

Where do I find the Rules?

- Lawyer's Handbook
- State Bar Website
- Administrative Code
- Lexis
- Westlaw

RULE 8.4: MISCONDUCT
 It is professional misconduct for a lawyer to:

- violate or attempt to violate the Rules of Professional Conduct, knowing or recklessness that such conduct is prohibited or that it will result in a disciplinary proceeding;
- commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness in a lawyer in other respects;
- engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- engage in conduct that is prejudicial to the administration of justice;
- state or imply an ability to influence improperly a government agency or official;
- intentionally or recklessly mislead the court;
- intentionally or recklessly injure or harass another; or
- engage in conduct that is unbecomingly prejudicial or damages his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Comments:
 Comment [1] states that the Rules of Professional Conduct are part of the lawyer's professional obligations. Comment [2] states that the Rules of Professional Conduct are not intended to be a comprehensive code of ethics. Comment [3] states that the Rules of Professional Conduct are not intended to be a code of conduct for all lawyers. Comment [4] states that the Rules of Professional Conduct are not intended to be a code of conduct for all lawyers.

ETHICS OPINION NOTES:
 CPR 116. An attorney may not advise a client to seek Dominican divorce knowing that the client will return immediately to North Carolina and continue to reside there.
 CPR 108. An attorney may file the personal bankruptcy.
 CPR 188. An attorney may not draw deeds or other legal instruments based on land surveys made by unlicensed land surveyors.
 CPR 342. An attorney should not close a loan where the transaction is conditioned by the lender upon the placement of title insurance with a particular company.
 CPR 309. An attorney may close a loan if the lender merely suggests rather than requires the placement of title insurance with a particular company.
 RPC 127. An attorney may not deliberately advise settlement proceeds which were conditionally deferred without satisfying all conditions precedent.
 RPC 136. An attorney may notarize documents which are to be used in legal proceedings in which the attorney practices.

Common Client Complaints

GENERAL

- "My lawyer didn't care about my case"
- "S/he won't return my calls. I don't know what's happening with my case"
- My case is taking too long

DOMESTIC CASES

- Lawyer sided with the enemy
- Hearings were postponed/resolution delayed
- "Coerced" separation agreement or settlement
- Opposing counsel is mean/dishonest/obstructionist

Examples: Client Complaints

I have been associated with [redacted] since 2002 when she began representing my former spouse in our separation, eventual divorce and custody issues. She has demonstrated a trend of deliberate omissions, exaggerations and misrepresentations as well as being unresponsive and protracting negotiations resulting in more fees and expenses for all parties involved.

[redacted] has been unresponsive to my communications and has failed to provide me with the information I need to make informed decisions. This was a deliberate omission on the part of [redacted] in an attempt to cause undue expense and delay in my case.

[redacted] I was represented by Attorney [redacted] initially for an allegation of infidelity case and finally in a divorce case. I feel that [redacted] failed to advise me correctly in the divorce proceedings. We appeared in court to seek alimony, but the judge suggested that the divorce case move forward and the settlement of alimony claims would be entered at another time. Mr. [redacted]

[redacted] I have asked if I wanted to still to receive alimony because the fee was still open. At the time I responded, my case would be closed. I was not advised that [redacted]

I have contacted my attorney [redacted] I would have been alright. In part of my ex-husband's statement [redacted] A class proceeding of my former debts what would require further research.

Common Client Complaints

CRIMINAL CASES

- Lawyer didn't investigate/didn't interview or subpoena witnesses client wanted to testify
- Guilty plea was "coerced"
- Lawyer failed to perfect appeal
- Lawyer failed to turn over trial transcript after appeal
- Inadequate communication w/ailed client

Examples: Client Complaints

§ 15A-902. Discovery procedure.

Handwritten notes:
 Who did I say that was the first time I said that to me? And that day started the unnecessary business practice and excessive language that led to me pleading guilty. What is actually an important part of the alleged crime. My failure to keep the adequacy of communication open between herself and I.

