



HOUSE BILL 869: State Bar Grievance Process/Ethics Records.

2021-2022 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 15, 2022
Introduced by:	Reps. Stevens, Reives	Prepared by:	Kristen L. Harris
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *House Bill 869 would: 1) create a grievance review panel to allow respondents to appeal privately a public discipline decision by the Grievance Committee before appealing to the Disciplinary Hearing Commission (DHC); 2) authorize the recovery of attorneys' fees by respondents in actions before the DHC who have been found not to have committed a violation; and 3) provide that documents in the possession of the State Bar or its staff, employees, legal counsel, councilors, or Ethics Committee advisory members concerning any request for ethics advice are not public records, unless the material, with the consent of the inquiring party, appears in a public agenda of the Ethics Committee.*

CURRENT LAW:

Lawyers in North Carolina must observe and follow a code of ethics called the North Carolina Rules of Professional Conduct. The North Carolina State Bar, specifically the Council of State Bar, controls the disciplinary proceedings of attorneys practicing in North Carolina. G.S. 84-28.

The Grievance Review Process

Any person may file a grievance against a member of the State Bar. When the Bar receives a grievance, upon the direction of the Council or the Grievance Committee (the Committee), the counsel will investigate the conduct and submit a report to the Chair of the Committee. 27 NCAC 01B.0111

If a grievance is referred to the Committee, the Committee will determine whether there is probable cause to believe that a respondent is guilty of misconduct justifying disciplinary action. If probable cause is found and the Committee determines that a hearing is necessary, the chairperson will direct counsel to prepare and file a complaint against the respondent. If the Committee finds probable cause, but determines that no hearing is necessary, it will impose an admonition, reprimand, or censure on the respondent. If no probable cause is found, the grievance is dismissed or dismissed with a letter of warning or caution. 27 NCAC 01B.0113

Within 15 days after service, a respondent may refuse an admonition, reprimand, or censure and request a hearing before the Disciplinary Hearing Commission (DHC). A hearing before the DHC is open to the public. 27 NCAC 01B.0113 and 27 NCAC 01B.0116

Typically, any investigation and review of a grievance remains private and confidential until either a public discipline is imposed, or there is a hearing before the DHC.

BILL ANALYSIS:

Section 1 would create a grievance review panel of the Grievance Committee (the Committee) that would review, at the request of the grievance respondent, a public discipline imposed by the Committee. The respondent could be represented by counsel and appear before and present oral argument to the panel. The

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panel could concur in the Committee's decision or remand the file with its recommendation for a different disposition. Upon remand, the Committee could affirm its decision or impose a different disposition. The proceedings and the materials in the possession of the panel would be confidential and not public record.

Section 1 would also award attorneys' fees to a respondent found not to have committed a violation following an action before the DHC. The fees would be paid by the State Bar and could not exceed the statutory costs and fees allowed to be assessed *against* respondents.

This section would be effective when it becomes law, and apply to grievances and actions existing on or commencing on or after that date.

Section 2 would make conforming changes and provide that documents in the possession of the State Bar or its staff, employees, legal counsel, councilors, or Ethics Committee advisory members concerning any requests for ethics advice are not public record unless the material, with the consent of the inquiring party, appears in a public agenda of the Ethics Committee of the State Bar.

Section 3 would require the State Bar to adopt temporary rules to implement this act.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.