



2015 Superior Court Judges Summer Conference
Friday, June 26, 2015

THE NORTH CAROLINA STATE BAR

NORTH CAROLINA STATE BAR

What is it?

- ❖ State regulatory agency
- ❖ Formed in 1933 by the Legislature
- ❖ Mission: to regulate the practice of law in North Carolina



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NORTH CAROLINA STATE BAR MEMBERS

- ❖ Membership is mandatory
- ❖ Only 3 States have separate mandatory and voluntary Bars
 - Virginia and West Virginia are the other States
- ❖ Most others are unified bars



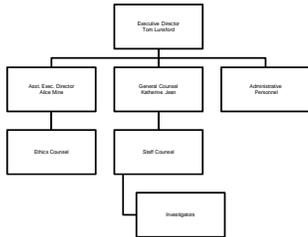
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NORTH CAROLINA STATE BAR

- ❖ State Bar is governed by a 68-member Council
 - 4 officers
 - 1 councilor per each prosecutorial district elected by the lawyers of that district
 - 16 additional councilors apportioned to districts by lawyer population every 6 years
 - Currently divided among Wake, Durham, Forsyth, Guilford and Mecklenburg Counties
 - 3 public members appointed by governor

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NORTH CAROLINA STATE BAR STAFF



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NORTH CAROLINA STATE BAR COMMITTEES

THE BIG 4

- ❖ Grievance
- ❖ Ethics
- ❖ Authorized Practice
- ❖ Administrative



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NORTH CAROLINA STATE BAR BOARDS

Boards operated under the State Bar:

- ❖ CLE Board
- ❖ Paralegal Board
- ❖ Board of Legal Specialization
- ❖ IOLTA Board
- ❖ Lawyers Assistance Program Board
- ❖ Client Security Fund Board

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INDEPENDENT BOARDS

The State Bar Council appoints members but boards operate independently:

- ❖ Disciplinary Hearing Commission
- ❖ Board of Law Examiners



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Current Issues

- Litigation
- Legislation
- Rules and Initiatives

Litigation

- The Dental Board
 - Decision on February 25, 2015
- LegalZoom
 - In Business Court & MDNC

Litigation

- Capital Associated Industries
 - Trade Association seeking to provide legal services to its members
- World Law Group
 - National Debt Settlement Operation
 - Pending in Business Court

Legislative

- Amendments to Chapter 84
 - Authorization to enforce UPL
 - Definition of practice of law
- Introduced bill to give Judicial Standards exclusive jurisdiction over discipline of judges

Rules and Initiatives

- The Beginning and End of Law Practice
 - Dealing with lawyers who are no longer capable of practicing
- Revise Rules to facilitate sale of law practices
- Trust Accounting

How the State Bar Rules on Questions of Legal Ethics

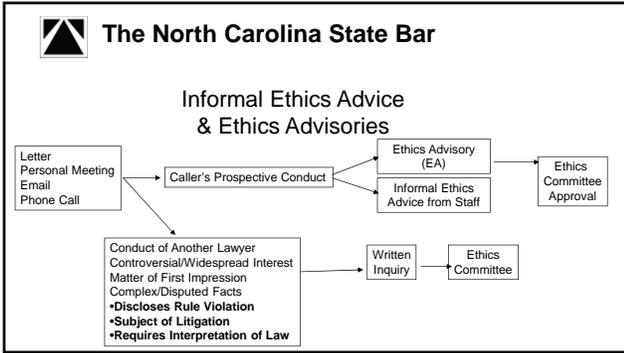


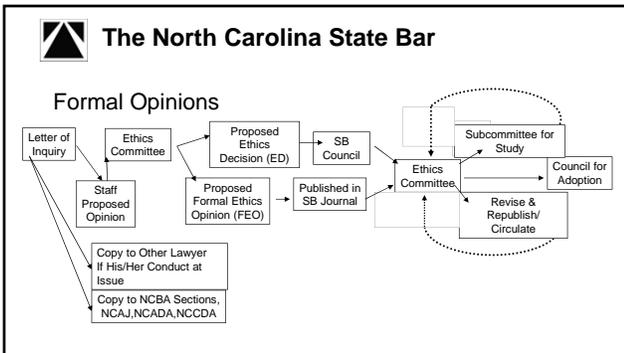
The North Carolina State Bar



The North Carolina State Bar

- Ethics Process
 - Responds to inquiries about professional conduct
 - Interprets and applies the Rules of Professional Conduct
 - Revises the Rules of Professional Conduct
 - A resource for Judges





The North Carolina State Bar

Current Questions Before the Ethics Committee:

- Is a lawyer required to know about social media and how it may impact a client's case? Is a lawyer required to advise a client about how social media may impact the client's case?
- Does a lawyer/mentor have to inform a client that the presence of a lawyer/protégé may waive the attorney-client privilege?
- May a lawyer authorize the use of deception in the investigation of a client's case?

Authorized Practice Committee

- Reviews complaints about the unauthorized practice of law (UPL)
- Average about 100 complaints each year
- Consumer Protection function

Process

- Complaints are submitted to the State Bar
- Complaints are investigated
 - Google is our friend
 - Staff investigators
- Counsel makes a recommendation on disposition
- Committee determines disposition

Dispositions

- Dispositions available to Committee
 - Send a Letter of Caution
 - Seek an injunction
 - Take no action
 - Dismiss
 - Refer to DA

Nature of Complaints

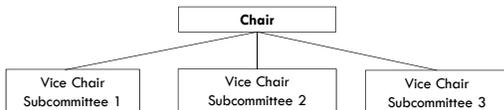
- Complaints range from serious to amusing
- Some regular areas of concern
 - “Debt relief” and “loan modification” services
 - Living trust mills
 - Real estate closings by non-lawyers
 - “Immigration consultants”
 - “Document preparation” services
- Noteworthy and trendy complaints
 - Impersonation of an attorney
 - Using “real” law firm website elements to create “fake” law firm site

GRIEVANCE COMMITTEE

- Oversees investigations of grievances
- Issues proposed written discipline
- Determines matters to be referred to the Disciplinary Hearing Commission

GRIEVANCE COMMITTEE

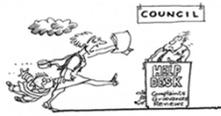
- Committee is divided into 3 subcommittees, each headed by a Vice Chair



GRIEVANCES

GRIEVANCES TO STATE BAR COME FROM

- ❑ CLIENTS
- ❑ SPOUSES OF CLIENTS
- ❑ OPPOSING PARTIES
- ❑ OTHER ATTORNEYS
- ❑ JUDGES
- ❑ INMATES
- ❑ "OFFICIOUS INTERMEDDLERS"
- ❑ STATE BAR



❑ AVERAGE # OF GRIEVANCE FILES OPENED DIN PAST 3 YEARS: 1312

INITIAL INVESTIGATION

Reviewed by Office of Counsel

- ❑ Assuming the facts are true, but no clear rule violation, Counsel recommends dismissal to the Chair
- ❑ If the facts indicate a possible rule violation, Counsel sends a Letter of Notice to attorney



REPORT OF COUNSEL

Counsel prepares a Report of Counsel with his or her analysis and recommendations:

- ❑ If dismissal is recommended, Chair and Vice-Chair must review and approve
- ❑ If something other than dismissal is recommended, the case is on the agenda of applicable Sub-Committee.



GRIEVANCE SUB-COMMITTEE MEETINGS

- Sub-committees meet with Counsel to review grievances and then go into preliminary hearing.
- FUNCTIONS SIMILAR TO A GRAND JURY
- At preliminary hearing the sub-committee votes on:
 - (1) Is there probable cause to believe that there has been a violation of the Rules of Professional Conduct; and
 - (2) the type of discipline which should be imposed
- Meetings are closed; even Counsel cannot attend



DISCIPLINE

- Dismissal
- Dismissal with Letter of Caution - private
- Dismissal with Letter of Warning - private
- Admonition - private
- Reprimand - public
- Censure - public
- Referral to DHC- public
- Stay grievance pending a referral to LAP
- Continue grievance review pending further investigation



MEETING OF FULL COMMITTEE

- Following the subcommittee meetings, entire Grievance Committee meets to vote on the recommendations of the subcommittees.
- Any member of the Grievance Committee may pull any matter from the agenda for further discussion.
- Meeting is also closed



CONFIDENTIALITY

- The grievance process through this point is confidential.
- Information is known only to the Office of Counsel and Grievance Committee members.



DISCIPLINARY HEARING COMMISSION

- DHC is a separate entity from the State Bar – the State Bar prosecutes actions before the DHC.
- DHC has 20 members. 12 attys. appt. by State Bar; 8 non-attys. appt. by Governor (4) and Legislature (4)
- DHC sits in panels of three to preside over disciplinary trials. One member of the panel is a lay person.

DISCIPLINARY HEARING COMMISSION

- Trials are held in two phases –
 - misconduct phase and
 - discipline phase.
- Burden of proof is on the State Bar to prove violation of Rules of Professional Responsibility by clear, cogent and convincing evidence.

DISCIPLINARY HEARING COMMISSION

- In discipline phase of trial, panel may consider:
 - Aggravating circumstances such as prior discipline, pattern of misconduct, dishonest motive; and
 - Mitigating circumstances such as absence of dishonest motive, good faith effort to make restitution, character, reputation, physical or mental disability

DISCIPLINE

- DHC may dismiss the case, issue a letter of warning, admonition, reprimand, censure, suspension or disbarment. (G.S. 84-28)
- Suspension can be stayed conditioned upon compliance with requirements delineated by the DHC.
- When disability is raised as an issue in the case, DHC may also make a finding of disability and transfer attorney to inactive disability status.

New State Bar Building

- "Basic" building paid by bar dues
- Upgrades paid through contributions to the Bar Foundation





