

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 431
SENATE BILL 166

AN ACT TO AMEND CERTAIN PROVISIONS OF LAW THAT REGULATE
ATTORNEYS-AT-LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-1 reads as rewritten:

"§ 84-1. Oaths taken in open court.

Attorneys before they shall be admitted to practice law shall, in open court before a justice or judge of the General Court of Justice, personally appear and take the oath prescribed for attorneys, attorneys by G.S. 11-11, and also the oaths of allegiance to the State, and to support the Constitution of the United States, prescribed for all public officers, officers by Article VI, Sec. 7 of the North Carolina Constitution and G.S. 11-7, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken may act as attorneys during their good behavior."

Sec. 2. G.S. 84-2 reads as rewritten:

"§ 84-2. Persons disqualified.

No justice, judge, full-time district attorney, full-time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of the General Court of Justice, ~~nor~~ register of deeds, deputy or assistant register of deeds, nor sheriff, sheriff or deputy sheriff shall engage in the private practice of law. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars (\$200.00)."

Sec. 3. G.S. 84-2.1 reads as rewritten:

"§ 84-2.1. 'Practice law' defined.

The phrase 'practice law' as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any ~~such~~ legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase 'practice law' shall not be construed to limit the foregoing general definition of ~~such~~ the term, but shall be

construed to include the foregoing particular acts, as well as all other acts within ~~said~~ the general definition."

Sec. 4. G.S. 84-4 reads as rewritten:

"§ 84-4. Persons other than members of State Bar prohibited from practicing law.

~~It~~ Except as otherwise permitted by law, it shall be unlawful for any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or proceeding in any court in this State or before any judicial body or body, including the North Carolina Industrial Commission, or the Utilities Commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney-at-law. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. ~~this Chapter.~~ Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina."

Sec. 5. G.S. 84-4.1 reads as rewritten:

"§ 84-4.1. Limited practice of out-of-state attorneys.

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, ~~or the North Carolina Utilities Commission Commission, or the North Carolina Industrial Commission-Commission, or the Office of Administrative Hearings of North Carolina-Carolina, or any administrative agency,~~ may, on motion, be admitted to practice in ~~the General Court of Justice or the North Carolina Utilities Commission or the North Carolina Industrial Commission or the Office of Administrative Hearings of North Carolina~~ that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall contain or be accompanied by:

- (1) The attorney's full name, post-office ~~address-address,~~ bar membership number, and status as a practicing attorney in another state.
- (2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

- (3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.
- (4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.
- (5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with ~~such the~~ legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

Sec. 6. G.S. 84-4.2 reads as rewritten:

"§ 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.

Permission granted under ~~the preceding section~~ G.S. 84-4.1 may be summarily revoked by the General Court of Justice or any agency, including the North Carolina Utilities Commission, on its own motion and in its discretion."

Sec. 7. G.S. 84-14 is recodified as G.S. 7A-97 in Article 11 of Chapter 7A of the General Statutes.

Sec. 8. G.S. 84-16 reads as rewritten:

"§ 84-16. Membership and privileges.

The membership of the North Carolina State Bar shall consist of two classes, active and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, who shall have paid the membership dues hereinafter specified, unless classified as an inactive member by the Council as hereinafter provided. No person other than a member of the North Carolina State Bar shall practice in any court of the State except foreign attorneys as provided by statute.

Inactive members shall be all persons found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give

legal advice or counsel or to examine the law or to pass ~~upon~~ upon, adjudicate, or offer an opinion concerning the legal effect of any act, document, or law.

All active members shall be required to pay annual membership fees, and shall have the right to ~~vote~~ vote in elections held by the district bar in the judicial district in which the member resides. ~~A member shall be entitled to vote at all annual or special meetings of the North Carolina State Bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides:~~ Provided, that if ~~he~~ a member desires to vote with the bar of some district in which ~~he~~ the member practices, other than that in which ~~he~~ the member resides, ~~he~~ the member may do so ~~upon~~ by filing with the resident judge of the district in which he resides (and, after the North Carolina State Bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina State Bar), his the Secretary of the North Carolina State Bar a statement in writing that ~~he~~ the member desires to vote in ~~such~~ the other district: Provided, however, that in no case shall ~~he~~ the member be entitled to vote in more than one district."

