

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 560

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

Sponsors: Senators Rabon and Britt (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 3, 2019

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 Article 30 of Chapter 7A is repealed.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 (12) ~~and formulate~~ Formulate and adopt procedures for accomplishing these  
2 purposes. ~~The Council may do all things necessary in the furtherance of the~~  
3 ~~purposes of this Article that are not otherwise prohibited by law."~~

4 **SECTION 3.** Chapter 84 of the General Statutes is amended by adding a new Article  
5 to read:

6 "Article 5.

7 "Investigation and Discipline."

8 **SECTION 4.** G.S. 84-28 through G.S. 84-32.1 and G.S. 84-36 through G.S. 84-37  
9 are recodified in Article 5 of Chapter 84 as created in Section 3 of this act as G.S. 84-40 through  
10 G.S. 84-50 respectively.

11 **SECTION 5.** G.S. 84-40 as recodified in Section 4 of this act reads as rewritten:

12 **"§ 84-40. ~~Discipline and disbarment.~~ Investigation and discipline of judges and attorneys.**

13 (a) Any attorney admitted to practice law in this State is subject to the disciplinary  
14 jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided  
15 in G.S. 84-23. Any judge or justice of the General Court of Justice is subject to the disciplinary  
16 jurisdiction of the Council under the North Carolina Code of Judicial Conduct as adopted by the  
17 Supreme Court and under the procedures adopted by the Council.

18 ...."

19 **SECTION 6.** G.S. 84-43, as recodified in Section 4 of this act, reads as rewritten:

20 **"§ 84-43. Evidence and witnesses.**

21 In any investigation concerning the qualifications and conduct of any judge or justice of the  
22 General Court of Justice or of charges of professional misconduct or disability or in petitions for  
23 reinstatement, reinstatement for attorneys, the Council and any committee thereof, and the  
24 disciplinary hearing commission, and any committee thereof, may administer oaths and  
25 affirmations and shall have the power to subpoena and examine witnesses under oath, and to  
26 compel their attendance, and the production of books, papers and other documents or writings  
27 deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand  
28 of the secretary-treasurer or the president of the Council or the chair of the committee appointed  
29 to hear the charges, and shall have the force and effect of a summons or subpoena issued by a  
30 court of record, and any witness or other person who shall refuse or neglect to appear in obedience  
31 thereto, or to testify or produce the books, papers, or other documents or writings required, shall  
32 be liable to punishment for contempt either by the Council or its committee or a hearing  
33 committee of the disciplinary hearing commission through its chair pursuant to the procedures  
34 set out in Chapter 5A of the General Statutes, but with the right to appeal therefrom. Depositions  
35 may be taken in any investigations of professional misconduct as in civil proceedings, but the  
36 Council or the committee hearing the case may, in its discretion, whenever it believes that the  
37 ends of substantial justice so require, direct that any witness within the State be brought before  
38 it. Witnesses giving testimony under a subpoena before the Council or any committee thereof, or  
39 the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled  
40 to the same fees as in civil actions.

41 In cases heard before the Council or any committee thereof or the disciplinary hearing  
42 commission or any committee thereof, if the party shall be convicted of the charges, the party  
43 shall be taxed with the cost of the hearings: Provided, however, that the bill of costs shall not  
44 include any compensation to the members of the Council or committee before whom the hearings  
45 are conducted."

46 **SECTION 7.** Article 5 of Chapter 84 as enacted by Section 3 of this act is amended  
47 by adding three new sections to read:

48 **"§ 84-51. Definitions.**

49 With regard to any investigation concerning the qualifications and conduct of any judge or  
50 justice of the General Court of Justice conducted under this Article and unless the context clearly  
51 requires otherwise, the following definitions shall apply throughout this Article:

- 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.