

**NORTH CAROLINA STATE BAR  
SYNOPSIS OF COUNCIL ACTION  
APRIL 2012**

**APPOINTMENTS** – The Council made the following appointments:

***American Bar Association Delegates*** – The Council appointed James K. Fox of Winston-Salem, Anthony S. di Santi of Boone, and Barbara B. Weyher of Raleigh to two-year terms.

***Legal Aid of North Carolina (LANC)*** – The Council appointed Judge Jane P. Gray of Raleigh to a three-year term.

***Disciplinary Hearing Commission*** – The Council appointed Renny W. Deese of Fayetteville, Irvin W. Hankins III of Charlotte, and Barbara B. Weyher of Raleigh to three-year terms, and reappointed Steven D. Michael of Kitty Hawk and Ronald R. Davis of Winston-Salem to three-year terms.

**RECOMMENDATION FOR APPOINTMENTS SOUGHT** – The Council will make the following appointments at its meeting in July 2012. Anyone wishing to be considered or to nominate someone should contact Tom Lunsford at the State Bar office: 919-828-4620; [tlunsford@ncbar.gov](mailto:tlunsford@ncbar.gov); PO Box 25908, Raleigh, NC 27611.

***Board of Legal Specialization*** (3-year terms) – There are three appointments to be made. Jeri L. Whitfield and Carl W. Davis Jr. (public member) are not eligible for reappointment. Lana S. Warlick is eligible for reappointment.

***IOLTA Board of Trustees*** (3-year terms) – There are three appointments to be made. Michael A. Colombo and F. Edward Broadwell Jr. are eligible for reappointment. Irvin W. Hankins III does not wish to be reappointed.

**RANDOM AUDITS** – Judicial districts randomly selected for audit during the second quarter of 2012 were District 19B, consisting of Randolph and Montgomery Counties; and District 5, consisting of Pender and New Hanover Counties.

**ETHICS COMMITTEE** – Upon the recommendation of the Ethics Committee, the Council adopted three new ethics opinions: **2010 FEO 14**, which rules that it is improper for a lawyer to adopt another lawyer's name as a keyword for use in an Internet search engine company's advertising program; **2011 FEO 4**, which rules that a lawyer may not agree to procure title insurance exclusively from a particular title insurance agency on every transaction referred to the lawyer by a person associated with the agency; and **2011 FEO 14**, which rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing his or her transcription and typing needs to a company located in a foreign jurisdiction.

**2011 FEO 11**, which ruled that a lawyer who is a party in a lawsuit, whether proceeding pro se or represented by counsel, may communicate with the represented opposing party relative to the subject matter of the representation with the consent of the opposing party's lawyer, was not approved by the Council and was referred back to the committee for reconsideration.

The Ethics Committee decided to publish for comment four proposed opinions: **Proposed 2012 FEO 1**, which rules that testimonials that discuss characteristics of a lawyer's client service may be used in lawyer advertising without the use of a disclaimer. A testimonial that refers generally to results may be used so long as the testimonial is accompanied by an appropriate disclaimer. Reference to specific dollar amounts in client testimonials is prohibited; **Proposed 2012 FEO 2**, which rules that a lawyer-mediator may not draft a business contract for parties to mediation; **Proposed 2012 FEO 3**, which rules that a lawyer may charge interest on a delinquent client account without an advance agreement with the client, to the extent and in the manner permitted by law; and **Proposed 2012 FEO 4**, which rules that a lawyer who represented an organization while employed with another firm must be screened from participation in any case in which she previously represented the organization. However, general knowledge of the organization's litigation policies and procedures would not be sufficient to disqualify her from other cases against the organization.

**GRIEVANCE COMMITTEE** – During the quarter the Grievance Committee considered 306 cases. Five lawyers received letters of caution, nineteen lawyers received letters of warning, six lawyers received admonitions, two lawyers received reprimands, two lawyers received censures, and fourteen lawyers were referred to the Disciplinary Hearing Commission.

## **RULE AMENDMENTS**

**Amendments for Which Supreme Court Approval is Pending** – At its meeting on April 27, 2012, the Council adopted, subject to the Supreme Court's approval, the amendments described below.

***27 N.C.A.C. 1A, Section .0800 Election and Appointment of State Bar Councilors***  
***.0804 Procedures Governing Elections by Mail***  
***.0805 Procedures Governing Elections by Electronic Vote***

The amendments would permit judicial district bars to adopt procedures for on-line voting for State Bar Councilors as long as the procedures provide for appropriate notice, ensure secure voting, and offer ballot access to all active members of the judicial district bar.

***27 N.C.A.C. 1D, Section .0900 Procedures for Administrative Committee***  
***27 N.C.A.C. 1D, Section .1500 Rules Governing the Administration of the Continuing Legal Education Program***  
***.0903 Suspension for Failure to Fulfill Obligations of Membership***  
***.1523 Noncompliance***

The amendments would allow for service of a notice to show cause (NSC) by designated delivery service (e.g., Federal Express) or by email, if acknowledged by the respondent. It would also allow for service of an order of suspension by mailing the order to the last address on file with the State Bar if, after due diligence, the member could not be served by registered/certified mail, designated delivery service or personal service. The amendments would facilitate the service of both NSC and suspension orders. The proposed amendments would also clarify that a response to a NSC must “show cause” why a member should not be suspended rather than merely provide an explanation for the failure to fulfill an obligation of membership.

***27 N.C.A.C. 1D, Section .1700 The Plan of Legal Specialization  
.1720 Minimum Standards for Certification of Specialists***

The amendments would specify that the substantial involvement and CLE requirements apply to the calendar years prior to application and would clarify the standard for peer review

***27 N.C.A.C. 1G, Section .0100 The Plan for Certification of Paralegals  
.0123 Inactive Status Upon Demonstration of Hardship***

The amendments would create an inactive status for certified paralegals who are suffering financial hardship, illness or disability, or are on active military duty or following a military spouse to another state or country. To be reinstated to active status after two years or more of inactivity, the certified paralegal would have to take 12 hours of CPE. After five years of inactive status, certification would lapse. To be certified again, the paralegal would have to reapply and pass the certification examination.

**Proposed Amendments for Publication** – At its meeting on April 27, 2012, the Council voted to publish the following proposed amendments to the State Bar’s rules for comment from members of the Bar.

***27 N.C.A.C. 2, Rule 1.15, Safekeeping Property  
Rule 1.15 Definitions  
Rule 1.15-2 General Rules***

The proposed amendments would clarify the rule requiring a lawyer maintaining a trust or fiduciary account to file a written directive that requires their bank or other financial institution to report to the Bar when an instrument drawn on the account is presented for payment against insufficient funds.

***27 N.C.A.C. 1D, Section .1300 Rules Governing the Administration of the Plan for Interest on Lawyers’ Trust Accounts (IOLTA)  
.1316 IOLTA Accounts***

The trust account rules require trust accounts to be maintained in North Carolina banks. The accounts of lay “settlement agents” are required by law to be IOLTA accounts. The

proposed amendment is intended to clarify the circumstances under which such accounts can be maintained outside of North Carolina.

**27 N.C.A.C. 1B, Section .0100 Discipline and Disability of Attorneys**

**.0105 Chairperson of the Grievance Committee: Powers and Duties**

**.0106 Grievance Committee: Powers and Duties**

**.0112 Investigations: Initial Determination: Notice and Response: Committee Referrals**

The proposed amendments are intended to make the Grievance Committee's procedure for referring cases to the Trust Account Supervisory Program consistent with the procedures for referrals to approved law office management programs or to the Lawyer Assistance Program.

**27 N.C.A.C. 1D, Section .0700 Procedures for Fee Dispute Resolution**

**.0702 Jurisdiction**

The proposed amendments are intended to make clear that the Fee Dispute Resolution Program does not have jurisdiction over fees or expenses established by private arbitrators.

**27 N.C.A.C. 1D, Section .1600 Regulations Governing the Administration of the Continuing Legal Education Program**

**.1605 Computation of Credit**

The proposed amendments would provide CLE credit to lawyers who teach classes at accredited law schools or who teach classes or courses on topics of substantive law at accredited graduate schools.

**CONSTRUCTION OF THE STATE BAR'S NEW HEADQUARTERS**

The chairman of the Facilities Committee, John M. Silverstein, advised the Council that construction of the new building is well under way and is currently under budget and on schedule. He noted that the Capital Campaign in support of the building project being undertaken under the auspices of the State Bar's Foundation has already met with considerable early success, having raised in excess of \$1,000,000. The goal is \$2,500,000. He advised the Council that a considerable portion of that money has already been committed to funding enhancements of the building that will add beauty, durability, and functionality.