

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15271-ND-81A

Short Title: Disciplining Judges - State Bar. (Public)

Sponsors: Senators Rabon and Britt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIGN THE DUTY OF INVESTIGATING AND RESOLVING INQUIRIES
3 CONCERNING THE QUALIFICATION OR CONDUCT OF JUDGES AND JUSTICES
4 TO THE STATE BAR.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 30 of Chapter 7A is repealed.

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

8 "§ 84-23. Powers of Council.

9 (a) ~~The Council is vested, Council, as an agency of the State, with the State, may do all~~
10 things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited
11 by law including all of the following:

12 (1) ~~authority to regulate~~ Regulate the professional conduct of licensed lawyers
13 and State Bar certified ~~paralegals~~ paralegals.

14 (2) ~~Among other powers, the Council shall administer this Article; take~~ Take
15 actions that are necessary to ensure the competence of lawyers and State Bar
16 certified ~~paralegals;~~ paralegals.

17 (3) ~~formulate and adopt~~ Adopt rules of professional ethics and ~~conduct;~~ conduct
18 for lawyers and State Bar certified paralegals.

19 (4) ~~investigate~~ Investigate and prosecute matters of professional ~~misconduct;~~
20 misconduct for lawyers and State Bar certified paralegals as provided in
21 Article 5 of this Chapter.

22 (5) ~~grant~~ Grant or deny petitions for ~~reinstatement;~~ reinstatement.

23 (6) ~~resolve~~ Resolve questions pertaining to membership ~~status;~~ status.

24 (7) ~~arbitrate~~ Arbitrate disputes concerning legal ~~fees;~~ fees.

25 (8) ~~certify~~ Certify legal specialists and paralegals and charge fees to applicants
26 and participants necessary to administer these certification ~~programs;~~
27 programs.

28 (9) ~~determine~~ Determine whether a member is ~~disabled;~~ disabled.

29 (10) ~~maintain~~ Maintain an annual registry of interstate and international law firms
30 doing business in this ~~State;~~ State.

31 (11) Investigate and resolve inquiries concerning the qualifications and conduct of
32 any judge or justice of the General Court of Justice as provided in Article 5 of
33 this Chapter. Nothing in this Article shall affect the impeachment of judges
34 under the North Carolina Constitution, Article IV, Sections 4 and 17.



- 1 (1) Censure. – A finding by the Supreme Court, based upon a written
2 recommendation by the Council thereof, that a judge has willfully engaged in
3 misconduct prejudicial to the administration of justice that brings the judicial
4 office into disrepute, but which does not warrant the suspension of the judge
5 from the judge's judicial duties or the removal of the judge from judicial
6 office. A censure may require that the judge follow a corrective course of
7 action. Unless otherwise ordered by the Supreme Court, the judge shall
8 personally appear in the Supreme Court to receive a censure.
- 9 (2) Council. – The government of the North Carolina State Bar as provided in
10 G.S. 84-17 and includes any committee or the disciplinary hearing
11 commission thereof.
- 12 (3) Incapacity. – Any physical, mental, or emotional condition that seriously
13 interferes with the ability of a judge to perform the duties of judicial office.
- 14 (4) Investigation. – The gathering of information with respect to alleged
15 misconduct or disability.
- 16 (5) Judge. – Any justice or judge of the General Court of Justice of North
17 Carolina, including any retired justice or judge who is recalled for service as
18 an emergency judge of any division of the General Court of Justice.
- 19 (6) Letter of caution. – A written action of the Council that cautions a judge not
20 to engage in certain conduct that violates the Code of Judicial Conduct as
21 adopted by the Supreme Court.
- 22 (7) Public reprimand. – A finding by the Supreme Court, based upon a written
23 recommendation by the Council that a judge has violated the Code of Judicial
24 Conduct and has engaged in conduct prejudicial to the administration of
25 justice, but that misconduct is minor. A public reprimand may require that the
26 judge follow a corrective course of action.
- 27 (8) Remove or removal. – A finding by the Supreme Court, based upon a written
28 recommendation by the Council that a judge should be relieved of all duties
29 of the judge's office and disqualified from holding further judicial office.
- 30 (9) Suspend or suspension. – A finding by the Supreme Court, based upon a
31 written recommendation by the Council that a judge should be relieved of the
32 duties of the judge's office for a period of time, and upon conditions, including
33 those regarding treatment and compensation, as may be specified by the
34 Supreme Court.

35 **"§ 84-52. Grounds for discipline by Council; public reprimand, censure, suspension, or**
36 **removal by the Supreme Court.**

37 (a) The Council, upon a determination that any judge has engaged in conduct that violates
38 the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of
39 such a nature as would warrant a recommendation of public reprimand, censure, suspension, or
40 removal, may issue to the judge a private letter of caution.

41 (b) Upon recommendation of the Council, the Supreme Court may issue a public
42 reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and
43 persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime
44 involving moral turpitude, or conduct prejudicial to the administration of justice that brings the
45 judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall
46 receive no compensation during the period of that suspension. A judge who is removed for any
47 of the foregoing reasons shall receive no retirement compensation and is disqualified from
48 holding further judicial office.