Sec. 9. G.S. 84-17 reads as rewritten:

"§ 84-17. Government.

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar ~~hereinafter~~ referred to in this Chapter as the 'eouncil', 'Council', which shall be composed of ~~50~~ 55 councilors exclusive of officers, except as hereinafter provided, to be appointed or elected as hereinafter set forth, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as ~~president, whose term of office expires at the 1973 annual meeting or after.~~ president. Notwithstanding any other provisions of the law, the North Carolina State Bar ~~shall have the power and authority to~~ may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. ~~The North Carolina State Bar Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. Notwithstanding any provisions of this Article as to the voting powers of members, the eouncil~~ The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other ~~matters, except as otherwise directed or overruled, as in G.S. 84-33 provided.~~ matters. There shall be one councilor from each judicial district and additional councilors as are necessary to make the total number of councilors ~~50~~ 55. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years ~~on the basis of the number of the~~ based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North

Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

~~A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the council~~ Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district, notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the 50-55 councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts."

Sec. 10. G.S. 84-18 reads as rewritten:

"§ 84-18. Terms, election and appointment of councilors.

(a) Except as set out in this section, the terms of councilors are fixed at three years commencing on the first day of January in the year following their election. A year shall be the calendar year. No councilor may serve more than three successive three-year terms but a councilor may serve an unlimited number of three successive three-year terms provided a three-year period of nonservice intervenes in each instance. Any councilor serving a partial term of 18 months or more is considered to have served a full term and shall be eligible to be elected to only two successive three-year terms in addition to the partial term. Any councilor serving a partial term of less than 18 months is eligible to be elected to three successive three-year terms in addition to the partial term. This paragraph shall not apply to officers of the State Bar.

~~All councilors serving at the effective date of these changes shall remain in office and continue to represent their district for the remainder of their term. Those who have already served for 18 months or more shall be eligible for election to two additional three-year terms and be ineligible for election thereafter until a period of three years has expired. Those who have served less than 18 months shall be eligible for election to three consecutive three year terms and be ineligible for election thereafter until an intervening three year period has expired.~~

The secretary of a judicial district bar shall notify the secretary-treasurer of the State Bar in writing of any additions to or deletions from the delegation of councilors representing the district within 90 days of the effective date of the change. No new councilor shall assume a seat until official notice of the election has been given to the secretary-treasurer of the State Bar.

~~When a judicial district loses a councilor or is entitled to an additional councilor by virtue of reallocation of councilors as provided in G.S. 84-17 above, then the affected~~

~~judicial districts shall certify to the State Bar Council the identity of that judicial district's authorized councilor or councilors. This certification shall be made within 90 days of the date the reallocation is made and reported to the judicial districts affected. Until this certification is received, the district shall have no representation on the State Bar Council. In the case of reallocation, the certification shall be made within 90 days.~~

Any active member of the North Carolina State Bar member, other than an inactive member, is eligible to serve as a councilor from the judicial district in which ~~he or she~~ the member is eligible to vote.

(b) ~~The State Bar Council~~ may promulgate rules to govern the election and appointment of councilors. The election and appointment of councilors shall be as follows:

Each judicial district bar shall elect one eligible North Carolina State Bar member for each ~~State Bar Council~~ vacancy in the district. Any vacancy occurring after the election, whether caused by resignation, ~~death~~ reconfiguration of the district by the General Assembly, or otherwise shall be filled by the judicial district bar in which the vacancy occurs. The appointment shall be for the unexpired portion of the term and shall be certified to the ~~State Bar Council~~ by the judicial district bar. Any appointed councilor shall be subject to the terms set forth in subsection (a) of G.S. 84-18.

(c) Public members shall serve three-year terms. No public member shall serve more than two complete consecutive terms. The Secretary of the North Carolina State Bar shall promptly inform the Governor when any seat occupied by a public member becomes vacant. The successor shall serve the remainder of the term. Any public member serving a partial term of 18 months or more is considered to have served a full term and is eligible to be elected to only one additional three-year term in addition to the partial term. Any public member serving a partial term of less than 18 months is eligible to be elected to two successive three-year terms in addition to the partial term."