Advertising

THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES

- The Magic Words
- No false or misleading communications, i.e.:
 - Material misrepresentation of fact or law or omission which renders statement materially misleading;
 - Likely to create an unjustified expectation about results; or
 - Comparisons w/other lawyers that cannot be substantiated
- "Specialist" is a term of art
- No in-person or live phone solicitation

Examples: Advertising

THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES

Regardless of your present mortgage situation, I will be able to assist you.

"No other personal injury law firm can offer you the knowledge and experience of Lawyer & Lawyer. Insurance companies know that Lawyer & Lawyer will try our cases, and we will win."

We are Attorneys assisting people in saving their homes by filing for relief under the ~~Bankruptcy Code~~.
This is an Advertisement for Legal Services

Want to know how to save your house **IMMEDIATELY** without paying a lot of money or being scammed by people trying to take your home?

Where do I take this??

COMPLAINT ABOUT LAWYER CONDUCT

THE GRIEVANCE COMMITTEE

- Standing committee of the State Bar
- Oversees investigations of grievances
- Issues written discipline
- Determines if matter should be tried before the Disciplinary Hearing Commission
- Meets quarterly in conjunction with NCSB Council Meetings
 - Meetings are closed

STRUCTURE OF GRIEVANCE COMMITTEE

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    graph TD
      Chair[Chair] --> Subcommittee1[Vice Chair Subcommittee 1]
      Chair --> Subcommittee2[Vice Chair Subcommittee 2]
      Chair --> Subcommittee3[Vice Chair Subcommittee 3]
    
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- Committee is divided into 3 subcommittees, each headed by a Vice Chair
- Each subcommittee has several advisory members, including at least one non-lawyer

Slide 7

c1 Show complaints of coerced plea, working for opposing party in domestic case, etc.
choyme, 4/12/2009


The Grievance Process--Overview

- Birth of a Grievance
 - SOL-esque Rule: 6 years, w/exceptions
- Investigation
- Letter of Notice/Response
- Report of Counsel
- Grievance Committee Disposition




The Birth of a Grievance

- GRIEVANCES COME FROM:
 - CLIENTS/FORMER CLIENTS
 - SPOUSES OF CLIENTS
 - OPPOSING PARTIES
 - OTHER ATTORNEYS
 - JUDGES
 - "OFFICIOUS INTERMEDDLERS"
 - STATE BAR
- Concepts of "standing" and "mootness" don't apply, & grievances can't be withdrawn.
- Average 1200-1500 grievances per year




Processing Grievances

- Handled by NCSB Office of Counsel
 - Katherine Jean, Counsel
 - 16 Deputy Counsel
 - 11 Investigators
 - 12 Paralegals & Administrative Staff



GRIEVANCES: INITIAL REVIEW

- Assuming the facts are true, but no Rule violation is apparent, Counsel sends report to Chair recommending dismissal
- If the facts indicate a possible Rule violation, Counsel sends Letter of Notice to attorney
 - Referral to Local Grievance Committee



Examples: Dismissal by Chair

CONFLICT OF INTEREST (CRIMINAL) More Forfeiting

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.


I. Improvised Ethical Destruction = Conflict of Interest

In disciplinary process states clear, consent to drive together, collect more at agent having power to compel or constrain appealing forcibly to the mind or reason convincing.

Used knowledge of law against me in divorce.

GRIEVANCES: INVESTIGATION

- Response to Letter of Notice
- And sometimes:
 - Financial audit
 - Examination of court file
 - Witness interviews
 - Etc.

