



SENATE BILL 790: State Bar Review Committee Recommendations.

2023-2024 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 5, 2024
Introduced by:	Sens. Sawrey, Lee	Prepared by:	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 790 would make various changes to Article 4 (North Carolina State Bar) in Chapter 84 (Attorney-At-Law) of the North Carolina General Statutes, as recommended by the State Bar Review Committee, as follows:*

- *Require the North Carolina State Bar (State Bar) to provide a copy of the complaint and supporting materials when issuing a letter of notice to a respondent attorney, when requested by the respondent attorney, and provide certain other materials and information when recommending disciplinary action against the respondent attorney.*
- *Allow a respondent attorney to address the Grievance Committee and hear the Office of Counsel's presentation to the Grievance Committee.*
- *Allow the chair of the Grievance Committee to designate a person a vexatious complainant if the complainant has initiated grievances to the State Bar warranting dismissal in a manner and volume that amounts to an "abuse of the bar disciplinary process."*
- *Specify who may file a grievance with the State Bar.*

Senate Bill 790 would also require the State Bar to adopt rules to implement an expungement process for certain disciplinary actions against respondent attorneys by the State Bar, as recommended by the State Bar Review Committee.

CURRENT LAW:

Letter of Notice

Pursuant to 27 NCAC 01B.0107(2) and 27 NCAC 01B.0105, when the State Bar determines there is probable cause to believe a respondent attorney has violated the Rules of Professional Conduct, a letter of notice with a brief description of the rule allegedly violated and the pertinent facts will be sent to the respondent attorney.

Proceedings before the Grievance Committee

Meetings before the Grievance Committee to determine whether there is probable cause to believe a respondent is guilty of misconduct justifying disciplinary action are closed. Only counsel, deputy counsel, the testifying witness, interpreters, a stenographer, or an operator of a recording device may be present while the committee is in session. 27 NCAC 01B .0113

Standing

A grievance may be filed by any person against a member of the State Bar. 27 NCAC 01B.0111

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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BILL ANALYSIS:

Section 1.(a) would require the State Bar, when issuing a letter of notice to a respondent attorney and when requested by the respondent attorney, to provide a copy of the complaint and any supporting materials. If the complaint is submitted by an attorney or judge, pursuant to his or her professional obligations to report misconduct, the State Bar could redact his or her identifying information.

If the Office of Counsel recommends disciplinary action against a respondent attorney, the North Carolina State Bar, pursuant to rules adopted by the Council, would provide the attorney with 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 State Bar's possession which indicates the respondent attorney did not engage in the alleged misconduct or certify that it does not possess any such evidence. The materials required to be provided to the respondent attorney would be provided at least 30 days prior to the Office of Counsel's presentation to the Grievance Committee.

The respondent attorney would be able to address the Grievance Committee and hear the Office of Counsel's presentation of the factual basis for its recommendation.

Section 1.(b) would make a conforming change.

Section 1.(c) would allow the chair of the Grievance Committee to designate a person a vexatious complainant if the complainant has initiated grievances to the State Bar warranting dismissal in a manner and volume that amounts to an "abuse of the bar disciplinary process" which includes inappropriate, repetitive, or frivolous actions or communications by the complainant, but goes beyond conduct that is merely contentious or unsuccessful. A notice of the designation would be mailed to the complainant's last known address. If a person designated as a vexatious complainant did not request a review of the designation, the designation would be final and not subject to further review.

A vexatious complainant could seek review of the designation by filing a request for review with the chair of the Disciplinary Hearing Commission (DHC). The Office of Counsel could file a response to the request for review. Based on the written submissions, the chair of the DHC could either uphold or vacate the designation. The designation would be final and conclusive and not subject to review or reversal.

The Office of Counsel would not be required to review and process subsequent grievances from a vexatious complainant unless the grievance is submitted with a verification signed by the complainant that the alleged misconduct is true under penalty of perjury and is submitted on his or her behalf by a member of the State Bar who has an active license, is not a vexatious complainant himself or herself, and is not currently the respondent in a pending grievance investigation or the defendant in a disciplinary proceeding. If the vexatious complainant is a licensed North Carolina attorney, the grievance must be submitted on his or her behalf by a member of the State Bar who has an active license, is not a vexatious complainant himself or herself, and is not currently the respondent in a pending grievance investigation or the defendant in a disciplinary proceeding.

Section 1.(d) would allow the following individuals, in addition to the State Bar, to file grievances with the State Bar:

- An attorney or judge pursuant to their obligation to report misconduct in accordance with the Rules of Professional Conduct.
- A judge, attorney, court staff member, juror, party, or client in the legal matter that is the subject of the grievance.
- 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.

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Section 1.(e) would allow the State Bar to adopt rules to implement the statutory provisions in Section 1.

Section 2.(a) would require the State Bar to 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 rules should be consistent with recommendations by the State Bar Review Committee.

Section 2.(b) would make a conforming change.

EFFECTIVE DATE: The act would be effective August 1, 2024, and apply to grievances filed on or after that date.

BACKGROUND: The State Bar Review Committee met five times between January 24, 2024 and March 14, 2024. A copy of the Committee's Final Report can be found [here](#).

Kristen L. Harris, Staff Attorney for the Legislative Analysis Division, contributed substantially to this summary.