Sec. 11. G.S. 84-18.1 reads as rewritten:

"§ 84-18.1. Membership and fees of district bars.

(a) The district bar shall be a subdivision of the North Carolina State Bar subject to the general supervisory authority of the Council and may adopt rules, regulations and bylaws that are not inconsistent with this Article. A copy of any rules, regulations and bylaws that are adopted, along with any subsequent amendments, shall be transmitted to the Secretary-Treasurer of the North Carolina State Bar.

(b) Any district bar may from time to time by a majority vote of ~~its membership~~ the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. ~~Such~~ The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-

treasurer. The name of each active member of a district bar who ~~shall be~~ is more than 12 full calendar months in arrears in the payment of any ~~such~~ fee shall be furnished by the secretary-treasurer of the district bar to the ~~council of the North Carolina State Bar Council~~. In the exercise of its powers as set forth in G.S. 84-23, the ~~council~~ Council shall thereupon take ~~such~~ disciplinary or other action with reference to the delinquent as it considers necessary and proper."

Sec. 12. G.S. 84-19 reads as rewritten:

"§ 84-19. Judicial districts definition.

For purposes of this Article, the term 'judicial district' ~~means a judicial district as in existence on January 1, 1987,~~ refers to prosecutorial districts established by the General Assembly and the term 'district bar' means the bar of a judicial district as defined by this section."

Sec. 13. G.S. 84-20 reads as rewritten:

"§ 84-20. Compensation of councilors.

The members of the ~~council~~ Council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation ~~not exceeding ten dollars (\$10.00) per day~~ for the time spent in attending ~~meetings,~~ meetings an amount to be determined by the Council, subject to approval of the North Carolina Supreme Court, and shall receive actual expenses of travel and subsistence while engaged in ~~his~~ their duties provided that for transportation by use of private automobile the expense of travel shall not exceed ~~ten cents (10¢) per mile.~~ the rate per mile allowed by G.S. 138-6. The ~~council~~ Council shall determine ~~per diem, subsistence per diem~~ and mileage to be paid. ~~Such~~ The allowance as ~~may be~~ fixed by the ~~council~~ Council shall be paid by the secretary-treasurer of the North Carolina State Bar upon ~~certified statements presented~~ presentation of appropriate documentation by each member."

Sec. 14. G.S. 84-21 reads as rewritten:

"§ 84-21. Organization of ~~council;~~ Council; publication of rules, regulations and bylaws.

~~Upon receiving notification of the election of a councilor for each judicial district, or, if such notification shall not have been received from all said districts, within 120 days after this Article shall have gone into effect, the clerk of the Supreme Court of North Carolina shall call a meeting of the councilors of whose election he shall have been notified, to be held in the City of Raleigh not less than 20 days nor more than 30 days after the date of said call; and at the meeting so held the councilors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councilors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this Article. The regular term of all officers shall be one year, but those first elected shall serve until January 1, 1935. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and bylaws, not inconsistent with this Article, as it shall deem necessary or expedient for the discharge of its duties, the secretary treasurer shall file with the clerk of the Supreme Court of North Carolina a~~

~~certificate, to be called the "certificate of organization," showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post office addresses, and the rules, regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this Article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this Article have not been complied with, shall return the said certificate to the secretary treasurer with a statement showing in what respects the provisions of this Article have not been complied with; and the said certificate shall not be again presented to the Chief Justice of the Supreme Court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this Article have been complied with, or (b) if for any reason the Chief Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days from the presentation to the Chief Justice or judge, as the case may be, of any certificate of organization hereinbefore required to be presented by the secretary treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this Article has not been complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports and in the North Carolina Administrative Code.—The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council—Council under this Article,—Article may be amended by the ~~council~~—Council from time to time in any manner not inconsistent with this Article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made—adopted by the ~~council~~—Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by it—the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any ~~of such~~ rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."~~

Sec. 15. G.S. 84-22 reads as rewritten:

"§ 84-22. Officers and committees of the North Carolina State Bar.

