

**FISCAL AND OPERATING POLICIES OF
THE NORTH CAROLINA STATE BAR COUNCIL**

(Updated June 10, 2016)

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I. Fiscal Policies and Procedures

PURPOSE

It is the purpose of these Fiscal Policies and Procedures to put in place such policies and procedures as will safeguard all moneys received by the North Carolina State Bar, monitor properly the expenditure of all moneys received by the State Bar, account properly for the expenditure of these moneys and provide for accountability to the public, to the members of the State Bar, and to the State Bar Council.

II. Statutory Background and Internal State Bar and Bar Council Organization

The final responsibility for administration of fees paid by attorneys to the North Carolina State Bar and other moneys received by the State Bar rests upon the North Carolina State Bar Council. "The government of the North Carolina State Bar is vested in a council of the North Carolina Bar referred to as the council." (Article 84 of the General Statutes of North Carolina. G.S. 84-23).

Terms used in reference shall be: "State Bar" for the North Carolina State Bar; "council" for the North Carolina State Bar Council; "president" for the president of the State Bar and the council; "executive director" for the executive director of the State Bar and the council who by statute also has the title of secretary/treasurer of the State Bar and the council; and "General Statutes" or "G.S." for the General Statutes of the state.

The General Statutes provide there shall be four officers of the State Bar and the council who shall be members of the council in all respects: (1) a president, (2) a president-elect, (3) a vice-president, and (4) an immediate past president. (G.S. 84-22) The General Statutes provide "There shall be a secretary/treasurer who shall also have the title of executive director" (G.S. 84-22), but the General Statutes also provide the executive director "shall not be a member of the State Bar council." (G.S. 84-22) To avoid any confusion, "council officers" shall be used in reference to the four officers who are made officers of the council by statute, and "executive director" in reference to the statutory executive director who is also secretary-treasurer of the State Bar and the council, but who is not a member of the Council.

The president of the State Bar acts as the chief executive officer of the State Bar and the council. The executive director of the State Bar acts as the chief administrative officer of the State Bar and the council, and in addition is the treasurer of the State Bar who receives annual statutory fees from attorneys licensed by the state and other moneys of the State Bar.

The General Statutes provide:

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. (G.S. 84-22)

At its January 1993 meeting, upon recommendation of the officers and the Budget and Finance Committee, the council voted to request the State Auditor to review its annual audit and auditor's management letter. The council officers met with the State Auditor to discuss such

review. The president and the executive director later met with the State Auditor to discuss the procedures for such review.

After the council's action, the legal staff of the State Bar and the Attorney General concluded that the State Auditor has audit authority over the State Bar. The State Auditor coordinated with the president and the executive director of the State Bar regarding the overview of the audit and outlined procedures for doing so in a letter dated February 23, 1993.

In October 2006, the rules of the State Bar were revised to create the Finance and Audit Committee. That committee is responsible for overseeing the State Bar's financial activities and for the annual audit in accordance with these policies and procedures.

III. Selection and Direction of External Auditors

The external auditors of an organization, in common usage, are sometimes referred to as the outside auditors, the independent accountants, or the certified public accountants. For clarity, the independent certified accountants auditing the financial records of the State Bar and the council will be referred to as "external auditors."

Finance and Audit Committee

There shall be a standing committee of the State Bar named the Finance and Audit Committee. It shall be the duty of the Finance and Audit Committee to superintend annually the preparation of the State Bar's operational budget and to make recommendations to the Executive Committee concerning that budget and the budgets of its boards; to make recommendations to the Executive Committee regarding the State Bar's financial policies; to examine the financial records of the State Bar at each regular meeting of the council and report its findings to the Executive Committee; to recommend to the Executive Committee annually the retention of an independent auditor; to direct the work of the independent auditor in accordance with the policies and procedures adopted by the council and the State Auditor; and to review the results of the annual audit and make recommendations concerning the audit to the Executive Committee. (27 N.C.A.C. 1A .0701(a)(9))

Appointment and Composition of the Finance and Audit Committees

The Finance and Audit Committee shall be appointed by the president and shall consist of not less than three nor more than five members

Solicitation of Proposals from External Auditors

If the Executive Committee decides that the external auditors should be changed, the Finance and Audit Committee shall solicit written proposals from at least three reputable private auditing firms for the audit of the State Bar. The solicitation shall require of auditing firms submitting proposals that the written proposal of each auditing firm contain and provide for, at a minimum, the following:

- a review and report on compliance with State Bar fiscal policies,
- an audit opinion on the financial statements,
- a management letter, and
- a proposal for a three- to five-year engagement contract.

