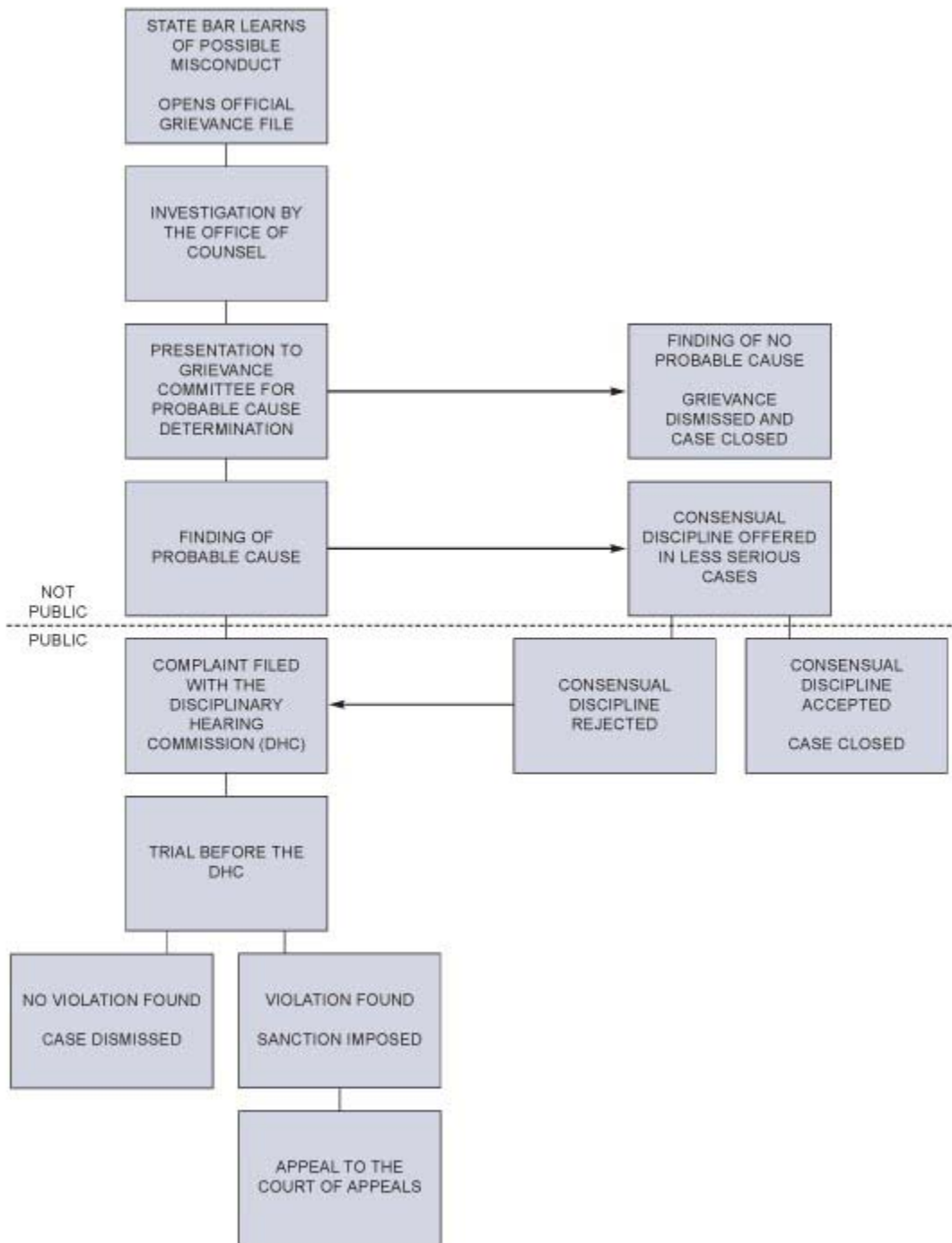


## Overview of The North Carolina State Bar's Disciplinary Procedure



### THE NORTH CAROLINA STATE BAR

208 Fayetteville Street • PO Box 25908 • Raleigh, NC 27611-5908 • 919.828.4620



## Definitions

The following definitions are used throughout this website. You should refer back to these definitions if you do not understand a term used.

**Admonition** – a written form of discipline imposed in cases in which a lawyer has committed a minor violation of the Rules of Professional Conduct.

**Bar Counsel** - a North Carolina State Bar staff lawyer who investigates and/or prosecutes disciplinary charges against the respondent.

**Censure** – a written form of discipline more serious than a reprimand issued in cases in which the respondent has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the respondent's license.

