

A BILL TO BE ENTITLED

1 AN ACT TO MAKE VARIOUS AMENDMENTS TO CHAPTER 84 OF THE  
2 GENERAL STATUTES RELATING TO OUT-OF-STATE ATTORNEYS,  
3 PREPAID LEGAL SERVICES, DEPOSITS OF THE STATE BAR, BOARD OF  
4 LAW EXAMINERS RECORDS, AND ATTORNEY DISCIPLINE AND  
5 DISBARMENT.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 84-23.1 reads as rewritten:

9 "**§ 84-23.1. Prepaid legal services.**

10 (a) This section is in addition to and not a limitation of the powers and  
11 responsibilities of the council set out in G.S. 84-23. To the extent that this section deals  
12 with the same powers and responsibilities it shall be taken to be in amplification of  
13 those powers and not in derogation thereof.

14 ~~(b) The council has the responsibility and duty of discipline and regulation of the~~  
15 ~~practice of law in this State. Plans providing for prepaid legal services must be~~  
16 ~~submitted to the council and may not be implemented or operated without the prior and~~  
17 ~~continuing approval by the council as being proper under the statutes, rules and~~  
18 ~~regulations governing the practice of law in this State; provided, however, the council~~  
19 ~~shall not approve any plan for prepaid legal services which in any way restricts the right~~  
20 ~~of the client or person receiving prepaid legal services to select his own attorney from~~  
21 ~~the actual members of the North Carolina State Bar, or a member of any other state bar~~  
22 ~~in any other state where the claim or cause of action may arise.~~

1       (b1) All organizations offering prepaid legal services plans shall register those  
2 plans with the North Carolina State Bar Council on forms provided by the Council.  
3 Each plan shall be registered prior to its implementation or operation in this State.

4       ~~(e) The council is authorized to initiate and cause the creation of a nonprofit~~  
5 ~~corporation pursuant to Chapter 55A of the General Statutes, for the purpose of~~  
6 ~~providing for prepayment for legal services. The corporation authorized by this section~~  
7 ~~shall have the following powers:~~

8           ~~(1) To provide for the collection of payments for the plan or plans it~~  
9           ~~offers, the payment of legal fees in accordance with its approved plans,~~  
10           ~~and the investment and safeguarding of funds held for such purposes.~~

11           ~~(2) To contract with insurance companies or other companies for actuarial~~  
12           ~~services, administrative and other services, use of facilities,~~  
13           ~~underwriting and reinsurance.~~

14           ~~(3) All other powers necessary and appropriate for the offering of plans~~  
15           ~~for prepaid legal services.~~

16           ~~(4) All other powers granted to nonprofit corporations by law or by virtue~~  
17           ~~of their charters and bylaws.~~

18       ~~The corporation may not directly employ an attorney to perform legal services for~~  
19 ~~another person. It shall not be subject to regulation under Articles 1 through 64 of~~  
20 ~~Chapter 58 of the General Statutes or other provisions relating to insurance companies,~~  
21 ~~but it shall be subject to regulation pursuant to subsection (b) of this section. Neither~~  
22 ~~the existence of this authorization, nor the creation of such a corporation shall limit the~~  
23 ~~authority of the council to approve other plans for prepaid legal services. The council~~  
24 ~~may cause funds of the North Carolina State Bar to be contributed, advanced or loaned~~  
25 ~~to, or used for the benefit of the corporation so created upon such terms as the council~~  
26 ~~deems appropriate, and pursuant to such regulations as the council may promulgate to~~  
27 ~~assure such funds are used for the purposes herein provided.~~

28       ~~(d) Notwithstanding approval of the council pursuant to subsection (b), registration~~  
29 ~~of the plan with the North Carolina State Bar Council pursuant to subsection (b1), any~~  
30 ~~plan for prepaid legal services other than pursuant to subsection (e) is subject to regulation~~  
31 ~~under Articles 1 through 64 of Chapter 58 of the General Statutes if offered by a company~~  
32 ~~engaged in the insurance business or if the plan itself constitutes the offering of~~  
33 ~~insurance.~~

34       ~~(e) Notwithstanding any other provision of this section or any other statute or law, no~~  
35 ~~plan providing for prepaid legal services shall be authorized to exist or function in the~~  
36 ~~State of North Carolina which in any way restricts or denies the client or person~~  
37 ~~receiving prepaid legal services the right to select an attorney of his own choice from~~  
38 ~~the active membership of the North Carolina State Bar, or a member of any other state~~  
39 ~~bar in any other state where the claim or cause of action may arise to represent said~~  
40 ~~person or client."~~

