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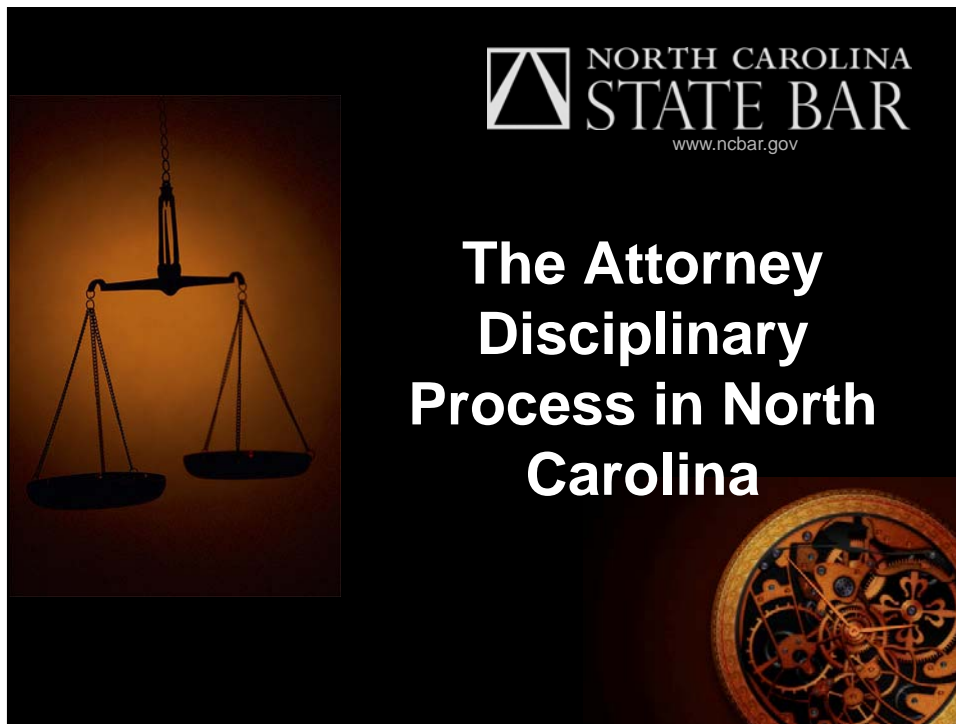
**XII.**

**NC State Bar Disciplinary Process**

**Nichole P. McLaughlin  
North Carolina State Bar  
Raleigh, NC**

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## Where do I find the Rules?

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

<p>Administrative Rules ..... 2-1</p> <p>Continuing Legal Education (CLE) ..... 2-19</p> <p>Discipline and Disability ..... 2-1</p> <p>Fee Dispute Resolution ..... 2-4</p> <p>SOTA ..... 2-13</p> <p>Legal Specialization ..... 2-29</p> <p>Membership ..... 2-1</p> <p>Paralegal Certification ..... 2-1</p> <p>Professional Organizations ..... 2-1</p> <p>Ethics Opinions ..... 20-1</p> <p>Index to Ethics Opinions ..... 20-247</p>	<p>Gen. Stat. Chapter 84 ..... 2-1</p> <p>TDLA Q&amp;A ..... 11-14</p> <p>Rules of Professional Conduct ..... 9-1</p> <p>Rules Index ..... 9-72</p> <p>Trust Accounting Q&amp;A ..... 11-1</p> <p><b>The North Carolina State Bar Lawyer's Handbook 2013 (Abridged)</b></p> <p><small>An official publication of the North Carolina State Bar, this handbook contains the current and historical Rules of Professional Conduct, all ethics opinions adopted under the Rules and Supplement (1983), Rules, and Trust Accounting Guidelines.</small></p>
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**2801 FEO 5.** Disciplinary action taken during a LAF support group meeting was considered and not reported to the State Bar under Rule 3.3.

**2803 FEO 2.** A lawyer must report a violation of the Rules of Professional Conduct as required by Rule 8.4(b) even if the lawyer's unethical conduct stems from mental impairment (including substance abuse).