The officers of the North Carolina State Bar and the Council shall consist of a president, president-elect, vice-president and an immediate past president, who shall be deemed members of the Council in all respects. The president, president-elect and vice-president need not be members of the ~~State Bar~~—Council at the time of their election.

There shall be a secretary-treasurer who shall also have the title of executive director, but who shall not be a member of the ~~State Bar~~ Council. All officers shall be elected annually by the ~~State Bar~~ Council at an election to take place at the annual meeting of the North Carolina State Bar. The regular term of all officers is one year. The Council is the judge of the election and qualifications of its members.

In addition to the committees and commissions as may be specifically established or authorized by law, the North Carolina State Bar may have committees, standing or special, as from time to time the Council ~~of the North Carolina State Bar~~ deems appropriate for the proper discharge of the duties and functions of the North Carolina State Bar. The Council ~~of the North Carolina State Bar~~ shall determine the number of members, composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to each committee. Any committee may, at the discretion of the appointing or electing authority, be composed of Council members or members of the North Carolina State Bar who are not members of the Council, or of lay persons, or of any combination."

Sec. 16. G.S. 84-23 reads as rewritten:

"§ 84-23. Powers of Council.

Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the Council is hereby vested, as an agency of the State, with the ~~control of the discipline, disbarment and restoration of attorneys practicing law in this State.~~ authority to regulate the professional conduct of licensed attorneys. Among other powers, ~~The Council~~ the Council shall ~~have power to~~ administer this Article; take actions that are necessary to ensure the competence of lawyers; ~~to~~ formulate and adopt rules of professional ethics and conduct; ~~to~~ formulate and adopt rules and procedures for discipline, incapacity and disability hearings; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes. The Council may ~~to~~ publish an official journal concerning matters of interest to the legal ~~profession;~~ profession and may ~~to~~ acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The ~~North Carolina State Bar~~ Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and to do all ~~such~~ things necessary in the furtherance of the purposes of this Article as are not prohibited by law."

Sec. 17. G.S. 84-24 reads as rewritten:

"§ 84-24. Admission to practice.

~~The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of~~

~~North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this Article.~~

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the ~~council of the North Carolina State Bar, Council,~~ Council, who need not be members of the ~~council.~~ Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years: ~~Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.~~ years.

The Board of Law Examiners shall elect a member of ~~said the~~ Board as ~~chairman~~ chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable ~~said the~~ Board to perform its duties promptly and properly. The ~~chairman~~ chair and any employees shall serve for ~~such period as said Board may determine.~~ a period of time determined by the Board.

The examination shall be held in ~~such the~~ manner and at ~~such the~~ times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide ~~such~~ assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Board of Law Examiners, subject to the approval of the ~~council~~ Council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of ~~such the~~ change.

All ~~such~~ rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the ~~council.~~ Council.

Whenever the ~~council~~ Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to ~~such~~ the person, noting thereon that the ~~same~~ license is issued in compliance with an order of the ~~council of the North Carolina State Bar~~ Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

Sec. 18. G.S. 84-28 reads as rewritten:

"§ 84-28. Discipline and disbarment.

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the ~~council of the North Carolina State Bar~~ Council under such rules and procedures as the ~~council~~ Council shall ~~promulgate~~ adopt as provided in ~~G.S. 84-21~~ G.S. 84-23.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

- (1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;
 - (2) The violation of the Rules of Professional Conduct adopted and promulgated by the ~~council of the North Carolina State Bar~~ Council in effect at the time of the act;
 - (3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the ~~council~~ Council or any committee of the North Carolina State Bar.
- (c) Misconduct by any attorney shall be grounds for:
- (1) Disbarment; ~~or~~
 - (2) Suspension for a period up to but not exceeding five years, any portion of which may be stayed upon reasonable conditions to which the offending attorney consents; ~~or~~
 - (3) Censure – A censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney 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 members of the public, but the protection of the public does not require suspension of the attorney's license; ~~or~~
 - (4) Reprimand – A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated

one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or

- (5) Admonition – An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbaring or suspending an attorney may impose reasonable conditions precedent to reinstatement. No attorney who has been disbarred by the Disciplinary Hearing Commission, the Council, or by order of any court of this State may seek reinstatement to the practice of law prior to five years from the effective date of the order of disbarment. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing a censure, reprimand, or admonition an admonition, reprimand, censure, or stayed suspension may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, may be ~~suspended from the practice of law, but this suspension shall not take place pending appeal of the conviction.~~ disciplined based upon the conviction, without awaiting the outcome of any appeals of the conviction. An order of discipline based solely upon a conviction of a criminal offense showing professional unfitness shall be vacated immediately upon receipt by the Secretary of the North Carolina State Bar of a certified copy of a judgment or order reversing the conviction. The fact that the attorney's criminal conviction has been overturned on appeal shall not prevent the North Carolina State Bar from conducting a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(d1) An attorney who is disciplined as provided in subsection (d) of this section may petition the court in the trial division in the judicial district where the conviction occurred for an order staying the disciplinary action pending the outcome of any appeals of the conviction. The court may grant or deny the stay in its discretion upon such terms as it deems proper. A stay of the disciplinary action by the court shall not prevent the North Carolina State Bar from going forward with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for

prompt action exists regardless of whether a disciplinary proceeding in the matter of ~~such~~ the conduct is pending. ~~Such~~ The application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to disability inactive status for mental ~~incompetence~~ incompetence, ~~or physical disability~~ disability, ~~or substance abuse~~ interfering with the attorney's ability to competently engage in the practice of law under such rules and procedures as the council shall promulgate as provided in G.S. 84-21. the rules and procedures the Council adopts pursuant to G.S. 84-23.

(h) There shall be an appeal of right from any final order imposing admonition, reprimand, censure, ~~suspension~~ suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any ~~such~~ appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination ~~of the any appeal.~~ appeal of right.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the ~~council~~ Council or any committee to which the ~~council~~ Council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, suspended, disbarred, disabled, incapacitated or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter ~~such~~ orders as are necessary to protect the interests of such the clients, including the authority to order the payment of counsel fees from the estate of the member compensation by the member or the estate of a deceased or disabled member to any attorney appointed to administer or conserve the law practice of the member. Compensation awarded to a member serving under this section awarded from the estate of a deceased member shall be considered an administrative expense of the estate for purposes of determining priority of payment."

Sec. 19. G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 15 members. Ten of these members shall be members of the North Carolina State Bar, and shall be appointed by the ~~council~~ Council. The other five shall be citizens of North Carolina not licensed to practice law in this or any other state, three of whom shall be appointed by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House of Representatives. The ~~council~~ Council shall designate one of its appointees as ~~chairman~~ chair and another as ~~vice chairman~~ vice-chair. The chairman chair shall have actively practiced law in the courts of the State for

at least 10 years. ~~When the commission is first selected, five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Speaker of the House of Representatives, shall be appointed for terms of one year; five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Lieutenant Governor, shall be appointed for terms of two years; and the remaining five members shall be appointed for terms of three years. All such initial terms shall commence July 1, 1975. Thereafter five members shall be appointed each year to three-year terms to fill the positions of the terms then expiring. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The council, Council, the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, respectively, shall appoint members to fill the unexpired term-terms when any vacancy is vacancies are created by resignation, disqualification, disability or death. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chairman-chair may serve one additional three-year term in that capacity. No member of the council-Council may be appointed to the commission."~~

Sec. 20. G.S. 84-28.2 reads as rewritten:

"§ 84-28.2. Persons immune from suit.

Persons shall be immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar or any board, committee, officer, agent or employee thereof, or given in any investigation or proceedings, pertaining to alleged misconduct, incapacity-misconduct or disability or to reinstatement of an attorney. The protection of this immunity does not exist, however, as to statements made to others not intended for ~~such~~ this use."

Sec. 21. G.S. 84-29 reads as rewritten:

"§ 84-29. Evidence and witnesses.

In any investigation of charges of professional ~~misconduct, incapacity-misconduct~~ or disability or in petitions for reinstatement, the council-Council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the ~~council-Council~~ or the ~~chairman-chair~~ of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the ~~council-Council~~ or its committee or a hearing committee of the disciplinary hearing commission through its ~~chairman-chair~~ pursuant to the procedures set out in Chapter ~~5A, 5A~~ of the General Statutes, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the ~~council-Council~~ or the committee hearing the case may, in its discretion, whenever it

believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the ~~council~~ Council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the ~~council~~ Council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted of the ~~charges against him, he charges, the party~~ shall be taxed with the cost of the hearings: Provided, however, that ~~such~~ the bill of costs shall not include any compensation to the members of the ~~council~~ Council or committee before whom the hearings are conducted."