49 (c) Upon recommendation of the Council, the Supreme Court may suspend, for a period
50 of time the Supreme Court deems necessary, any judge for temporary physical or mental
51 incapacity interfering with the performance of the judge's duties, and may remove any judge for

1 physical or mental incapacity interfering with the performance of the judge's duties which is, or
2 is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue
3 to receive compensation during the period of the suspension. A judge removed for mental or
4 physical incapacity is entitled to retirement compensation if the judge has accumulated the years
5 of creditable service required for incapacity or disability retirement under any provision of State
6 law, but that retired judge shall not sit as an emergency justice or judge.

7 **"§ 84-53. Procedures.**

8 (a) Any citizen of the State may file a written complaint with the Council concerning the
9 qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon
10 the Council shall make such investigation as it deems necessary. The Council may also make an
11 investigation on its own motion. The Council shall not make an investigation, whether initiated
12 upon its own motion or by written complaint of a citizen of this State, when the motion or
13 complaint is based solely upon a superior court judge's legal ruling and that legal ruling has not
14 yet been reviewed and ruled upon by either the North Carolina Court of Appeals or the North
15 Carolina Supreme Court.

16 (a1) The Council thereof may issue process to compel the attendance of witnesses and the
17 production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall
18 be recommended for public reprimand, censure, suspension, or removal unless that judge or
19 justice has been given a hearing affording due process of law.

20 (b) Unless otherwise waived by the justice or judge involved, all papers filed with and
21 proceedings before the Council, including any investigation that the Council may make, are
22 confidential, and no person shall disclose information obtained from proceedings or papers filed
23 with or by the Council, except as provided herein. Those papers are not subject to disclosure
24 under Chapter 132 of the General Statutes.

25 (c) Information submitted to the Council or its staff, and testimony given in any
26 proceeding before the Council, shall be absolutely privileged, and no civil action predicated upon
27 that information or testimony may be instituted against any complainant, witness, or his or her
28 counsel.

29 (d) If, after an investigation is completed, the Council concludes that a letter of caution
30 is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the
31 matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of
32 this section.

33 (e) If, after an investigation is completed, the Council concludes that disciplinary
34 proceedings should be instituted, the notice and statement of charges filed by the Council, along
35 with the answer and all other pleadings, remain confidential. Disciplinary hearings ordered by
36 the Council are confidential, and recommendations of the Council to the Supreme Court, along
37 with the record filed in support of such recommendations are confidential. Testimony and other
38 evidence presented to the Council is privileged in any action for defamation. At least five
39 members of the Council must concur in any recommendation to issue a public reprimand,
40 censure, suspend, or remove any judge. A respondent who is recommended for public reprimand,
41 censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the
42 Supreme Court, and if the respondent has objections to it, to have the record settled by the
43 Council's chair. The respondent is also entitled to present a brief and to argue the respondent's
44 case, in person and through counsel, to the Supreme Court. A majority of the members of the
45 Supreme Court voting must concur in any order of public reprimand, censure, suspension, or
46 removal. The Supreme Court may approve the recommendation, remand for further proceedings,
47 or reject the recommendation. A justice of the Supreme Court or a member of the Council who
48 is a judge is disqualified from acting in any case in which he is a respondent.

49 (f) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme
50 Court, the notice and statement of charges filed by the Council along with the answer and all

1 other pleadings, and recommendations of the Council to the Supreme Court along with the record
2 filed in support of such recommendations, are no longer confidential.

3 (g) The Council may issue advisory opinions to judges, in accordance with rules and
4 procedures adopted by the Council.

5 (h) The Council has the same power as a trial court of the General Court of Justice to
6 punish for contempt, or for refusal to obey lawful orders or process issued by the Council."

7 **SECTION 8.** The authority, powers, duties and functions, records, personnel,
8 property, and unexpended balances of appropriations, allocations, or other funds, including the
9 functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement
10 functions of the Judicial Standards Commission are transferred as a Type I transfer to the Council
11 of the North Carolina Bar.

12 **SECTION 9.** This act becomes effective January 1, 2020. Any ongoing inquiry into
13 the conduct and qualifications of any judge or justice of the General Court of Justice pending
14 before the Judicial Standards Commission on December 31, 2019, shall not be affected by any
15 provision of this act, but the same may be prosecuted or defended in the name of the Council of
16 the North Carolina Bar. In these actions and proceedings, the Council of the North Carolina Bar
17 shall be substituted as a party upon proper application to the courts or other administrative or
18 quasi-judicial bodies. Prosecutions for offenses or violations committed before January 1, 2020,
19 are not abated or affected by this act, and the statutes that would be applicable but for this act
20 remain applicable to those prosecutions. Rules adopted by the Judicial Standards Commission
21 shall remain in effect unless subsequently modified by the Council.