

# BAR GRIEVANCE PROCESS FOR PROSECUTORS

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## State Bar Grievance Process (Step 1)

- Grievance (complaint)
- Office of Counsel Investigation:
  - ▣ No violation, even if true?
    - Report to chair, recommend dismissal
  - ▣ Would be a violation, if true?
    - Letter of Notice: attorney must respond, office of counsel reviews and sends a summary report to chair with a recommendation
  - ▣ PC for violation?
    - Sent to Grievance Committee for consideration at next quarterly meeting



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## State Bar Grievance Process (Step 2)

- Grievance Committee:
  - ▣ “Grand Jury” role: is there probable cause to send case on to the Disciplinary Hearing Committee?
- Potential Dispositions
  - ▣ Dismissal, Letter of Caution, Letter of Warning
  - ▣ Discipline Imposed:
    - Admonition
    - Reprimand
    - Censure



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## State Bar Grievance Process (Step 3)

- **Disciplinary Hearing Committee**
  - ▣ Independent court, DHC panel acts as judge and jury
  - ▣ Rules for discovery, subpoena, pleadings, evidence
  - ▣ 2-stage proceeding (violation → discipline)
  - ▣ Burden of proof: clear and convincing
- **Results:**
  - ▣ Dismiss
  - ▣ Admonish, reprimand, or censure
  - ▣ Suspend or disbar



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## Responding to a Grievance

- Anyone can file a grievance against you
- If you learn that a grievance has been filed:
  - ▣ Remember that most grievances are dismissed
  - ▣ Tell your boss
  - ▣ Contact the Legal and Legislative Services Division of the AOC to determine whether the state will pay for a lawyer to represent you

There are matters for which legal representation will not be provided for you or your staff. These matters include, but are not limited to, criminal charges filed against a judicial official or petitions filed to remove an elected official from office. If you or one of your staff receive a complaint from the North Carolina State Bar or the North Carolina Judicial Standards Commission, contact Legal.

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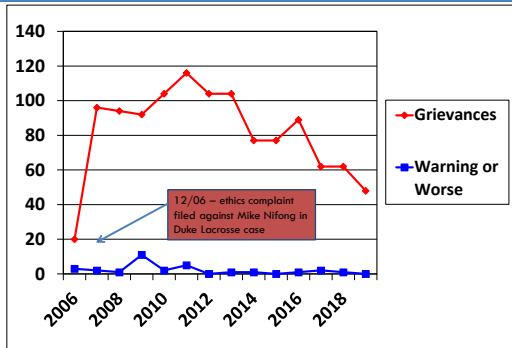
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## Grievances Against Prosecutors



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## Frequent Grievance #1: Failing to Provide Discovery

- 35% of instances of public discipline against prosecutors since 2000 in North Carolina
- 22% of cases in which USDOJ investigated attorney misconduct in 2010
- 43% of cases of prosecutorial misconduct found in *USA Today* survey of federal court opinions
- 57% of cases of prosecutorial misconduct found in Santa Clara Law School survey of California court opinions

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## How Do I Avoid This Kind of Grievance?

- Comply with your discovery obligations
- “But there’s no discovery in district court...”
  - ▣ *Brady/Giglio*
  - ▣ Rules of Professional Conduct
- Err on the side of disclosure



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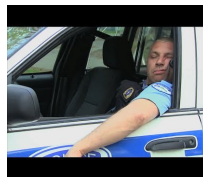
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## Question #1-A

- You’re preparing to try a PDP case. You know that the arresting officer has recently been disciplined for sleeping in his patrol car while on duty.
- Must you disclose this information to the defendant?



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### Question #1-B

□ You're preparing to try a boyfriend/girlfriend AOF case. You remember the victim, because last year she charged a previous boyfriend with AOF, then asked you to drop the charges because "it didn't happen."

□ Must you disclose this information?



