

Discipline, Disability, and Other Difficulties with Lawyers: How the State Bar Can Help



Superior Court Judges Conference
October 2023

Carmen Bannon
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The North Carolina State Bar



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YOUR INHERENT AUTHORITY

“Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice.”

Beard v. N. Carolina State Bar, 320 N.C. 126, 129 (1987)



“[I]s it incontrovertible that our courts have inherent authority to take disciplinary action against attorneys practicing therein.” This “power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers.”

In re Burton, 257 N.C. 534, 542-43 (1962)

“Generally, in the absence of controlling statutory provisions or established rules, all matters relating to the orderly conduct of the trial or which involve the proper administration of justice in the court, are within [the court's] discretion.”

State v. Rhodes, 290 N.C. 16, 23 (1976)

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YOUR INHERENT FLEXIBILITY



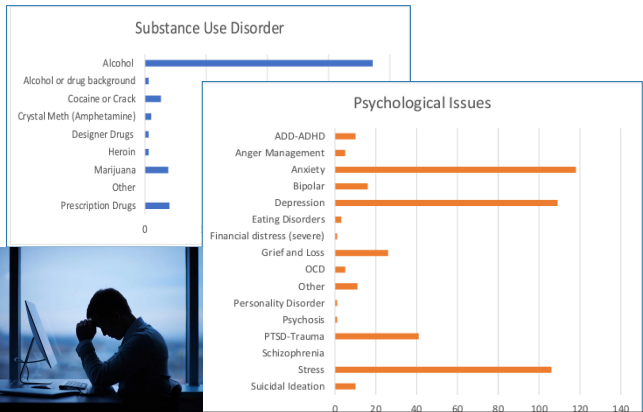
NB: These deeply unsettling images were generated by AI with the prompt "Judge Showing Off Flexibility." We will not be replaced by computers any time soon.



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LAWYER IMPAIRMENT

Specific Problems Cited by Lawyers Assisted by LAP in 2022-2023:



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DISABLED LAWYERS

Disabled or disability - a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney.

N.C.A.C. 1B, § .0103(19)

Generally, member entitled to apply for reinstatement from disability inactive status after one year and once a year thereafter

Notice and public hearing required if member does not consent to transfer to disability inactive status



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Disability Scenario: Working Together

- Criminal defense lawyer suffers from a serious medical condition impacting his brain, but months later he believes his condition has improved enough to resume practicing law
- Judicial officials express concerns to the State Bar, and the Office of Counsel requested that he submit to a clinical evaluation through NC LAP
- Lawyer passed the clinical evaluation and continued to practice
- Judicial officials continued to have concerns


If this were in your court, what would you do?

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Option #1
Grievance Committee Referral to DHC for Disability Proceedings



Option #3
Local Judge Orders Lawyer to Show Cause Why He Should Not be Transferred to Disability Inactive Status




Option #2
Consent Order by Grievance Committee Transferring Lawyer to Disability Inactive Status




Option #4*
2 Consent Orders (1 Public and 1 Sealed) Whereby Court Transfers Lawyer to Disability Inactive Status

**Most private and most flexible*



OPTIONS



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Disability Scenario: The Outcome

Flexibility Offered to Lawyer

- Privacy
- Ability to petition for reinstatement after completing a neuropsychological evaluation and fitness to practice evaluation and demonstrating that he followed all treatment recommendations
- Choose your judge (district/superior)

Lawyer's Choice: Consent Order Transferring to Disability Inactive Status

- One filed under seal to preserve member's privacy
- One publicly filed order to clarify his status for the public

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WHEN SOLO PRACTITIONERS DIE, DISAPPEAR, OR ARE DISABLED: TRUSTEESHIPS

If the unavailable lawyer was a solo practitioner appointment of a trustee may be needed to protect the lawyer's clients.

The State Bar will ask the Senior Resident in the lawyer's district to appoint a lawyer to serve as trustee pursuant to N.C. Gen. Stat. § 84-28(j) and 27 N.C. Admin. Code 1B § .0122 and will help the trustee wind down the lawyer's practice.

- Primary purpose of a trusteeship is to protect the interests of the lawyer's clients.
- Trusteeships are intended to shut down, rather than to preserve, the unavailable lawyer's practice.
- The trustee does not represent the unavailable lawyer's former clients. The trustee's primary responsibilities are to:
 - Tell clients they must arrange for new counsel,
 - Refund unearned fees & other funds remaining in the lawyer's trust account,&
 - Help clients obtain their client files.

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WHEN STATE BAR ETHICS COUNSEL CAN HELP

NEED ETHICS ADVICE?

After consulting the [Rules of Professional Conduct](#) and the relevant [ethics opinions](#), if you continue to have questions about your professional responsibility, any lawyer may request informal advice from the ethics department of the State Bar by calling (919) 828-4620 or by emailing ethicsadvice@nbar.gov. If you call the Bar, tell the receptionist that you have an ethics question.