41           Sec. 2. G.S. 84-4.1 reads as rewritten:

42       "**§ 84-4.1. Limited practice of out-of-state attorneys.**

43       Any attorney domiciled in another state, and regularly admitted to practice in the  
44 courts of record of another that state and in good standing therein, having been retained

1 as attorney for ~~any party to a legal proceeding, civil or criminal,~~ a party to any civil or  
 2 criminal legal proceeding pending in the General Court of Justice of North Carolina, or  
 3 the North Carolina Utilities Commission or the North Carolina Industrial Commission  
 4 or the Office of Administrative Hearings of North Carolina may, on motion, be admitted  
 5 to practice in the General Court of Justice or the North Carolina Utilities Commission or  
 6 the North Carolina Industrial Commission or the Office of Administrative Hearings of  
 7 North Carolina for the sole purpose of appearing for ~~his client in said litigation, but only~~  
 8 ~~upon compliance with the following conditions precedent:~~ a client in the litigation. The  
 9 motion required under this section shall contain or be accompanied by:

- 10 (1) The attorney's ~~He shall set forth in his motion his~~ full name, post-office  
 11 address and status as a practicing attorney in ~~such other~~ another state.
- 12 (2) ~~He shall attach to his motion a~~ A statement, signed by the client, setting  
 13 forth the client's address and declaring that the client has retained the  
 14 attorney to represent the client in the proceeding. ~~his client, in which the~~  
 15 ~~client sets forth his post-office address and declares that he has retained the~~  
 16 ~~attorney to represent him in such proceeding.~~
- 17 (3) ~~He shall attach to his motion a~~ A statement that unless permitted to  
 18 withdraw sooner by order of the court, ~~he~~ the attorney will continue to  
 19 represent ~~his~~ the client in ~~such~~ the proceeding until the final  
 20 determination thereof, and that with reference to all matters incident to  
 21 ~~such~~ the proceeding, ~~he~~ the attorney agrees ~~that he shall to~~ be subject to  
 22 the orders and amenable to the disciplinary action and the civil  
 23 jurisdiction of the General Court of Justice and the North Carolina  
 24 State Bar in all respects as if ~~he~~ the attorney were a regularly admitted  
 25 and licensed member of the Bar of North Carolina in good standing.
- 26 (4) ~~He shall attach to his motion a~~ A statement ~~to the effect that~~ the state in  
 27 which ~~he~~ the attorney is regularly admitted to practice grants like  
 28 privileges to members of the Bar of North Carolina in good standing.
- 29 (5) ~~He shall attach to his motion a~~ A statement to the effect that ~~he~~ the  
 30 attorney has associated and ~~has~~ is personally appearing ~~with him in such~~  
 31 ~~proceeding in the proceeding,~~ with an attorney who is a resident of this  
 32 State and is duly and legally admitted to practice in the General Court  
 33 of Justice of North Carolina, upon whom service may be had in all  
 34 matters connected with such legal proceedings, or any disciplinary  
 35 matter, with the same effect as if personally made on ~~such~~ the foreign  
 36 attorney within this State.

37 (6) Compliance with the foregoing requirements ~~shall~~ does not deprive the court  
 38 of the discretionary power to allow or reject the application."

39 Sec. 3. Chapter 84 of the General Statutes is amended by adding a new  
 40 section to read:

41 "**§ 84-34.1. Deposits of the North Carolina State Bar.**

42 Deposits of the North Carolina State Bar, its boards, agencies, and committees shall  
 43 be secured as provided in G.S. 159-31(b)."

44 Sec. 4. G.S. 84-24 reads as rewritten:

1 **"§ 84-24. Admission to practice.**

2 The provisions of the law now obtaining with reference to admission to the practice  
3 of law, as amended, and the rules and regulations prescribed by the Supreme Court of  
4 North Carolina with reference thereto, shall continue in force until superseded, changed  
5 or modified by or under the provisions of this Article.