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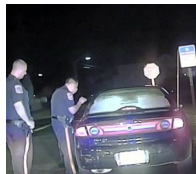
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### Question #1-C

□ You're preparing to try a DWI case. The officer tells you as he arrives in court that he has a video from his dashboard camera that the "forgot to mention."

□ Must you disclose this video?



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### Frequent Grievance #2: Committing a Crime

- 35% of instances of public discipline against prosecutors since 2000 in North Carolina
- "Two categories of conduct dominate the list [of cases in which prosecutors have been subjected to professional discipline]. The first category involves plainly illegal activity such as bribery, extortion, and . . . embezzlement of state funds."
  - ▣ Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721 (2001).

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## How Do I Avoid This Kind of Grievance?

- Don't commit a crime
- Should you admit guilt if charged?



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## Frequent Grievance #3: Improper Statements to the Media

- 10% of instances of public discipline against prosecutors since 2000 in North Carolina



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## How Do I Avoid This Kind of Grievance?

- Don't talk to the media
- If you do talk to the media
  - ▣ Talk to your boss first
  - ▣ Review Rule 3.6 and the comments
  - ▣ Keep your comments brief and factual
  - ▣ Until the defendant has been convicted, note the presumption of innocence



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### Question #3-A

- You just convicted the mayor's son of DWI in district court, and a reporter calls you about the case.
- Can you tell the reporter "we were convinced of the defendant's guilt and we are glad the judge agreed?"



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### Question #3-B

- A reporter asks you what will happen after lunch in a misdemeanor child abuse trial?
- Can you tell the reporter "the treating doctor is going to testify."



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### Question #3-C

- A local blogger asks you whether that harassing phone calls trial will take place today?
- Can you tell the blogger "probably, but we are working on a plea?"



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### Question #4-A

- The defendant has presented a "use of force expert" to testify that the defendant acted in self-defense.
- May you argue to the jury that the witness, a former officer, left public service because he wanted to make more money as a defense expert?



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"[W]hen you come into this court and you put your hand on that Bible up there and you talk about your degrees and where you can practice medicine . . . you better not be trying to sell a bill of goods, you better not be looking to pick up your three thousand dollar check and stay on that defense witness testimony list . . . You need to come in here and get up and tell the truth . . . That's what you deserve, ladies and gentlemen. And it's a crying shame when education is corrupted for filthy lucre, it's a crying shame when people who've got the education abuse it. It's up to you to determine whether that happened in this case or not. But . . . [a]s soon as he gets a little cross examination he wants to say somebody's evil for talking about what money he's making and he gets choked up and has to go to the water jug. Well what's stuck in his throat? The truth? . . . You know that when all you can do in mitigation in a capital murder case is to put up a psychiatrist that has spent [very little] time with this defendant . . . that's a mighty small [showing] in mitigation. And saying it doesn't make it so cause you can pay somebody to say anything."

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### Question #4-B

- The defendant is unemployed, drinks heavily, and has a prior conviction for AOF.
- May you refer to the defendant as a "low-life?"



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The screenshot shows two overlapping browser windows from the NC Prosecutors Resource Online website. The top window displays '228.3 Closing Arguments' with a sub-section for 'Permissible Topics'. The bottom window displays '228.4 Closing Arguments' with a sub-section for 'Impermissible Topics'. A 'Key Concepts' section is visible in the bottom window, listing several points about prosecutive conduct. A watermark for 'ncpro.sog.unc.edu' is overlaid on the bottom right of the screenshot.

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### Frequent Grievance #5: Honesty and Candor

- ❑ 5-10% of instances of public discipline against prosecutors since 2000 in North Carolina
- ❑ **Example:** Claiming full attendance at a CLE that you attended only in part violates Rule 8.4 because it is conduct involving “dishonesty, fraud, deceit or misrepresentation.”
- ❑ **Example:** Making misleading or incomplete statements to the court, in violation of Rule 3.3 (“Candor toward Tribunal”) or Rule 8.4 (“Misconduct”).

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## BAR GRIEVANCE PROCESS FOR PROSECUTORS

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