**2809 FEO 2.** A disbarred lawyer who reasonably believes that a civil attorney engaged in the unethical practice of law while preparing a deal must report the lawyer who assisted the civil attorney but may raise the transaction if the client consents and acting in the client's interest.

**RULE 8.4: MISCONDUCT**  
 It is professional misconduct for a lawyer to:  
 (a) violate or attempt to violate the Rules of Professional Conduct, knowing by assist or induce another to do so, or do so through the acts of another;  
 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;  
 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;  
 (d) engage in conduct that is prejudicial to the administration of justice;  
 (e) state or imply an ability to influence improperly a government agency or official;  
 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or  
 (g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

**Comment**  
 (1) The Rules of Professional Conduct are intended to protect the public interest in the legal system. They are not intended to protect the lawyer's interests. A lawyer who violates the Rules of Professional Conduct may be disciplined even if the lawyer's conduct was motivated by a desire to protect the lawyer's interests. A lawyer who violates the Rules of Professional Conduct may be disciplined even if the lawyer's conduct was motivated by a desire to protect the lawyer's interests.

**ETHICS OPINION NOTES**  
 CPR 110. An attorney may not advise a client to seek Dominican divorce knowing that the client will return immediately to North Carolina and continue residence.  
 CPR 168. An attorney may file personal bankruptcy.  
 CPR 188. An attorney may not draw deeds or other legal instruments based on land surveys made by unregistered 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 369. 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 release settlement proceeds which were conditionally delivered without satisfying all conditions precedent.  
 RPC 136. An attorney may notarize documents which are to be used in legal proceedings in which the attorney appears.



# 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 ..... 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 uncooperative and prolonging negotiations resulting in more fees and expenses for all parties involved.

She was the author of our Separation Agreement signed in 22 June 2002 after mediation. After signing the agreement on advice of counsel at the time, we discovered that the spousal support clause did not contain the termination clause for death, remarriage or cohabitation. This was a deliberate omission on the part of ..... to circumvent NC statutes regarding spousal support termination.

In 2003, I was represented by Attorney ..... initially for an alienation of affection case and finally in a divorce case. I feel that ..... 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 settled at another time (File No. 04CVD .....

In 2004, I was asked if I wanted to still seek any alimony because the file was still open. At the time I responded no, the case could be closed. I was not advise that:

1. I was entitled to seek attorney fees
2. I could have been eligible to part of my ex-husbands retirement
3. A clause protecting me from future debts that were acquired while married



## 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/jailed client

c1



## Examples: Client Complaints



...; in April 2007, I was looking over a Motion For Discovery that \_\_\_\_\_ sent me concerning other items, when I noticed a big difference in the two documents (the request for discovery and its Motion For Discovery) and then it hit me, I had been duped! \_\_\_\_\_ had sent his old colleague ADA \_\_\_\_\_ a document of no more significance to the Court system than a "get well" card (and brilliant delay!) among friends. \_\_\_\_\_ and \_\_\_\_\_ had tricked me into silence for six (6) months with a fictitious document that was not even (at least not from October 2006-April 2007) submitted to the Clerk of Superior Court!

§ 15A-902. Discovery procedure.

(a) A party seeking discovery under this Article must, before filing any

*Ms's Oct 4, 2006 that day was the first time I had seen Ms. \_\_\_\_\_ and that day started the necessary remarks, gestures and coercive language that led to me pleading guilty. What is actuality I am innocent of the alleged crime. Ms. \_\_\_\_\_ failed in keeping the adequacy of communication open between herself and I.*

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

## Advertising



- ☑ 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



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

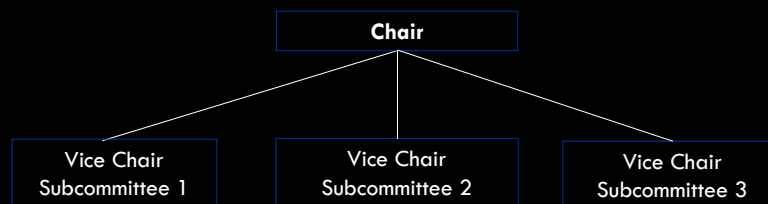
Want to know how to save your house **IMMEDIATELY** without paying a lot of money or being scammed by people trying to take your home?



## 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



- Committee is divided into 3 subcommittees, each headed by a Vice Chair
- Each subcommittee has several advisory members, including at least one non-lawyer



## 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
  - 9 Investigators
  - 13 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 ~~Innocent~~ (CRIMINAL) More Forthcoming  
 DESCRIPTION OF YOUR COMPLAINT

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

I. Improvised Ethical Destruction = ~~Bullying Ignored~~ Conflict of

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

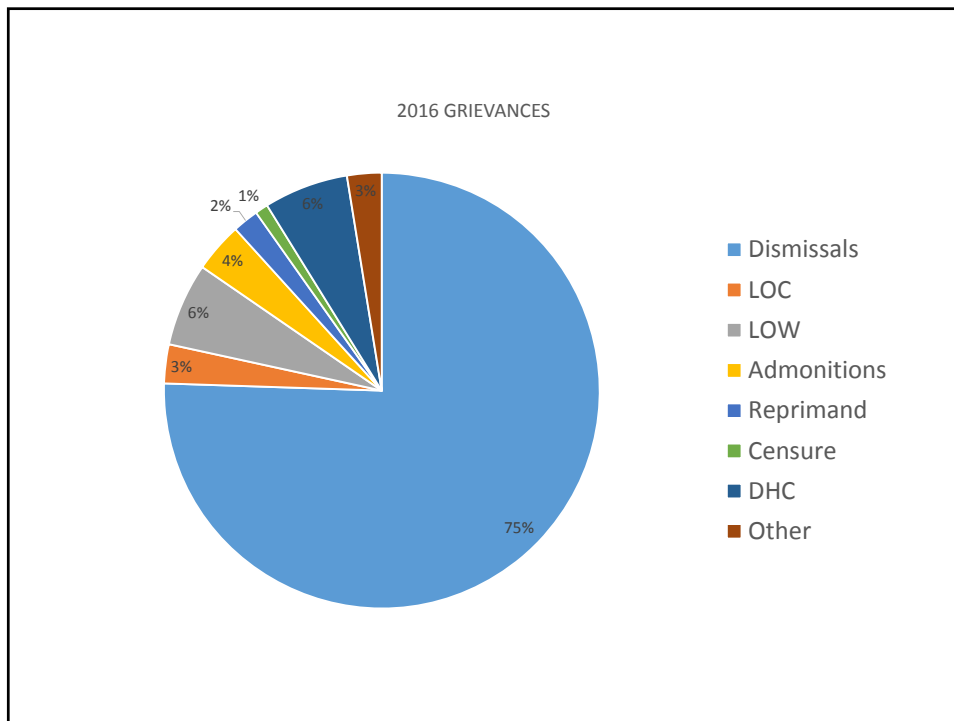
– And sometimes:

- 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

■ = Disciplinary Order



Disciplinary Hearing Commission

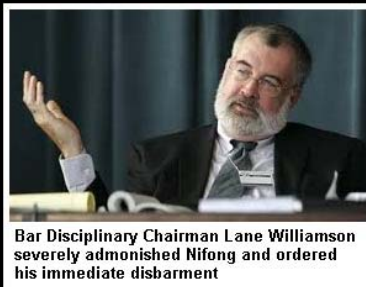
- Stayed Suspension (Probation)
- Active Suspension
- Disbarment
- Transfer to disability inactive status



Disciplinary Hearing Commission

### 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 Nifong and ordered his immediate disbarment

NOT



## What to do if you get a Letter of Notice

- ❑ **Request more time if you need it**
- ❑ **Respond, no matter how baseless the allegations are**
- ❑ **Explain and provide relevant documents**
- ❑ **Don't panic**
- ❑ **Don't assume NCSB believes allegations are well-founded**
- ❑ **Don't attack the client/complainant**
- ❑ **Don't unload on the State Bar**



## DENIAL WILL NOT HELP





## 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 standerous letters to the North Carolina Referral Service and the Judge, I 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	<u>2.00 hrs.</u> 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 b[redacted]

Re: File Number [redacted]

Mr. McMillan,

I most respectfully respond that, the grievance filed against me is bullshit.



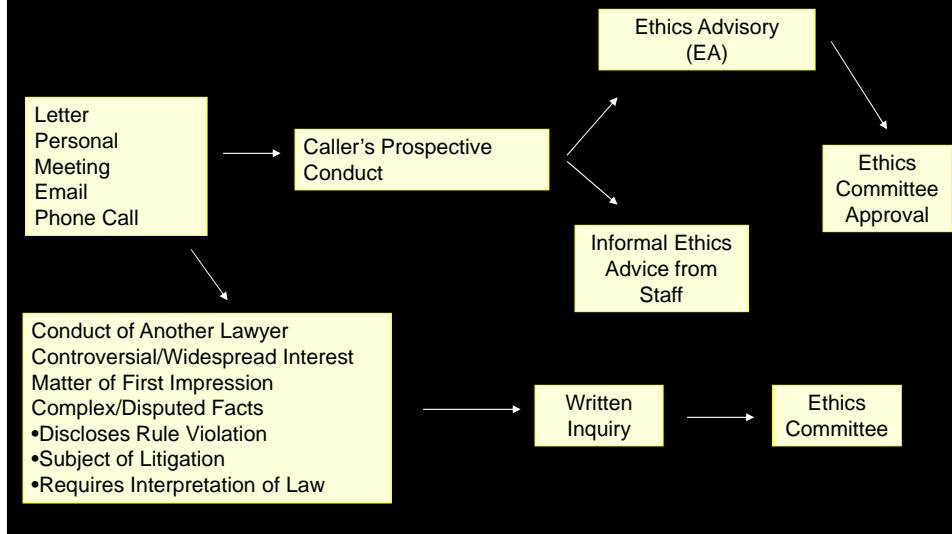
## How the State Bar Rules on Questions of Legal Ethics

- 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

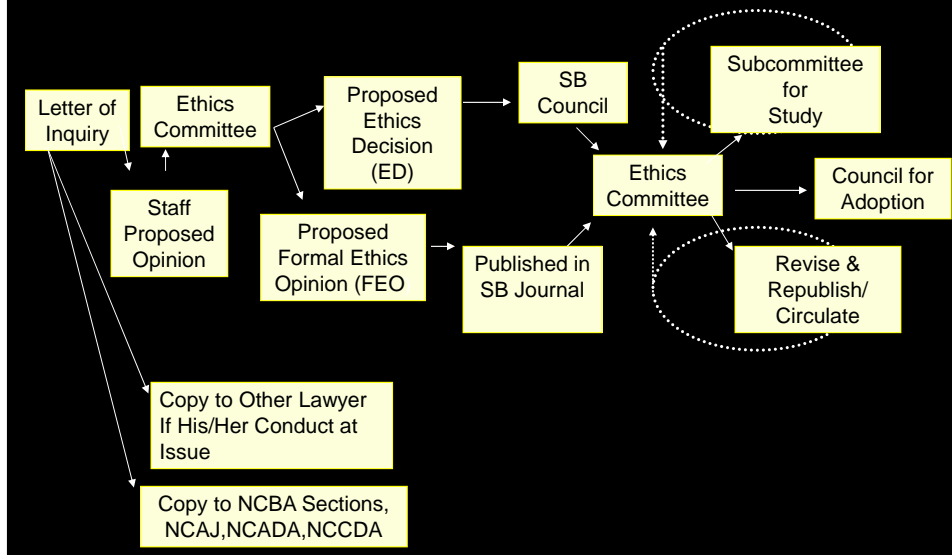
## Confidential Informal Ethics Advice & Ethics Advisories



## 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
- Trust Accounting: Rule 1.15

# Formal Opinions



## Call, Write, or E-mail for Informal Advice

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