6 For the purpose of examining applicants and providing rules and regulations for  
7 admission to the Bar including the issuance of license therefor, there is hereby created  
8 the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by  
9 the council of the North Carolina State Bar, who need not be members of the council.  
10 No teacher in any law school, however, shall be eligible. The members of the Board of  
11 Law Examiners elected from the Bar shall each hold office for a term of three years:  
12 Provided, that the members first elected shall hold office, two for one year, two for two  
13 years, and two for three years.

14 The Board of Law Examiners shall elect a member of said Board as chairman  
15 thereof, and the Board may employ an executive secretary and provide such assistance  
16 as may be required to enable said Board to perform its duties promptly and properly.  
17 The chairman and any employees shall serve for such period as said Board may  
18 determine.

19 The examination shall be held in such manner and at such times as the Board of Law  
20 Examiners may determine.

21 The Board of Law Examiners shall have full power and authority to make or cause  
22 to be made such examinations and investigations as may be deemed by it necessary to  
23 satisfy it that the applicants for admission to the Bar possess the qualifications of  
24 character and general fitness requisite for an attorney and counselor-at-law and to this  
25 end the Board of Law Examiners shall have the power of subpoena and to summons and  
26 examine witnesses under oath and to compel their attendance and the production of  
27 books, papers and other documents and writings deemed by it to be necessary or  
28 material to the inquiry and shall also have authority to employ and provide such  
29 assistance as may be required to enable it to perform its duties promptly and properly.  
30 Records, papers, and other documents containing information collected and compiled by  
31 the Board or its members or employees as a result of investigations, inquiries, or  
32 interviews conducted in connection with examinations or licensing matters, are not  
33 public records within the meaning of Chapter 132 of the General Statutes.

34 All applicants for admission to the Bar shall be fingerprinted to determine whether  
35 the applicant has a record of criminal conviction in this State or in any other state or  
36 jurisdiction. The information obtained as a result of the fingerprinting of an applicant  
37 shall be limited to the official use of the Board of Law Examiners in determining the  
38 character and general fitness of the applicant.

39 The Board of Law Examiners, subject to the approval of the council shall by  
40 majority vote, from time to time, make, alter and amend such rules and regulations for  
41 admission to the Bar as in their judgment shall promote the welfare of the State and the  
42 profession: Provided, that any change in the educational requirements for admission to  
43 the Bar shall not become effective within two years from the date of the adoption of  
44 such change.

1 All such rules and regulations, and modifications, alterations and amendments  
2 thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the  
3 certificate of organization and the rules and regulations of the council.

4 Whenever the council shall order the restoration of license to any person as  
5 authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a  
6 written license to such person, noting thereon that the same is issued in compliance with  
7 an order of the council of the North Carolina State Bar, whether the license to practice  
8 law was issued by the Board of Law Examiners or the Supreme Court in the first  
9 instance.

10 Appeals from the Board shall be had in accordance with rules or procedures as may  
11 be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be  
12 promulgated by the Supreme Court."

13 Sec. 5. G.S. 84-28 reads as rewritten:

14 **"§ 84-28. Discipline and disbarment.**

15 (a) Any attorney admitted to practice law in this State is subject to the  
16 disciplinary jurisdiction of the council of the North Carolina State Bar under such rules  
17 and procedures as the council shall promulgate as provided in G.S. 84-21.

18 (b) The following acts or omissions by a member of the North Carolina State Bar  
19 or any attorney admitted for limited practice under G.S. 84-4.1, individually or in  
20 concert with any other person or persons, shall constitute misconduct and shall be  
21 grounds for discipline whether the act or omission occurred in the course of an attorney-  
22 client relationship or otherwise:

- 23 (1) Conviction of, or a tender and acceptance of a plea of guilty or no  
24 contest to, a criminal offense showing professional unfitness;
- 25 (2) The violation of the Rules of Professional Conduct adopted and  
26 promulgated by the council of the North Carolina State Bar in effect at  
27 the time of the act;
- 28 (3) Knowing misrepresentation of any facts or circumstances surrounding  
29 any complaint, allegation or charge of misconduct; failure to answer  
30 any formal inquiry or complaint issued by or in the name of the North  
31 Carolina State Bar in any disciplinary matter; or contempt of the  
32 council or any committee of the North Carolina State Bar.