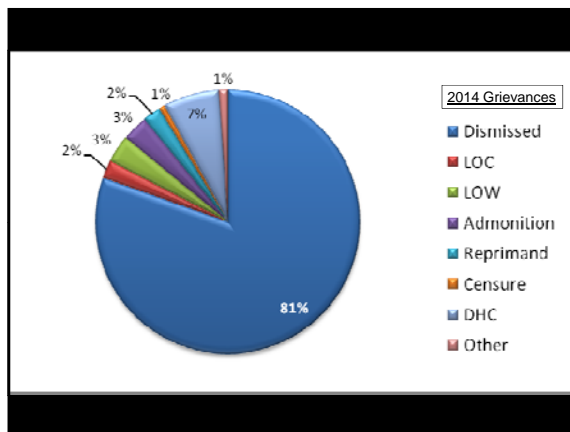


Disposition of Grievances

- ❑ Dismissal by Chair (no LON)
- ❑ Dismissal by Chair & Vice-Chair
- ❑ Referral to Lawyer Assistance Program
- ❑ Dismissal with Letter of Caution
- ❑ Dismissal with Letter of Warning
- ❑ Admonition
- ❑ Reprimand
- ❑ Censure
- ❑ Referral to DHC for disability and/or disciplinary hearing

PRIVATE

PUBLIC



Possible Outcomes of Disciplinary Investigation

Not Public

- Dismissed (with or without notifying lawyer)
- Letter of Caution/Letter of Warning
- Admonition
- Reprimand or Censure

■ = Written Discipline

- Stayed Suspension (Probation)
- Active Suspension
- Disbarment
- Transfer to disability inactive status

■ = Disciplinary Order

What is the DHC?

- Independent Commission charged solely with deciding attorney discipline cases
- Created by statute (NCGS 84-28.1)
- 20 Appointed Members: 12 Lawyers, 8 Non-lawyers
- A 3-person panel (2 lawyers, 1 non) decides each case
- Trials similar to superior court bench trial
- Rules of Evidence & Civil Procedure apply
- Only DHC or court can suspend or disbar a lawyer
- Appeal is directly to COA: No Superior Court review, as in many other administrative tribunals
- DHC proceedings are usually low-profile...

Bar Disciplinary Chairman Lane Williamson severely admonished Nitang and ordered his immediate disbarment

NOT

What to do if you get a Letter of Notice

- ❑ Don't waste time if you need it
- ❑ Depends on how well-founded the allegations are
- ❑ Explain and provide relevant documents
- ❑ Don't attack the client/complainant
- ❑ Don't unload on the State Bar



Examples: "What Not to Do"

Dear [client]:

The North Carolina State Bar has recently stated that I have violated no Rules of Professional Conduct. By writing slanderous do have an action for libel against you. Also there may be malicious prosecution by filing a frivolous grievance. If you will pay the enclosed bill I will not pursue and further action against you.

Yours truly,

For Legal Services Rendered:

Balance Carried Forward	\$52.50
Preparation of Motion to Withdraw	.25 hr.
Attendance of Hearing (December 6, 2002)	1.00 hr.
Preparation of Letter to State Bar on February 6, 2003 and Review of file	2.00 hrs. 3.25 hrs.

Examples: "What Not to Do"

I am aware of RPC210 and CPR100. Just because these opinions were issued in the past does not mean that they are realistic or that they are, in fact, followed by real property practitioners in actual practice.

We must adhere to the rules of the NC State Bar, who makes rules that do not account for the reality of the practice, and, when furnished with information, do not have staff who understand the practice or the process we deal with everyday.

If I had faith in your process, I would say that I hope & expect this grievance to be immediately dismissed because it is totally without merit. As I have little faith in your process, I can only hope you would inform me of your decision before I retire.

Examples: "What Not to Do"
(Professionalism Edition)

To Former Client...

With respect to your threat of legal action, let me assure you I am in the process of filing a lawsuit against you for defamation, slander, malicious prosecution, intentional infliction of emotional distress and for being a lying bitch. You should expect to get a copy of my complaint within the next 60 days.

To Opposing Counsel...

Here are summaries of [my client's] income from 2011 and through the present date this year. He is the principal in [redacted] Tattoo, Inc., and his draw is sixty percent (60%) of the total income for the company. Accordingly, these documents reflect that his income is less than the minimum wage imputed to him in the order that you obtained. Please tell [your client] that her baby is ugly and take a dismissal of this matter.

