

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 863

Short Title: Attorney Grievance Procedure.

(Public)

Sponsors: Representatives Capps; and Pate.

Referred to: Judiciary I.

April 12, 1995

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE NUMBER OF PUBLIC MEMBERS OF THE NORTH
2 CAROLINA STATE BAR, TO MAKE ATTORNEY GRIEVANCE
3 PROCEEDINGS AND RECORDS BASED ON CHARGES OF ATTORNEY
4 MISCONDUCT OPEN TO THE PUBLIC, TO ESTABLISH THE RIGHTS OF
5 COMPLAINANTS, AND TO MAKE OTHER CHANGES TO THE GRIEVANCE
6 PROCEDURES.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 84-17 reads as rewritten:

10 **"§ 84-17. Government.**

11 The government of the North Carolina State Bar is vested in a council of the North
12 Carolina State Bar hereinafter referred to as the 'council', which shall be composed of 50
13 councilors exclusive of officers, except as hereinafter provided, to be appointed or elected
14 as hereinafter set forth, the officers of the North Carolina State Bar, who shall be
15 councilors during their respective terms of office, and each retiring president of the North
16 Carolina State Bar who shall be a councilor for one year from the date of expiration of his
17 term as president, whose term of office expires at the 1973 annual meeting or after.
18 Notwithstanding any other provisions of the law, the North Carolina State Bar shall have
19 the power and authority to acquire, hold, rent, encumber, alienate, and otherwise deal
20 with real or personal property in the same manner as any private person or corporation,

1 subject only to the approval of the Governor and the Council of State as to the
2 acquisition, rental, encumbering, leasing and sale of real property. The North Carolina
3 State Bar Council is authorized and empowered in its discretion to utilize the services of
4 the Purchase and Contract Division of the Department of Administration for the
5 procurement of personal property, in accordance with the provisions of Article 3 of
6 Chapter 143 of the General Statutes. Notwithstanding any provisions of this Article as to
7 the voting powers of members, the council shall be competent to exercise the entire
8 powers of the North Carolina State Bar in respect of the interpretation and administration
9 of this Article, the acquisition, lease, sale, or mortgage of property, real or personal, the
10 seeking of amendments hereto, and all other matters, except as otherwise directed or
11 overruled, as in G.S. 84-33 provided. There shall be one councilor from each judicial
12 district and additional councilors as are necessary to make the total number of councilors
13 50. The additional councilors shall be allocated and reallocated by the North Carolina
14 State Bar every six years on the basis of the number of the active members of each
15 judicial district bar according to the records of the North Carolina State Bar and in
16 accordance with a formula to be adopted by the North Carolina State Bar, to insure an
17 allocation based on lawyer population of each judicial district bar as it relates to the total
18 number of active members of the State Bar.

19 A councilor whose seat has been eliminated due to a reallocation shall continue to
20 serve on the council until expiration of the remainder of the current term.

21 In addition to the 50 councilors, there shall be ~~three-nine~~ public members not licensed
22 to practice law in this or any other state ~~who shall be appointed by the Governor.~~ state, three
23 of whom shall be appointed by the Governor, three of whom shall be appointed by the
24 General Assembly upon recommendation of the Speaker of the House of Representatives,
25 and three of whom shall be appointed by the General Assembly upon recommendation of
26 the President of the Senate."

27 Sec. 2. Article 4 of Chapter 84 of the General Statutes is amended by adding
28 the following new sections to read:

29 **"§ 84-28.3. Public proceedings; open records.**

30 (a) All deliberations and decision making of the Grievance Committee of the
31 North Carolina State Bar involving allegations of misconduct by a member shall be
32 conducted in hearings, proceedings, or meetings open to the public, including
33 deliberations regarding termination of an investigation, dismissal of a grievance, probable
34 cause, pretrial motions, motions for a new trial or to amend a judgment, and requests for
35 reconsideration of decisions of the Committee. Neither the Grievance Committee nor the
36 Disciplinary Hearing Commission shall exclude any member of the public from a hearing
37 on a grievance.

38 (b) The Secretary-Treasurer of the North Carolina State Bar shall maintain a
39 permanent file of each grievance filed with the North Carolina State Bar that shall be
40 open to the public and available for inspection during normal business hours. The file of
41 each grievance shall contain (i) the grievance, (ii) any answer or response of the member,
42 (iii) motions, (iv) a complete record of all proceedings, (v) investigative data, (vi) rulings,
43 orders, and decisions of the Grievance Committee or Disciplinary Hearing Commission,

1 (vii) any letter of notice, letter of caution, letter of warning, admonition, reprimand or
2 censure, and (viii) all other papers and permanent documents that the North Carolina
3 State Bar either received, considered, or issued in the process of the grievance and of
4 related complaints filed by the North Carolina State Bar. The Grievance Committee and
5 the Disciplinary Hearing Commission shall make written findings of fact and legal
6 conclusions supporting all rulings and decisions of the Committee, and those rulings and
7 decisions shall be placed in the permanent file of each case.