Sec. 22. G.S. 84-31 reads as rewritten:

"§ 84-31. Counsel; investigators; powers; compensation.

The ~~council~~ Council may appoint a member of the North Carolina State Bar ~~to prosecute to represent the North Carolina State Bar in any proceedings in which it has an interest including reinstatement and the prosecution of charges of misconduct, incapacity~~ misconduct or disability in such the hearings as may be that are held, including appeals, and may authorize such counsel to employ assistant counsel, investigators, and administrative assistants in such numbers as it deems necessary. Counsel and investigators engaged in discipline, ~~incapacity-reinstatement~~, and disability matters shall have the authority throughout the State to serve subpoenas or other process issued by the ~~council~~ Council or any committee thereof or the disciplinary hearing commission or any committee thereof, in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. The ~~council~~ Council may allow counsel, assistant counsel, investigators and administrative assistants such compensation as it deems proper."

Sec. 23. G.S. 84-32 reads as rewritten:

"§ 84-32. Records and judgments and their effect; restoration of licenses.

(a) In cases heard by the disciplinary hearing commission or any committee thereof, ~~a complete record of the proceedings and evidence~~ the proceedings shall be recorded by a certified court reporter and an official copy of all exhibits introduced into evidence shall be made and preserved in the office of the secretary-treasurer. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court in the district wherein the ~~accused~~ respondent resides or practices law, and also upon the minutes of the Supreme Court of North Carolina; and ~~such~~ the judgment shall be effective throughout the State.

(b) Whenever any attorney desires to voluntarily surrender his license, ~~he~~ the attorney must tender ~~his~~ the license and a written resignation to the ~~council~~ Council. The ~~council~~ Council, in its discretion, may accept or reject the tender. ~~such a tender with or without conditions, or reject such a tender. In the event such a tender is accepted, the council shall either enter an Order of Discipline or refer the matter to the disciplinary hearing commission for hearing in accordance with the rules and regulations prescribed by the council. The hearing committee of the disciplinary hearing commission may enter a final Order of Discipline or, if directed by the council, make a~~

~~recommendation back to the council. If the tender is accepted, the Council shall enter an order of disbarment. A copy of any order of disbarment~~ Order of Discipline shall be filed with the Clerk of the Supreme Court and with the clerk of the superior court of the county of residence or prior residence of the licensee or the county in which the attorney maintains an office for the practice of law, where the respondent resides, maintains an office, or practices law and also upon the minutes of the Supreme Court of North Carolina. The judgment shall be effective throughout the State.

(c) ~~Whenever any attorney has been deprived of his~~ the attorney's license by suspension or disbarment, the ~~council~~ Council or the disciplinary hearing commission or the ~~Secretary-Treasurer~~ secretary-treasurer may, in accordance with rules and regulations prescribed by the ~~council~~ Council, restore the license upon due notice being given and satisfactory evidence produced of proper reformation of ~~the licentiate~~ the suspended or disbarred attorney and of satisfaction of any conditions precedent to restoration.

(d) The Council has jurisdiction to determine any petition seeking the reinstatement of the license of any attorney disbarred or suspended by any court in its inherent power when requested by the court. The proceeding shall be governed by the rules and regulations adopted by the Council. The disbarred or suspended attorney shall satisfy all conditions precedent to reinstatement generally imposed upon attorneys disbarred or suspended by the disciplinary hearing commission or the Council, as well as any conditions imposed by the court. Under no circumstances shall an attorney disbarred by a court or by the North Carolina State Bar be reinstated prior to five years from the effective date of the order of disbarment."

Sec. 24. G.S. 84-33 reads as rewritten:

"§ 84-33. Annual and special meetings.

