

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SENATE BILL 790
RATIFIED BILL**

AN ACT TO REQUIRE THE NORTH CAROLINA STATE BAR TO PROVIDE CERTAIN INFORMATION TO A RESPONDENT ATTORNEY WHEN DISCIPLINARY ACTION HAS BEEN RECOMMENDED, TO ALLOW A RESPONDENT ATTORNEY TO ADDRESS THE GRIEVANCE COMMITTEE AND TO HEAR THE OFFICE OF COUNSEL'S PRESENTATION TO THE COMMITTEE, 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 ALLOW 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, upon the request of the respondent attorney, provide the respondent attorney with a complete copy of the complaint, including supporting materials submitted with the complaint. For complaints submitted by an attorney or judge pursuant to the obligation to report misconduct in accordance with the Rules of Professional Conduct, the North Carolina State Bar may redact the complainant's identifying information.

(a2) If the North Carolina State Bar's Office of Counsel recommends disciplinary action against a respondent attorney, the North Carolina State Bar shall, pursuant to rules adopted by the Council, provide the attorney with the following:

- (1) All non-privileged, non-work product material and financial audits provided to the Grievance Committee in the respondent attorney's matter, and any evidence in the North Carolina State Bar's possession which indicates the respondent attorney did not engage in the alleged misconduct, or a certification that no such evidence is in the North Carolina State Bar's possession. The materials provided pursuant to this section shall be provided at least 30 days prior to the Grievance Committee's consideration of the Office of Counsel's recommendation.
- (2) An opportunity to address the Grievance Committee or a subcommittee thereof and to hear the Office of Counsel's presentation of the factual basis for its recommendation.

...



(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.

...."

SECTION 1.(b) G.S. 84-28.1(b) reads as rewritten:

"(b) 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~~.disabled, and comply with the requirements of this Chapter."

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

"§ 84-28.3. Vexatious complainants.

(a) The chair of the Grievance Committee may designate a person a vexatious complainant if the complainant has initiated grievances to the North Carolina State Bar alleging attorney misconduct that even if proven, would fail to constitute a violation of the Rules of Professional Conduct, or if available evidence conclusively disproves the allegations, in a manner and volume that amounts to an abuse of the bar disciplinary process. An "abuse of the bar disciplinary process" includes inappropriate, repetitive, or frivolous actions or communications by the complainant, but goes beyond conduct that is merely contentious or unsuccessful. The North Carolina State Bar will mail a notice of the designation to the complainant at the complainant's last known address. If the complainant does not request review of the designation pursuant to subsection (b) of this section, the designation by the chair of the Grievance Committee shall be final and not subject to further review.

(b) A complainant designated as vexatious may seek review of the designation by filing a request for review with the chair of the Disciplinary Hearing Commission within 30 days of the mailing of the notice issued under subsection (a) of this section. The Office of Counsel may file a response to the complainant's request for review. Based upon the written submissions by the complainant and the Office of Counsel, the chair of the Disciplinary Hearing Commission may either uphold or vacate the designation. Notwithstanding subsection (h) of G.S. 84-28, a designation as vexatious under this section shall be final and conclusive and not subject to review or reversal.

(c) The Office of Counsel may decline to review and process any subsequent grievances from a person designated as vexatious, unless the grievance is submitted with a verification signed by the complainant that the allegations are true under the penalty of perjury, and the grievance is submitted on the complainant's behalf by a member of the North Carolina State Bar who (i) has an active license, (ii) is not currently designated as a vexatious complainant, and (iii) is not currently the respondent in a pending grievance investigation or the defendant in a disciplinary proceeding. If the vexatious complainant is an attorney licensed to practice law in this State, the grievance must be submitted on the vexatious complainant's behalf by a member of the North Carolina State Bar who (i) has an active license, (ii) is not designated as a vexatious complainant, and (iii) is not currently the respondent in a pending grievance investigation or the defendant in a disciplinary proceeding."

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

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

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

- (1) An attorney or judge pursuant to their obligation to report misconduct in accordance with the Rules of Professional Conduct.
- (2) A judge, attorney, court staff member, juror, party, or client in the legal matter that is the subject of the grievance.
- (3) A person who has a cognizable interest in or connection to the legal matter or facts alleged in the grievance, or that person's representative.

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

SECTION 1.(e) The North Carolina State Bar may adopt rules to implement this section.

SECTION 2.(a) The North Carolina State Bar shall adopt temporary rules to implement an expungement process for certain disciplinary actions against respondent attorneys by the State Bar by October 31, 2024, and permanent rules by January 31, 2025. The North Carolina State Bar shall follow the recommendations by the State Bar Review Committee in drafting these rules.

SECTION 2.(b) G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; expunge disciplinary actions; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 3. This act is effective August 1, 2024, and applies to grievances filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 2024.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2024