Examples: "What Not to Do"

Henry Babb, Chair Grievance Committee
NC Bar
208 Fayetteville Street Mall
P. O. Box 25908
Raleigh, NC 27611-5908
(919) 828-4620
(919) 834-8156 fax

John B. McMillan, Chair
NC State Bar, Grievance Committee
208 Fayetteville Street Mall
P. O. Box 25908
Raleigh, NC 27611
(919) 828-4620
(919) 834-8156 fax

Re: your file number [redacted] Sent via US Mail & Fax.
CORRECTED COPY

Mr. Babb,
Your premise of the case is to
Re: File Number [redacted]
Mr. McMillan,
I most respectfully respond that, the grievance filed against me is bullshit.

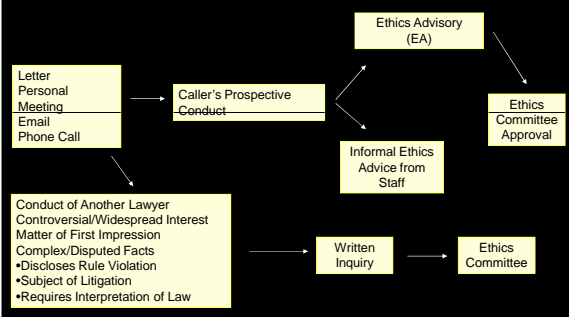
How the State Bar Rules on Questions of Legal Ethics

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

Ethics Committee

- Committee of the State Bar Council
 - 23 councilors; 17 advisory members
 - All members vote
 - Meets quarterly
 - Meetings and records are public
- Staff
 - 3 lawyers (Alice Mine, Suzanne Lever, Nichole McLaughlin)
 - 5000+ calls/year

Informal Ethics Advice & Ethics Advisories



Common Informal Inquiries

- Confidentiality: Rule 1.6
- Conflict of Interest
 - Rule 1.7: Current Clients
 - Rule 1.9: Duties to Former Clients
 - Rule 1.18: Duties to Prospective Clients
- File retention: Rule 1.15-2 and RPC 209
- Advertising: Rules 7.1 – 7.5
- Communicating with Witnesses: Rule 4.2
- Withdrawing: Rule 1.16

Confidentiality



- Rule 1.6(a)
- All information learned during the course of the representation
- Cannot disclose unless
 - Client consent,
 - Impliedly authorized in order to represent client, or
 - Applicable exception
- Survives death

Exceptions to Confidentiality

- Rule 1.6(b)
- All exceptions are permissive:
*A lawyer **may reveal** information protected from disclosure...to the extent the lawyer reasonably believes necessary to...*

Justifications for Disclosure

- To obey the law
 - Rule 1.6(b)(1): To comply with Rules, law, court order
 - Rule 1.6(b)(5): To secure legal advice about lawyer's compliance with Rules
- To protect others
 - Rule 1.6(b)(2): To prevent commission of crime by client
 - Rule 1.6(b)(3): To prevent reasonably certain death or bodily harm
- To rectify the consequences of the lawyer's involvement
 - Rule 1.6(b)(4): To prevent, mitigate, rectify consequences of client's crime or fraud committed by using lawyer's services

More Justifications for Disclosure

- Self defense
 - Rule 1.6(b)(6):
 - To establish claim or defense on behalf of lawyer in controversy with client;
 - to defend criminal charge or civil claim against lawyer;
 - to respond to allegations in any proceeding concerning lawyer's representation of client

Trumping



- Confidentiality trumps other duties almost every time:
 - Rule 8.3: Duty to report misconduct
- Duty of candor to court trumps confidentiality
 - Rule 3.3: disclosure to court required to rectify offering of material false evidence

Conflict of Interest

- Rule 1.7: Conflict of Interest: Current Clients
 - Prohibited or
 - Consentable
- Rule 1.18: Duties to Prospective Clients
- Rule 19: Duties to Former Clients
- Rule 1.10: Imputation of Conflicts of Interest

Rule 1.7: Basic Paradigm

- Rule 1.7(a) provides that a lawyer shall not represent a client if it involves a **concurrent conflict** of interest, which exists when:
 - (1) representation of one client “will be directly adverse to another client” or
 - (2) “significant risk the representation of one or more clients will be **materially limited** by the **lawyer’s responsibilities** to another client, a former client, or a third person or by a personal interest of the lawyer.”


