



This Bill Analysis reflects the contents of the bill as it was presented in committee.

# SENATE BILL 790: State Bar Review Committee Recommendations.

2023-2024 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	May 14, 2024
<b>Introduced by:</b>	Sens. Sawrey, Lee	<b>Prepared by:</b>	Kristen L. Harris Committee Counsel
<b>Analysis of:</b>	First Edition		

**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 certain materials and information when issuing a letter of notice to a respondent attorney and allow a respondent attorney to address the Grievance Committee at the initial hearing to determine probable cause and to hear the Office of Counsel's presentation to the Grievance Committee.*
- *Allow the Office of Counsel and 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 permanent 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

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## **BILL ANALYSIS:**

**Section 1.(a)** would require the State Bar, when issuing a letter of notice to a respondent attorney, to include with the letter: a copy of the grievance, all non-privileged and non-work product materials, financial audits, and exculpatory evidence that is presented to the Grievance Committee. If work product contains exculpatory evidence, it must be provided. If the State Bar does not possess any exculpatory evidence, it must certify it does not possess any exculpatory evidence.

The respondent attorney would be provided an opportunity to address the Grievance Committee at the initial hearing to determine if there is probable cause to believe there is misconduct justifying discipline and to hear the Office of Counsel's presentation to the Grievance Committee.

**Section 1.(b)** would allow the Office of Counsel and 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.

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 and serve an answer to the request for review. Based on the written submissions, the chair of the DHC could either concur with the designation or remand the matter for further consideration. Upon remand, the Office of Counsel and the chair of the Grievance Committee could either affirm or vacate their prior decision. The vexatious designation would remain in place until the matter is finally resolved by the State Bar.

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 and is not currently the respondent in disciplinary proceedings. 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 his or herself, and is not currently the respondent in disciplinary proceedings.

**Section 1.(c)** 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, or juror in the legal matter that is the subject of the grievance.
- A family member of a ward in a guardianship proceeding that is the subject of the grievance.
- A family member of a decedent in a probate matter that is the subject of the of the grievance.
- A trustee of a trust or the executor of an estate if the matter that is the subject of the grievance relates to the trust or estate.
- A trustee in a bankruptcy that is the subject of the grievance.
- A person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the grievance.

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**Sections 2.(a) and (b)** would require the State Bar to adopt rules to implement an expungement process for certain disciplinary actions against respondent attorneys by the State Bar consistent with recommendations by the State Bar Review Committee.

The State Bar would be authorized to adopt rules to implement Section 1 of this act.

**EFFECTIVE DATE:** Section 2 would be effective when it becomes law. Except as otherwise provided, this act would be effective July 1, 2024.

**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](#).