- Lawyer conflicts of interest/disqualification
- General questions about whether conduct (e.g., a common practice in your district) complies with the Rules
- Other questions about applicability of Rules of Professional Conduct (not related to a particular lawyer who you believe has engaged in misconduct)

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WHEN LAWYERS ARE CHARGED WITH CRIMES



- State Bar doesn't necessarily know about it
- Lawyer/defendant is not required to self-report criminal charges
- State Bar has no authority to suspend law license based on pending charges
- If lawyer is in custody pre-trial, State Bar may seek injunction prohibiting practice

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LAWYER CONVICTED OF A SERIOUS CRIME

When an attorney is charged with a criminal offense involving moral turpitude and amounting to a felony and (A) pleads guilty; (B) is convicted or (C) pleads *nolo contendere* with agreement that the attorney will surrender his or her license, the judge conducting the criminal trial may summarily disbar the attorney without further proceedings.



In re Burton, 257 N.C. 534 (1962).

But if you know you intend to consider discipline, best practice is to give the lawyer written notice that the Court will consider imposing discipline upon entry of a plea or finding of guilt.

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PROFESSIONAL DISCIPLINE IN SENTENCING LAWYER-DEFENDANTS

JUDGMENT SUSPENDING SENTENCE - MISDEMEANOR(S)
 IMPOSING AN INTERMEDIATE PUNISHMENT
 IMPOSING A COMMUNITY PUNISHMENT (STRUCTURED SENTENCING)

Offense Description
 COMMON LAW FORGERY (M)

X: 20. Other:
 COMPLY WITH MENTAL HEALTH TREAT; AS A CONDITION OF PLEA ~~DEF SHALL NOT PRACTICE LAW FOR 6 MONTHS~~ STARTING 9-13-2010 TO ALLOW SHUTDOWN; DEF SHALL COMPLY WITH ALL ORDERS OF THE NC STATE BAR

Either in the sentence itself

BUNCOMBE CO. C.S.C.
 In re DANIEL R. GREEN, Attorney, Respondent
 BY *[Signature]* ORDER OF DISBARMENT

Or in a separate order

THIS MATTER came before the undersigned Judge of the Superior Court of Buncombe County upon the tender of surrender of the law license of Daniel R. Green.
 The courts of this State have the inherent authority to take disciplinary action against attorneys licensed to practice law in North Carolina.
 By engaging in the criminal offenses referenced above, Green committed criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of North Carolina Rule of Professional Conduct 8.4(b).

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OTHER PROBLEM BEHAVIOR

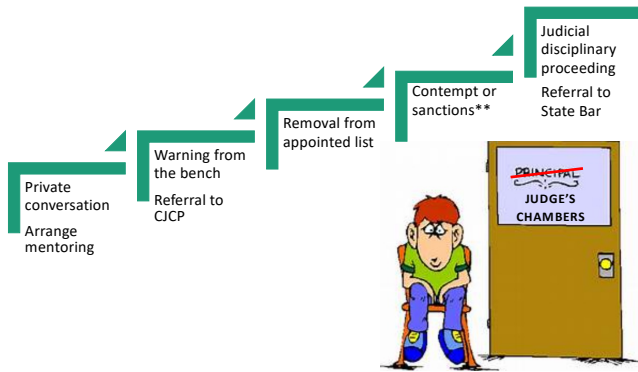
- Absenteeism
- Litigation Misconduct
 - Disruptive/disrespectful courtroom behavior
 - Frivolous claims
 - Baseless motions to recuse
 - Obstructionist interlocutory appeals
- Abusing courthouse personnel



Remember: You can enforce Local Rules and General Rules of Practice in addition to Rules of Professional Conduct!

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OPTIONS FOR ADDRESSING BAD BEHAVIOR



***In any order containing findings about lawyer misbehavior, please use "clear & convincing" or higher standard of proof.*

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Judicial Discipline

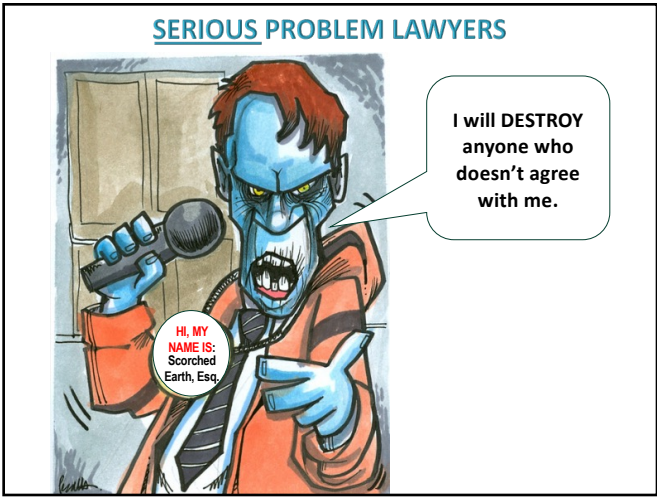
- Broad inherent authority
- Faster
- Discretion & flexibility re: sanctions
- Judicial control
- May require outside judge &/or appointed prosecutor
- Consumption of court time & resources