Final Selection of External Auditors

After receipt of proposals for the audit, the Finance and Audit Committee will review and evaluate the proposals received and make its recommendation for selection of external auditors. The Finance and Audit Committee in making its recommendations may take into account not

only the charges proposed by each audit firm making a proposal, but also the staff, experience and reputation of each firm, as well as in-person interviews with each firm. If qualifications are equal, then price will be a primary consideration. The recommendation of the Finance and Audit Committee shall be made to the Executive Committee, which shall then make a recommendation to the council. If the Executive Committee does not concur with the recommendation of the Finance and Audit Committee, the matter may either be sent back to the Finance and Audit Committee for further recommendation, or the Executive Committee may make a different recommendation to the council, stating the reasons of the Executive Committee for such different recommendation. The selection of the external auditors shall be by the council, subject to the approval of the State Auditor.

Engagement Letter

The external auditors selected shall provide an engagement letter to the Finance and Audit Committee, which shall provide at a minimum that the external auditors will render the services specified above and will review the engagement letter with the Finance and Audit Committee and the council officers. A copy of the letter will be provided to the State Auditor.

Audit Plan

Before the external auditors begin the audit, the Finance and Audit Committee shall require the external auditors to prepare a written plan for the audit and review it at the meeting with the Finance and Audit Committee. Items typically discussed at this meeting may include:

- the external auditor's responsibilities under generally accepted auditing standards,
- the general outline of the extent and timing of the external auditor's proposed audit of departments of the State Bar,
- the nature of the audit procedures to be performed,
- accounting and auditing problems foreseen by the external auditors,
- the impact of any new or proposed change in accounting principles or regulatory requirements, and
- any significant reporting deadlines.

This meeting will also serve as the Finance and Audit Committee's opportunity to clear up areas of concern, or specify any additional work it wants performed.

Procedure After Conclusion of Audit

At the conclusion of the audit, the external auditors shall meet with the Finance and Audit Committee and the council officers. This post-audit meeting will provide the forum for the external auditors, the Finance and Audit Committee and the council officers to discuss matters of concern. The Finance and Audit Committee shall inquire into compliance with State Bar fiscal policies and review the management letter, and may inquire into:

- whether an unqualified opinion will be issued and whether consideration was given to any other type of opinion,

- significant estimates used to prepare financial statements, if any,
- differences from prior year's financial statements,
- unusual transactions,
- disagreements with management on accounting or reporting issues,
- the degree of cooperation the executive director and the State Bar staff gave the external auditors,
- the performance and qualifications of the executive director and State Bar staff respecting the financial affairs of the State Bar, and
- any other concerns the external auditors or the members of the Finance and Audit Committee or the council officers may have.

Management Letter

As a byproduct of the audit, the external auditors prepare a management letter and furnish copies to the Finance and Audit Committee, the council officers and executive director, the State Auditor and the State Controller. The management letter include comments and suggestions of the external auditors respecting internal controls, accounting procedures, compliance with State Bar fiscal policies, and any other concerns of the external auditors. The executive director shall prepare a written response to the management letter within ten working days and submit it to the external auditors, the Finance and Audit Committee, the council officers the State Auditor and the State Controller.

Rotation of Auditors

At least once every three to five years the accounting firm performing the audit shall be rotated, or at a minimum, the accountant in charge shall be rotated.

Review by State Auditor and State Controller

After the conclusion of the audit, the State Bar shall transmit copies of the audit, the management letter and the response to the management letter to the State Auditor and the State Controller for review. Any management letter issues shall be resolved within a reasonable time and the resolution reported in writing by the executive director to the Finance and Audit Committee, the council officers, the State Auditor and State Controller.

IV. Reimbursement Policies

Prohibited Reimbursements

The State Bar shall not pay any reimbursement for:

- alcohol
- personal recreation
- personal entertainment
- educational expenses that are not related to State Bar business
- expenses of spouses and/or guests of Bar officers, councilors and staff

Allowable Reimbursements

Upon furnishing of written receipts, as required, councilors and noncouncilors will be fully reimbursed for the following reasonable and necessary expenses ("reimbursable expenses") incurred incident to official State Bar business:

- transportation, (intrastate, as opposed to interstate) air travel and all car rentals must be approved in writing by the executive director in advance, mileage reimbursement for the use of private automobiles will be paid at the prevailing I.R.S. rate for business travel)
- lodging and meeting rooms, provided that reimbursement for lodging incident to attendance at a meeting shall be limited to the amount charged for single occupancy in the meeting's headquarters hotel. If space is not available in the headquarters hotel when making reservations at a reasonable time in advance of the meeting, the Bar will reimburse the amount charged for single occupancy in a comparable hotel.
- meals, up to a maximum to be determined annually by the Finance and Audit Committee
- telephone calls made concerning State Bar business
- tips
- registration fees for approved meetings
- such other expenses as are approved by the executive director

Officer Travel

The State Bar shall reimburse the four council officers and the executive director for reimbursable expenses incurred incident to attendance at the following meetings:

- district bar meetings,
- quarterly meetings of the State Bar Council,
- meetings of the Southern Conference of Bar Presidents,
- the American Bar Association's annual National Conference on Professional Responsibility,
- annual and quarterly meetings of the North Carolina Bar Association, and
- the annual and midyear meetings of the National Conference of Bar Presidents and the National Association of Bar Executives.