**Complainant** – the person making a complaint against a lawyer.

**Disbarment** - Expulsion from the North Carolina State Bar which revokes the lawyer's license and prohibits the lawyer from practicing law in North Carolina and holding him or herself out as a lawyer. Disbarment is permanent unless the lawyer petitions to have his or her license restored, which he or she may do after five years. To be reinstated, the lawyer must prove to the Disciplinary Hearing Commission that he has reformed.

**Disciplinary Hearing Commission (DHC)** - the trial arm of the North Carolina State Bar. It is composed of 12 lawyers and 8 non-lawyers.

**Grievance** – the complaint filed against a lawyer by a client, member of the public, or another lawyer.

**Letter of Caution** – written communication from the Grievance Committee or the DHC to a lawyer stating that the lawyer's conduct, while not the basis for discipline, is unprofessional or not in accord with accepted professional practice.

**Letter of Warning** – written communication from the Grievance Committee or the DHC to a lawyer stating that the lawyer's conduct, while not the basis for discipline, is an unintentional, minor, or technical violation of the Rules of Professional Conduct and may be the basis for discipline if continued or repeated.

**Malpractice** – when a lawyer fails to exercise an accepted degree of professional learning or skill when rendering legal services to a client which results in injury or loss to the client. A claim of malpractice must be made in a court of law. A violation of the Rules of Professional Conduct is not malpractice.

**Reprimand** – a written form of discipline more serious than an admonition issued in cases in which the respondent has violated one or more provisions of the Rules of Professional Conduct, causing harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

**Respondent** – the lawyer against whom a complaint is made.

**Rules of Professional Conduct** – the rules of ethical conduct that all North Carolina lawyers must follow. The rules govern lawyers' ethical duties to clients, the courts, and the public. The Rules are also known as the [Revised Rules of Professional Conduct](#).

**Suspension** – Temporary removal of the lawyer's license to practice law in North Carolina .



TO: THE GRIEVANCE COMMITTEE  
THE NORTH CAROLINA STATE BAR  
PO BOX 25908  
RALEIGH, NC 27611  
TELEPHONE: (919) 828-4620

OFFICE USE ONLY
FILE NUMBER

I, the undersigned hereby complain against (Name of Attorney) \_\_\_\_\_  
(Address) \_\_\_\_\_ (City) \_\_\_\_\_ NC (Zip) \_\_\_\_\_  
a practicing attorney of \_\_\_\_\_ County. I agree to cooperate by furnishing to the representatives of  
the North Carolina State Bar all pertinent information and records in my possession concerning the alleged misconduct of said attorney.  
I further agree that if a hearing or inquiry is ordered concerning the alleged misconduct of said attorney, then I will furnish evidence  
concerning the facts by submitting to deposition or personal attendance at the hearing or inquiry. I hereby indicate that this information  
is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged misconduct of the above-  
named attorney. I understand that I may also need to reveal this information to a privately-retained attorney to pursue private remedies  
on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 applies only to those  
statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused attorney for his response to a formal  
inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

Name of Complainant  
Mr., Mrs., or Ms. \_\_\_\_\_  
(Please circle correct TITLE and TYPE or PRINT legibly)

\_\_\_\_\_  
Signature of complainant

Address \_\_\_\_\_

**THIS AFFIDAVIT SHOULD BE NOTARIZED**

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Sworn and subscribed before me this the \_\_\_\_\_

Home Telephone ( \_\_\_\_\_ ) \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_.

Work Telephone ( \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)  
My commission expires \_\_\_\_\_

### DESCRIPTION OF YOUR COMPLAINT

NOTE: In the space below, tell us what your complaint is about. Be sure to include all facts that you want the State Bar to consider,  
including names, dates, and places. Use additional sheets if necessary. Attach copies (not originals) of any papers that support your  
complaint.



## How Lawyers are Disciplined

The NC State Bar has been in the news recently regarding several high profile cases involving alleged lawyer misconduct. It is obvious from accounts in the press and from communications we have received that some aspects of our work are not well understood. Given the considerable public interest in our pending disciplinary action against Michael B. Nifong arising from the Duke lacrosse case, this is a good time to explain a few things about professional discipline.