State Bar Discipline

- Specified statutory authority
- Slower
- Statute & rules control available sanctions
- Decision determined by agency or Hearing Commission
- In-house expertise
- No cost to court

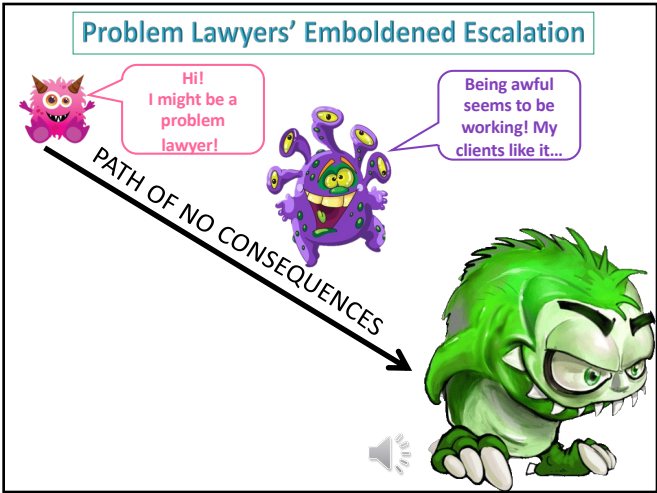
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SERIOUS PROBLEM LAWYERS



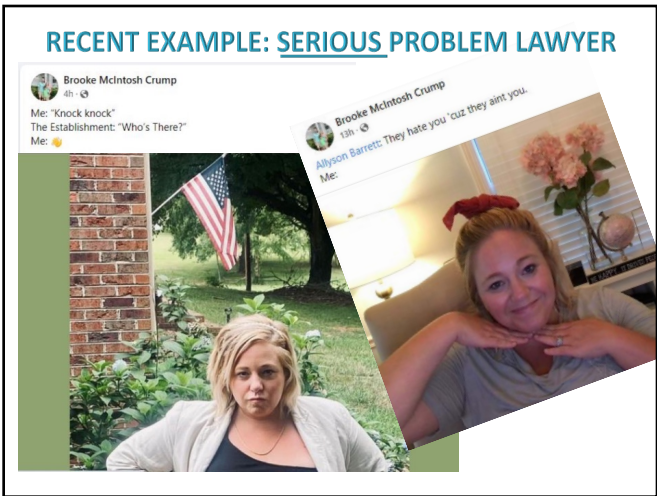
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Problem Lawyers' Emboldened Escalation



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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER



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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER

FILED
 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF
 COUNTY OF MONTGOMERY JUSTICE
 JUN -6 P 9 25 SUPERIOR DIVISION
 MONTGOMERY CO., C.S.C. FILE NUMBER: 22 CVS 220


BY R. Manner

IN THE MATTER OF ORDER
 BROOKE MCINTOSH CRUMP, TO SHOW CAUSE
 Attorney

Upon motion of the Chief District Court Judge of Judicial District 20A, the undersigned Superior Court Judge, pursuant to the Court's inherent authority to regulate the conduct of attorneys as officers of the court and N.C. Gen. Stat. § 84-36, Orders that Brooke McIntosh Crump appear before the Court on the 5th day of July, 2022, in the Montgomery County Courthouse Superior Court for a hearing to determine if any of the allegations of professional misconduct in the attached Motion for Order to Show Cause are true and, if so, what discipline or sanction is appropriate. Based upon the Motion and this Court's inherent authority, the Court finds and concludes as follows:

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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER

 This is your friendly reminder to not open no can of worms if you don't wanna eat 'em.

if you throw a rock at Brooke Crump, be ready for her to shoot a God-blessed missile.

The little legal diddy recently thrown my way is no longer pending in the Co. of the Mo.

But I'm an attorney so y'all can dangle my law license over my head and make me dance a little complacent jig forever, right? Here's your sign 🇺🇸 MoCo powers that be- that's not gonna fly with me. I only stepped down from my soap box because I took Secured Leave to hit up the beach. See you in court 🙏 I'll be sure to walk through the front door. [United States Marshals Service](#) I'll be calling y'all again about this here conflict of interest next week. ❤️

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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER

FILED
 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF
 COUNTY OF MONTGOMERY JUSTICE
 DEC -9 P 12 47 SUPERIOR DIVISION
 MONTGOMERY CO., C.S.C. FILE NUMBER: 22 CVS 220

BY [Signature]

IN THE MATTER OF ORDER
 BROOKE MCINTOSH CRUMP, TO SHOW CAUSE
 Attorney

THIS MATTER was heard by the undersigned on November 1 and 2, 2022 in Montgomery County Superior Court after an Order to Show Cause issued by this Court was served upon attorney Brooke McIntosh Crump notifying her of allegations that she engaged in professional misconduct and ordering her to appear and respond to those allegations. Carmen H. Bannon and J. Cameron Lee, Deputies Counsel for the North Carolina State Bar, appeared to prosecute this matter as ordered by this Court. Respondent, Brooke M. Crump, did not appear.

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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER

By lacking basic understanding of the concepts of "factual support" and "admissible evidence," Crump failed to act competently on behalf of clients in violation of Rule 1.1;

By making false and misleading statements in her 11 April 2022 Motion to Recuse and accompanying affidavit, Crump made false statements of material fact to the tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);

By making spurious allegations in the motions she filed in *In re S.B.* of felonious conduct against those she viewed as opposing her clients' wishes, Crump used means in representing a client that had no substantial purpose other than to embarrass or burden a third party in violation of Rule 4.4(a);

By suggesting without basis in her "Motion in the Cause" that Judge Nance is sexist, Crump made a statement concerning the integrity of a judge with reckless disregard for its truth or falsity in violation of Rule 8.2(a);

By requesting recusal of judges in her COA filings without offering evidence suggesting personal bias, prejudice, or interest on the part of the judges, Crump asserted issues without factual or legal basis in violation of Rule 3.1;

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RECENT EXAMPLE: SERIOUS PROBLEM LAWYER

Crump's conduct caused significant harm to public perception of the profession by reinforcing the negative stereotype that lawyers are antagonistic and combative, demeaning the integrity of the judicial process, and diminishing the public's expectation that attorneys will conduct themselves with dignity and adhere to the Rules of Professional Conduct.

Crump has demonstrated utter disdain for regulation of the legal profession, referring to this case as "that ode to Brooke Crump," "bullshit allegations," "a little legal ditty," "a small-town witch-hunt," an attempt at a "backdoor disbarment," and "that delightful little proceeding in Montgomery County."

There is no indication that Crump has taken ownership of her misconduct or its consequences. She has not acknowledged violating the Rules of Professional Conduct, expressed remorse, or shown any insight regarding her lack of professionalism.

Brooke McIntosh Crump is hereby DISBARRED from the practice of law, effective immediately upon entry of this Order.

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SERIOUS PROBLEM LAWYERS: FINAL THOUGHTS

We live in a time of eroding respect for the institutions that allow our democracy to function, when many instances of irrationality, hubris, and deception within other branches of government (and out in the world) are corrected only when a dispute reaches the judicial branch.

In that sense, it is not an overstatement to say that this [100+ year old courtroom] is a sacred space: Perhaps the last remaining place in our society where simply shouting the loudest doesn't control the narrative; where facts and truth still exist; where the rule of law is respected; where conventions of decorum and civility (for the most part) survive.

Lawyers like Brooke Crump defile this sacred space. They fuel unwarranted beliefs that the system is corrupt. And by intentionally undermining public faith in our judicial process, they threaten societal order itself.

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SHOW CAUSE ORDERS



- **Components of Order:** Advise lawyer of charges, direct lawyer to show cause why conduct doesn't warrant discipline & why discipline should not be imposed, give lawyer reasonable time to respond, & advise lawyer that s/he is entitled to counsel.
- **Show Cause Order May Be Issued Out of Term:** The order need not be signed in the county in which the case is to be heard.
- **Underlying Case Need Not Be Pending:** Trial court may sanction lawyer even though case creating the disciplinary issue has been resolved/appealed & is no longer before the court.
- **Any Session of Court:** Disciplinary action may be taken at any session of court, civil or criminal.

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DISCIPLINARY HEARINGS

- **Issues Before the Court:** There are 2 issues for determination at a disciplinary hearing:
 - (1) Whether misconduct occurred, &
 - (2) if so, what discipline is appropriate.The Court is not required to address these issues in any particular format, but disciplinary hearings are often conducted in 2 phases, similar to guilt/innocence & sentencing. If you use this process...
 - In Phase I, the Court would determine whether the lawyer engaged in misconduct & in Phase II, what discipline is appropriate.
- **Right to be Heard:** Lawyer should be allowed to present evidence & testimony, and make arguments re: misconduct & appropriate discipline. There is no case law indicating lawyers have a right to discovery or to subpoena witnesses.
- **Appointment of Prosecutor:** You may appoint the District Attorney, another licensed lawyer, or the State Bar's Office of Counsel to prosecute the disciplinary matter.
- **Standard of Proof** = Clear and convincing evidence.
- **Lawyer Does Not Have Right to Jury Trial**



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