The State Bar shall reimburse the president or the president's designee and the executive director or the executive director's designee for reimbursable expenses incurred incident to attendance at the following meetings:

- annual meetings of State Bar associations in states contiguous to North Carolina
- meetings of the North Carolina Academy of Trial Lawyers,
- meetings of the North Carolina Association of Defense Attorneys,
- meetings of the North Carolina Association of Black Lawyers,
- meetings of the North Carolina Association of Women Attorneys
- meetings of the Annual Judicial Conference of the Fourth Federal Circuit, and
- the American Bar Association's annual Bar Leadership Institute.

The president may designate in writing other bar related meetings inside or outside the state of North Carolina as being authorized for attendance by one or more council officers, members of the council, and others acting on behalf of the State Bar. The State Bar shall pay reimbursable expenses incurred at such meetings.

Councilor Travel

Councilors, council officers, and committee members (and staff, for meetings held outside of Raleigh) shall be reimbursed for actual expenses incurred incident to their attendance at council and committee meetings in accordance with these policies.

Per Diem Compensation

The full per diem compensation prescribed by the council for councilors shall be paid to all duly appointed members of the State Bar committees, except volunteers of the PALS and FRIENDS Committees of the Lawyer Assistance Program, for any day in which they are substantially involved in meetings or other activities on behalf of the State Bar.

Board Travel

Within applicable budgeting limits and in consultation with the executive director, the chairpersons of the State Bar's boards may authorize travel for board members and staff inside or outside of North Carolina to attend to official business or to attend meetings germane to the boards' regulatory responsibilities.

Boards having their own sources of revenue shall pay all reimbursable expenses (and per diem compensation) in accordance with these policies. To the extent that a board has insufficient funds to pay such expenses, those expenses may be borne by the North Carolina State Bar, in the discretion of the executive director.

Staff Travel

The North Carolina State Bar shall pay all registration fees as well as all other reimbursable expenses for the counsel to attend both the annual and mid-year meetings of the National

Organization of Bar Counsel (NOBC) and for each deputy counsel to attend either the annual meeting or the mid-year meeting of the NOBC each year. If for any reason the counsel is unable to attend a meeting with respect to which expenses are to be borne by the State Bar, the counsel may designate another member of the legal staff to attend in his or her place, provided, however, that in all events at least one member of the legal staff must remain in Raleigh to staff the office of counsel.

The North Carolina State Bar will pay all registration fees as well as all other reimbursable expenses for the assistant executive director to attend the annual and mid-year meetings of the National Association of Bar Executives and the American Bar Association's annual National Conference on Professional Responsibility. All staff lawyers who respond to ethics inquiries may attend the ABA's annual National Conference on Professional Responsibility and the North Carolina State Bar will pay their registration fees and all other reimbursable expenses.

The State Bar will pay registration fees and other reimbursable expenses associated with other staff travel authorized by the executive director.

ABA Delegates Travel

The State Bar shall reimburse its ABA delegates for actual expenses incurred incident to their attendance at the mid-year and annual meetings of the American Bar Association in accordance with these policies, to the extent that such expenses are not defrayed by the American Bar Association.

Extended Stays

Where it is possible to achieve a net savings to the State Bar, the trip of any person traveling out of town on official business may be extended (and additional expenses reimbursed) with the approval of the executive director to obtain lower air fares or other financial considerations even though the official business necessitating the travel may have been concluded or may not yet have begun. Generally speaking, expenses are reimbursable for travel, food, and lodging during the 24-hour period preceding a morning meeting and following an afternoon meeting, if necessary to facilitate a reasonable travel schedule.

Staff Membership Fees, Assessments and CLE Tuition

The North Carolina State Bar shall pay on behalf of its salaried employees who are active members of the North Carolina State Bar, all mandatory membership fees and assessments, and all tuition and registration fees associated with continuing legal education seminars attended by such lawyers with the preapproval of the executive director of the North Carolina State Bar. The State Bar shall also pay the annual membership dues of any of its staff attorneys for one voluntary bar organization per year, but in no event more than the annual dues of the North Carolina Bar Association.