~~There shall be an annual meeting of the North Carolina State Bar, open to all members in good standing, to be held at such place and time after such notice (but not less than 30 days) as the council may determine, for the discussion of the affairs of the Bar and the administration of justice; and special meetings of the North Carolina State Bar may be called, on not less than 30 days' notice, by the council, or on the call, addressed to the council, of not less than twenty five percent (25%) of the active members of the North Carolina State Bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina State Bar. The North Carolina State Bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given to the secretary-treasurer 30 days before the meeting, who shall give, by mail, at least 15 days' notice to the members of the North Carolina State Bar, and unless at the meeting two thirds of the members present and voting shall favor the motion to direct or overrule. There shall be no voting by proxy.~~

The Council shall hold an annual meeting and other meetings necessary to conduct the business of the North Carolina State Bar."

Sec. 25. G.S. 84-34 reads as rewritten:

"§ 84-34. Membership fees and list of members.

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, ~~beginning with the year 1990,~~ pay to the secretary-treasurer an annual membership fee ~~of one hundred thirty five dollars (\$135.00),~~ in an amount determined by the Council but not to exceed two hundred dollars (\$200.00), and every member shall notify the secretary-treasurer of ~~his~~ the member's correct post-office mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars (\$30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The ~~said~~ membership fee shall be regarded as a service charge for the maintenance of the several services ~~prescribed in~~ authorized by this Article, and shall be in addition to all fees ~~now~~ required in connection with admissions to practice, and in addition to all license taxes ~~now or hereafter~~ required by law. The ~~said~~ fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which ~~he shall have been~~ the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The ~~said~~ fees shall be disbursed by the secretary-treasurer on the order of the ~~council~~ Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the ~~council~~ Council, publish an account of the financial ~~transaction~~ transactions of the ~~council~~ Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and ~~post-office mailing~~ addresses forwarded to ~~him~~ the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who ~~shall be~~ are in arrears in the payment of membership fees ~~for one or more calendar years~~ shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein ~~said~~ the member or members reside, and the court shall thereupon take ~~such~~ the action as ~~that~~ is necessary and proper. The names and addresses of ~~such~~ attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from ~~his record~~ records of license tax payments, with any information for which the secretary-treasurer may call in order to enable ~~him~~ the secretary-treasurer to comply with this requirement.

The ~~said~~ list submitted to several clerks of the superior court shall also be submitted to the ~~council of the North Carolina State Bar~~ Council at its October meeting of each year and it shall take ~~such~~ the action thereon as ~~that~~ is necessary and proper."

Sec. 26. G.S. 84-37 reads as rewritten:

"§ 84-37. State Bar may investigate and enjoin unauthorized practice.

(a) ~~The council-Council~~ or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. ~~The council-Council~~ or any committee of its members appointed for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. ~~The council-Council~~ may bring or cause to be brought and maintain in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any ~~private person or of any bar association~~ against any person, partnership, corporation or association and any employee, agent, director, or officer thereof ~~who~~ entity against any person or entity that engages in rendering any legal service or makes it a practice or business to render legal services which are unauthorized or prohibited by law or statutes relative thereto. No bond for cost shall be required in ~~such~~ the proceeding.

(b) In an action brought under this section the final judgment if in favor of the plaintiff shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of law. The provisions of statute or rules relating generally to injunctions as provisional remedies in actions shall apply to ~~such~~ a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which ~~such~~ the acts constituting unauthorized or unlawful practice of law are alleged to have been committed or in which there appear reasonable grounds that they will be committed or in the county where the defendants in ~~such~~ the action ~~reside~~ reside or in Wake County.

(d) The plaintiff in ~~such~~ the action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of parties.

(e) This section shall not repeal or curtail any remedy now provided in cases of unauthorized or unlawful practice of law, and nothing contained herein shall be construed as disabling or abridging the inherent powers of the court in ~~such~~ these matters.

(f) The Council or its duly appointed committee has the authority to issue advisory opinions in response to inquiries from members or the public regarding whether contemplated conduct would constitute the unauthorized practice of law."

Sec. 27. This act becomes effective October 1, 1995, and applies to orders of disbarment entered on or after that date and disciplinary proceedings based upon convictions of offenses committed on or after that date. Section 25 applies to dues and fees for years beginning with 1996.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives