

**NORTH CAROLINA STATE BAR
SYNOPSIS OF COUNCIL ACTION
JULY 28, 2017**

NOMINATIONS – The Council's Nominating Committee nominated C. Colon Willoughby, Jr., of Raleigh for the office of vice president. G. Gray Wilson of Winston-Salem was nominated for the office of president-elect. L. Thomas Lunsford II of Raleigh was nominated for the office of secretary-treasurer. The elections will be held during the Annual Meeting of the State Bar at 11:45 a.m. on Thursday, October 27, 2017, at the State Bar's headquarters in Raleigh.

APPOINTMENTS – The Council made the following appointments:

Board of Legal Specialization – Nancy Ray of Greenville and Jan Elliott Pritchett of Greensboro were appointed to three-year terms. The Council reappointed Laura V. Hudson of Greensboro to a three-year term.

Robert A. Mason of Asheboro was appointed as chair, and Larry Rocamora of Durham was appointed as vice chair.

IOLTA Board of Trustees – Anita Brown-Graham of Chapel Hill was appointed to a three-year term. Elizabeth L. Quick of Winston-Salem and Sidney S. Eagles, Jr., of Raleigh were reappointed to three-year terms.

Edward C. Winslow, III of Greensboro was appointed as chair and Elizabeth L. Quick of Winston-Salem was appointed as vice chair.

RECOMMENDATIONS FOR APPOINTMENTS SOUGHT - The Council will make the following appointments at its meeting in October 2017. Anyone wishing to be considered or to nominate someone should contact Tom Lunsford at the State Bar office: 919-828-4620; tlunsford@ncbar.gov; PO Box 25908, Raleigh, NC 27611.

Client Security Fund Board of Trustees (5-year terms) – There is one appointment to be made. Cecil W. Sewell, Jr., (public member) is not eligible for reappointment.

Board of Law Examiners (3-year terms) – There are three appointments to be made. Jaye P. Meyer (chair) and Roger A. Askew are eligible for reappointment. James R. Van Camp is not eligible for reappointment.

Board of Continuing Legal Education (3-year terms) – There are three appointments to be made. J. Dickson Phillips, II and Judge Linda McGee are eligible for reappointment. Edward P. Tewkesbury (chair) is not eligible for reappointment.

NC LEAF (1-year term) – There is one appointment to be made. William R. Purcell is eligible for reappointment.

State Judicial Council (4-year terms) – There is one appointment to be made. Fred H. Moody, Jr. is not eligible for reappointment.

NC Judicial Standards Commission (6-year terms) – There are two appointments to be made. Edward T. Hinson, Jr. and Fred H. Moody, Jr. are not eligible for reappointment.

Board of Paralegal Certification (3-year terms) – There are three appointments to be made. Charity L. Inglis (paralegal) does not wish to be reappointed. Teresa L. Bowling (paralegal) and Howard L. Gum (vice chair) are not eligible for reappointment.

Equal Access to Justice Commission (3-year terms) – There is one Presidential recommendation to be made to the Chief Justice. Nancy B. Norelli's term ends in January 2018 and is eligible for reappointment.

RANDOM AUDITS – Lawyers randomly selected for audit are drawn from lists generated from the State Bar's database based upon judicial district membership designations. The randomly selected judicial districts used to generate the lists for the 3rd quarter of 2017 are District 16B, consisting of Robeson County, and District 19B, consisting of Randolph and Montgomery Counties.

ETHICS COMMITTEE – Upon the recommendation of the Ethics Committee, the Council adopted two new ethics opinions at its meeting on July 28, 2017. **2017 FEO 3**, *Advertisement with URL No Other Identifying Information*, rules that a billboard advertisement need not contain the lawyer's name, firm name, or the firm's office address if the URL address on the advertisement leads to the lawyer's website where such information can be easily found. **2017 FEO 4**, *Settlement Funds Subject to Statutory Lien* rules that a lawyer is prohibited from disbursing settlement funds pursuant to the client's directive if the funds are subject to a perfected lien.

At its meeting on July 27, 2017, the Ethics Committee voted to revise and republish proposed **2017 FEO 2**, *Maintaining Fiduciary Account in Accordance with Rule 1.15* and to publish two new opinions, **2017 FEO 5**, *Agreement Not to Solicit or Hire Lawyers from Another Firm As Part of Merger Negotiations*, and **2017 FEO 6**, *Participation in Online Platform for Finding and Employing a Lawyer*.

The Ethics Committee also voted to table proposed **2016 FEO 1**, *Contesting Opposing Counsel's Fee Request to Industrial Commission*, pending the issuance of an opinion on similar facts by the Court of Appeals. The committee agreed **Inquiry Re: Avvo**, *Participation in Online Flat-Fee Client Referral Services*, should continue to be studied by a subcommittee.

GRIEVANCE COMMITTEE – During the quarter the Grievance Committee considered 429 cases. Eight lawyers received letters of caution, twenty-two lawyers received letters of warning, twelve lawyers received admonitions, fourteen lawyers received reprimands, four lawyers received censures, two lawyers were referred to the Lawyer

Assistance Program, five lawyers were referred to the Trust Accounting Compliance Program, and twenty-three lawyers were referred to the Disciplinary Hearing Commission.

RULE AMENDMENTS

PROPOSED AMENDMENTS FOR PUBLICATION – At its meeting on July 28, 2017, the Council voted to publish the following proposed amendments to the State Bar’s rules for comment from members of the Bar.

A) 27 N.C.A.C. 1A, .0700 - Standing Committees of the Council

Rule .0701, Standing Committees and Boards

The proposed amendments would eliminate the Technology and Social Media Committee and establish the Communications Committee as a standing committee of the State Bar Council instead.

B) 27 N.C.A.C. 1G, .0100, the Plan for Certification of Paralegals

Rule .0119 Standards for Certification of Paralegals

The proposed amendments would allow applicants who hold national certifications from qualified national paralegal organizations (including the CLA/CP certifications from the National Association of Paralegals and the PACE-Registered Paralegal certification from the National Federation of Paralegal Associations) to sit for the certification exam although they have not satisfied the educational requirement for certification. The proposed amendments would also delete a provision that was in effect for the first two years of the certification program that allowed alternative qualifications for certification, and would require certain qualified paralegal studies programs to include the equivalent of one semester’s credit in legal ethics.

C) 27 N.C.A.C. 2, Rules of Professional Conduct

Rule 1.15-1, Safekeeping Property Rule 1.15-2, General Rules

The proposed amendments would specify that certain restrictions on the authority to sign trust account checks also apply to the initiation of electronic transfers from trust accounts. The amendments would also define “electronic transfer” and make clear that lawyers are permitted to sign trust account checks using a “digital signature” as defined by statute.

D) 27 N.C.A.C. 2, Rules of Professional Conduct

Rule 1.15, Safekeeping Property

The proposed amendment would explain the due diligence required if a lawyer uses an intermediary (such as a bank, credit card processor, or litigation funding entity) to collect a fee.

E) 27 N.C.A.C. 2, Rules of Professional Conduct

Rule 3.5, Impartiality and Decorum of the Tribunal

The proposed amendments would clarify the prohibition against *ex parte* communications with a judge and improve the clarity of the rule overall.

F) 27 N.C.A.C. 2, Rules of Professional Conduct

Rule 5.4, Professional Independence of Lawyer (and official comment)

The proposed amendments would create an exception to the fee-splitting prohibition in Rule 5.4 to allow payment of a reasonable portion of a legal fee to a credit card processor, group advertising provider, or online platform for hiring a lawyer if the business relationship will not interfere with the lawyer's professional judgment on behalf of a client.

PROPOSED AMENDMENTS FOR RE-PUBLICATION

(The version originally published contained a substantive mistake and a corrected version is described below.)

A) 27 N.C.A.C. 2, Rules of Professional Conduct

Rule 1.15-3, Records and Accountings

The proposed amendments would reduce the number of quarterly reviews of fiduciary accounts that must be performed by lawyers who manage more than ten fiduciary accounts on the assumption that such accounts are managed in the same manner and reviews of a random sample of the accounts should be sufficient to facilitate the early detection of internal theft and the correction of errors.

AMENDMENTS ADOPTED SUBJECT TO SUPREME COURT APPROVAL

A) 27 N.C.A.C. 1D, .1700, the Plan for Legal Specialization

.1714 Meetings

The proposed amendment would change the date for the annual meeting of the board to the date of its spring retreat to reflect current practice.

B) N.C. Board of Law Examiners Rules Governing Admission to the Practice of Law

The Board of Law Examiners has submitted a comprehensive rewrite of the Rules Governing Admission to Practice Law, including proposed amendments requiring administration of the Uniform Bar Examination.