8 (c) Copies of all letters of notice, letters of caution, letters of warning,
9 admonitions, reprimands, and censures may be disclosed to the Grievance Committee or
10 introduced into evidence in any proceeding filed against the member within 10 years after
11 issuance.

12 (d) This section does not apply to grievances based on charges of mental
13 incompetence or physical disability of a member.

14 **"§ 84-28.4. Rights of the complainant.**

15 (a) As used in this section, 'complainant' means any person who has filed a
16 grievance alleging misconduct of a member of the North Carolina State Bar with the
17 North Carolina State Bar. 'Complainant' does not include a person who has filed a
18 grievance against a member of the North Carolina State Bar based on mental
19 incompetence or physical disability.

20 (b) A complainant shall be sent by first-class mail copies of all affidavits, answers,
21 responses of the member, motions, orders, and decisions of the Grievance Committee and
22 the Disciplinary Hearing Commission, including any letter of notice, letter of caution,
23 letter of warning, admonition, reprimand, or censure.

24 (c) The Grievance Committee shall give a complainant at least 10 days' notice of
25 all proceedings and meetings of the Grievance Committee or the hearing committee of
26 the Disciplinary Hearing Commission that relate to the complainant's grievance,
27 including pretrial and posttrial motions.

28 (d) A complainant shall be timely notified of all interviews, conferences, and
29 discussions of the council of the North Carolina State Bar or State Bar personnel with the
30 member against whom the grievance or complaint has been filed or with the member's
31 representative, and the complainant may be present during the interviews, conferences,
32 and discussions. Neither the complainant, the member charged with misconduct, nor the
33 member's representative shall have ex parte conferences or discussions with the
34 Commission, Grievance Committee, or the staff of the North Carolina State Bar after the
35 complainant has filed the grievance.

36 (e) The complainant may reply to the member's response to a letter of notice of the
37 grievance by submitting a reply to the North Carolina State Bar within 30 days of the date
38 postmarked on the response and sending a copy by first-class mail to the member.

39 (f) The complainant may submit supplemental documentation that supports the
40 charge to the North Carolina State Bar for use in any hearing or proceeding up to 10 days
41 prior to the hearing or proceeding, including hearings on pretrial or posttrial motions.

42 (g) The Commission shall conduct a prehearing conference prior to the formal
43 grievance hearing. The complainant shall be notified and may be present at the

1 prehearing conference and may be represented by counsel at the formal grievance
2 hearing. The complainant may request a new trial or amendment of the final order and
3 may file a motion for relief with the Disciplinary Hearing Commission pursuant to rules
4 adopted by the North Carolina State Bar.

5 **"§ 84-28.5. Role of counsel.**

6 Counsel to the North Carolina State Bar shall investigate the conduct of members
7 charged with misconduct without the supervision or control of the chair of the Grievance
8 Committee or the council of the North Carolina State Bar and may amend complaints and
9 petitions related to grievances based on charges of misconduct without the approval of
10 the chair of the Grievance Committee. Counsel shall not make recommendations to the
11 Committee that a grievance complaint charging misconduct be dismissed prior to the
12 hearing on the grievance by the Grievance Committee.

13 **"§ 84-28.6. Standard of proof; entry of default; mitigating factors.**

14 (a) The Disciplinary Hearing Commission shall discipline a member charged with
15 misconduct if the charges are proved by a preponderance of the evidence and shall
16 dismiss the complaint if the charges are not proved by a preponderance of the evidence.

17 (b) Neither an entry of default nor an order imposing discipline pursuant to a
18 default may be set aside unless there is substantial evidence presented no later than one
19 year after the default that the member has a mental or physical disability that was the
20 cause of the member's default.

21 (c) The only mitigating factors that may be considered in imposing discipline are
22 (i) whether the member has made timely good faith efforts to make restitution or to
23 rectify the consequences of the acts of misconduct for which the member is charged, (ii)
24 whether the member made a full and free disclosure to the Disciplinary Hearing
25 Commission or was cooperative during the investigation and all proceedings, and (iii)
26 whether the member has a physical or mental disability or impairment that caused the
27 misconduct."

28 Sec. 3. The North Carolina State Bar shall amend the Rules of Professional
29 Conduct or adopt new rules consistent with section 2 of this act within 30 days of the
30 effective date of this act.

31 Sec. 4. This act becomes effective October 1, 1995, and applies to grievances
32 filed on or after that date.