33 (c) Misconduct by any attorney shall be grounds for:

- 34 (1) Disbarment; or
- 35 (2) Suspension for a period up to but not exceeding three-five years, any  
36 portion of which may be stayed ~~for a period not exceeding three~~ years  
37 upon reasonable conditions to which the offending attorney consents;  
38 or
- 39 (3) ~~Public censure~~ Censure – a censure is a written form of discipline more  
40 serious than a reprimand issued in cases in which an attorney has  
41 violated one or more provisions of the Rules of Professional Conduct  
42 and has caused significant harm or potential significant harm to a  
43 client, the administration of justice, the profession or members of the

- 1                    public, but the protection of the public does not require suspension of  
2                    the attorney's license; or  
3            (4)    ~~Private reprimand.~~ Reprimand – a reprimand is a written form of  
4                    discipline more serious than an admonition issued in cases in which an  
5                    attorney has violated one or more provisions of the Rules of  
6                    Professional Conduct, but the protection of the public does not require  
7                    a censure. A reprimand is generally reserved for cases in which the  
8                    attorney's conduct has caused harm or potential harm to a client, the  
9                    administration of justice, the profession, or members of the public; or  
10            (5)    Admonition – an admonition is a written form of discipline imposed in  
11                    cases in which an attorney has committed a minor violation of the  
12                    Rules of Professional Conduct.

13            Any order disbaring or suspending an attorney may impose reasonable conditions  
14 precedent to reinstatement. Any order of the Disciplinary Hearing Commission or the  
15 Grievance Committee imposing a censure, reprimand, or admonition may also require  
16 the attorney to complete a reasonable amount of continuing legal education in addition  
17 to the minimum amount required by the North Carolina Supreme Court.

18            (d)    Any attorney admitted to practice law in this State, who is convicted of or has  
19 tendered and has had accepted, a plea of guilty or no contest to, a criminal offense  
20 showing professional unfitness, may be suspended from the practice of law, but this  
21 suspension shall not take place pending appeal of the conviction.

22            (e)    Any attorney admitted to practice law in this State who is disciplined in  
23 another jurisdiction shall be subject to the same discipline in this State: Provided, that  
24 the discipline imposed in the other jurisdiction does not exceed that provided for in  
25 subsection (c) above and that the attorney was not deprived of due process in the other  
26 jurisdiction.

27            (f)    Upon application by the North Carolina State Bar, misconduct by an attorney  
28 admitted to practice in this State may be restrained or enjoined where the necessity for  
29 prompt action exists regardless of whether a disciplinary proceeding in the matter of  
30 such conduct is pending. Such application shall be filed in the Superior Court of Wake  
31 County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

32            (g)    Any member of the North Carolina State Bar may be transferred to disability  
33 inactive status for mental incompetence or physical disability interfering with the  
34 attorney's ability to competently engage in the practice of law under such rules and  
35 procedures as the council shall promulgate as provided in G.S. 84-21.

36            (h)    There shall be an appeal of right from any final order imposing a letter of  
37 warning, admonition, reprimand, censure, suspension or disbarment upon an attorney,  
38 or ~~involuntary~~ ~~involuntarily~~ transferring a member of the North Carolina State Bar to  
39 ~~disability~~ inactive status for ~~mental incompetence or physical disability~~, to the appellate  
40 division to the North Carolina Court of Appeals. Review by the appellate division shall  
41 be upon matters of law or legal inference. The procedures governing any such appeal  
42 shall be as provided by statute or court rule for appeals in civil cases. A final order  
43 which imposes disbarment or suspension for 18 months or more shall not be stayed  
44 except upon application, under the rules of the Court of Appeals, for a writ of

1 supersedes. A final order imposing suspension for less than 18 months or any other  
2 discipline except disbarment shall be stayed pending determination of the appeal.

3 (i) The North Carolina State Bar may invoke the process of the General Court of  
4 Justice to enforce the powers of the council or any committee to which the council  
5 delegates its authority.

6 (j) The North Carolina State Bar may apply to appropriate courts for orders  
7 necessary to protect the interests of clients of missing, disabled, incapacitated or  
8 deceased attorneys.

9 The senior regular resident judge of the superior court of any district wherein a  
10 member of the North Carolina State Bar resides or maintains an office shall have the  
11 authority and power to enter such orders as are necessary to protect the interests of such  
12 clients, including the authority to order the payment of counsel fees from the estate of  
13 the member to any attorney appointed to administer or conserve the law practice of the  
14 member."

15 Sec. 6. This act is effective upon ratification.