Conditions for Consent

- Rule 1.7(b): Lawyer can proceed with the representation despite the conflict if:
 - (1) the lawyer “**reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client**” **AND**
 - (4) each affected client gives **informed consent**, confirmed in writing

More conditions

- (2) the representation is not prohibited by law
- (3) the representation does not involve **the assertion of a claim by one client against another client in the same litigation**

Is the Conflict Consentable?

- Question must be resolved as to each client
 - Will confidential information have to be disclosed 
 - Get client consent to disclose
- Will lawyer be able to provide competent and diligent representation to both?
- Will interests of the clients be adequately protected if the clients are permitted to give consent?

Former Client Conflicts

- Rule 1.9(a) provides that a lawyer who formerly represented a client shall not represent another person in the “**same or a substantially related matter**” in which that person’s interests are “materially adverse” to the interests of the former client
- Unless, former client gives **informed consent confirmed in writing**

Key Questions

- What does it mean to be **substantially related**?
 - Only the same transaction or legal dispute? Or substantial risk that confidential information will be used to advance the interests of the new client?
- What does generally known mean?
 - Rule 1.9, Comment [8]

Information Learned During Former Representation

- Rule 1.9(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter **shall not** thereafter:
 - (1) **use information** relating to the representation to the **disadvantage** of the former client **except** as these Rules would permit or require with respect to a client, or when the **information has become generally known**; or
 - (2) **reveal** information relating to the representation except as these Rules would permit or require with respect to a client.

Prospective Client Conflicts

- Who
 - Rule 1.18(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a **prospective client**.
- Some protection
 - prospective clients entitled to some but not all protections of a client. Comment [1]
 - if no reasonable expectation or intent to form a client-lawyer relationship, person is **not** a “prospective client.” Comment [2]
 - lawyer “shopping” solely to create a conflict not protected
- Rule 1.18 applies to free consultation (Rule 1.9 applies if consultation fee paid) → 2006 FEO 14

Imputed Conflicts

- Rule 1.10(a): Concurrent and former client conflicts are imputed to all lawyers in a firm
 - unless conflict is based on a personal interest of lawyer and does not present significant risk of materially limiting the representation of the client

Withdrawal

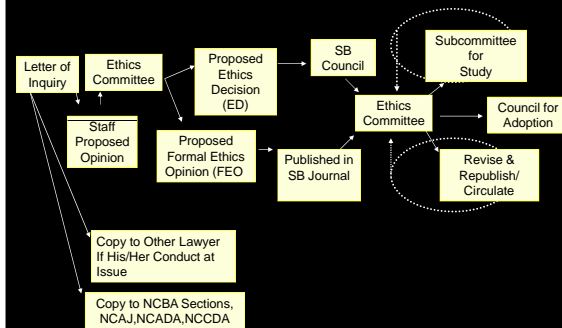
Rule 1.16 Declining or Terminating Representation

- Must withdraw if:
 - Required by RPC (conflict)
 - Discharged
 - Physical or mental impairment
- May withdraw if
 - No material adverse effect on client
 - Client consent, or
 - Client failures (crime/fraud, failure to pay fees, won't follow advice, frivolous)

Requirements of Withdrawal

- Rule 1.16(c) - must seek court permission in litigation matters
- Rule 1.16(d) – Protect client's interests
 - Reasonable notice
 - Refund unearned fee
 - Return file

Formal Opinions



Call, Write, or E-mail for Informal Advice

- The Ethics Hotline 8:30 am to 5:00 pm
 - Suzanne Lever
 - Nichole McLaughlin
- Contact us at
 - ethicsadvice@ncbar.gov
 - 919-828-4620, extension 575
 - PO Box 25908, Raleigh, NC 27611-5908