1. **The State Bar is not the “Bar Association.”** The State Bar is a state government agency responsible for regulating lawyers. It has the power to establish a code of ethics for the profession, and to investigate and prosecute lawyers for violations of that code. All lawyers licensed by the state of North Carolina are required to belong to the State Bar and to support its administration with their annual dues. The *North Carolina Bar Association* is a voluntary private professional association. The Bar Association has nothing to do with the disciplinary process.
2. **Disciplinary proceedings are public proceedings.** The State Bar investigates hundreds of cases each year, receiving reports from a variety of sources including citizens, lawyers, judges, and the media. Once a confidential investigation is completed and the State Bar’s Grievance Committee decides there is a reasonable basis to believe that a lawyer has violated the Rules of Professional Conduct, a formal complaint is filed on the public record before an independent administrative court known as the Disciplinary Hearing Commission (DHC). This initiates a completely transparent process that culminates in a trial at which the media and the public are welcome.
3. **The State Bar prosecutes disciplinary cases; it doesn’t decide them.** The DHC sits as the judge and jury in disciplinary cases. It is composed of 20 members: 12 lawyers appointed by the State Bar and eight non-lawyers appointed by the governor and the General Assembly. Sitting in panels of three, which always include a non-lawyer, the DHC conducts the trials, finds the facts, applies the law, and alone decides which disciplinary sanctions, if any, are appropriate. Once a trial is over, either side can appeal to the North Carolina Court of Appeals if it believes errors of law have occurred.
4. **Disciplinary proceedings are civil proceedings.** The DHC is a court of record, much like the state superior court. The State Bar, as the plaintiff/prosecutor, is represented by its legal counsel. The defendant lawyer also has a right to be represented by counsel. The State Bar has the burden of proving its case by evidence that is clear, cogent, and convincing. Matters are decided purely on the evidence presented. Public opinion is not admissible.
5. **Disciplinary proceedings concern the lawyer’s license to practice.** The DHC can dismiss a case, issue a letter of caution or a letter of warning, or impose an admonition, a reprimand, or a censure. The DHC can also suspend a lawyer’s license to practice law for a definite period not to exceed five years. Finally, the DHC can disbar a lawyer. Disbarment means that the lawyer is no longer licensed to practice law in North Carolina. The DHC cannot impose criminal penalties like fines or terms of imprisonment. It cannot remove a public official from office or require a lawyer to withdraw

from a case. It has no authority to order that damages be paid to persons who may have been injured by a lawyer's misconduct.

6. **The purpose of professional discipline is protection of the public.** In imposing a disciplinary sanction, the DHC's primary duty is to discipline the offending lawyer in the way that is most likely to prevent harm to the public. The DHC takes into account relevant aggravating and mitigating evidence about the defendant lawyer and his or her conduct when determining the appropriate disciplinary sanction.
7. **Disciplinary cases are independent of other related cases.** Although disciplinary cases may concern allegedly improper conduct in other civil or criminal cases, they are separate and independent. A disciplinary case does not terminate when a related civil or criminal matter is dismissed. The only parties to a disciplinary case are the State Bar, which is the plaintiff, and the accused lawyer, who is the defendant. Other persons who may have been injured or otherwise offended by the lawyer's conduct are not parties to proceedings before the DHC, although they may be called as witnesses.

The disciplinary procedures described above have been in place since 1977. Since that time they have openly facilitated justice and protected the public's interest in hundreds of cases. During the last ten years alone, lawyers have been disbarred or suspended in 373 cases. Interested members of the public wishing to learn more can find additional information on the State Bar's website at [www.ncbar.gov](http://www.ncbar.gov).

L. Thomas Lunsford, II  
Executive Director  
NC State Bar  
Raleigh, NC

## **State Bar's Disciplinary Process Is Much Like Court System**

Though the labels are different, the State Bar's disciplinary process works much like the criminal court system:

- The Bar's Grievance Committee acts much like a grand jury does, considering complaints in private and deciding whether there is probable cause to refer a case to the Disciplinary Hearing Commission for public trial and possible sanctions.
- If a case is referred to the Disciplinary Hearing Commission, the Bar's attorneys act as prosecutors, laying out evidence and arguments for why a lawyer should be disciplined. The accused lawyer can have his or her own defense attorney as well.
- The Disciplinary Hearing Commission is an administrative court that is independent of the State Bar. Sitting in panels of three members – two lawyers and one non-lawyer – the Commission acts much like a Superior Court. It publicly hears evidence, decides whether ethical rules have been broken and decides what, if any, discipline to impose.
- The Commission's hearings occur in two phases. In the first phase, the hearing committee determines whether the lawyer committed any ethical violations. If the committee finds that a lawyer has violated the Bar's Rules of Professional Conduct, the committee decides in the second phase what discipline to impose.
- If either the Bar or the defendant lawyer disagrees with a matter of law in the hearing committee's decision, either side can appeal the decision to the N.C. Court of Appeals.