Compensation and Reimbursement of Conservators

Whenever a conservator is appointed to conduct the professional affairs of an attorney who is deceased, missing or incapacitated and sufficient funds are not available in the subject attorney's estate to compensate adequately the conservator for his or her services or to reimburse the conservator for reasonable expenses incurred in managing the subject attorney's affairs, it shall be the policy of the North Carolina State Bar to provide such compensation and reimbursement as, in the judgment of the executive director, is appropriate. The presumptive hourly rate of such compensation will be the current average rate paid by the Administrative Office of the Courts to assigned counsel for indigent defendants in non-capital felony cases.

Receipts Before Reimbursement

All reimbursements for any reimbursable expenses (except \$25 and less) will be paid only after submission and approval of receipts. Reimbursement requests must be in writing, signed by the person requesting reimbursement, and filed within ninety days after expenditure is made. The policy shall generally be "no receipt, no reimbursement," provided, however, that in unusual cases where proper substantiation cannot be produced, the executive director may order reimbursement upon receipt of a written certification that payment was in fact made, and a written explanation regarding the missing receipt.

Approval of Reimbursement

Reimbursements for the foregoing authorized expenditures shall be made only upon written approval as follows:

- Reimbursement for expenses of the four council officers shall be made upon approval of the accounting manager and the executive director.
- Reimbursement for expenses of the executive director shall be made upon joint approval of the president (or other council officer designated by the president) and the accounting manager.
- Reimbursement for expenses of employees of the State Bar shall be made upon the approval by the executive director and accounting manager.
- Reimbursement for expenses of council members and non-councilor members of committees shall be made upon approval of the accounting manager and the executive director.

Approval of reimbursement may be given by e-mail or fax.

The executive director, in consultation with the president, may decline to reimburse any expense or portion of an expense that is deemed to be excessive or otherwise inappropriate for reimbursement.

Cash Advances

No cash advances will be made to any council officer, the executive director, or any council member for meeting or travel expenses. However, the executive director may make cash advances of up to \$500 to any staff member for State Bar related business.

V. Check Signing

Except as noted below, all checks of the State Bar require the signature of the executive director, assistant executive director, or counsel. Checks for \$2,000 or greater also require the signature of another of the following individuals: the executive director, assistant executive director, counsel, events manager, office manager, or executive assistant.

The office manager of the State Bar has check signing authority up to \$2,000.00 without co-signature.

Payroll checks, regardless of amount, require only the signature of the executive director, assistant executive director, or counsel; no co-signature is required.

Under no circumstances may an individual with signatory authority sign a check made payable to him or her.

VI. Credit Cards

Credit cards may be issued in the name of the State Bar, for official State Bar transactions. Credit cards are for use of the executive director, assistant executive director, office manager, and events manager.

The executive director may reimburse any staff member for the payment of an annual fee associated with a personal credit card maintained exclusively for official State Bar business.

VII. Fidelity Bonds

Fidelity Bonds Required

All persons employed at the State Bar, shall be bonded by a fidelity bond insuring against loss without limitation for fraud, embezzlement or dishonesty in a minimum amount of \$500,000 per person.

The external auditors and the Finance and Audit Committee shall review the fidelity bonds annually for compliance with this policy.

VIII. Basis of Accounting

To produce interim financial statements, the accounting manager shall use the cash basis of accounting and the financial records of the agency shall be kept generally in accordance with the cash basis of accounting. Annual audited financial statements of the agency shall be stated in accordance with the accrual basis of accounting.

IX. Risk Assessment

It shall be the responsibility of the executive director and the accounting manager jointly to review on a quarterly basis the State Bar's operational environment to identify apparent changes that could have an adverse effect upon the North Carolina State Bar, and to propose and implement procedures to protect the agency from any risks so identified.

The executive director and the accounting manager will also be jointly responsible for continually evaluating risks to the agency. The executive director and the accounting manager will implement such procedures as are reasonably necessary to eliminate or mitigate such risks.

X. IOLTA Policy - Financial

Financial Matters

The State Bar shall not be an applicant for IOLTA funds.

The IOLTA Board shall submit the IOLTA budget to the executive director of the North Carolina State Bar for review and approval by the State Bar at its meeting in January of the year for which the IOLTA Board has proposed the budget.

Neither the State Bar nor any of its officers or employees has authority to participate in or otherwise influence the grant making process or decisions of the IOLTA Board, unless a participating individual is a member of the staff of the IOLTA Program or is a member of the IOLTA Board, in which event participation shall be appropriate.

The IOLTA Board shall be responsible for maintaining its own financial records separate and apart from those of the North Carolina State Bar. Such records shall at all times be available for inspection by representatives of the State Bar.

Representatives of the IOLTA Board designated by its chairperson shall review the IOLTA Board's financial records at least quarterly.

The director of the IOLTA program shall be responsible for making disbursements from funds maintained by the IOLTA Board in accordance with the IOLTA budget in a manner not inconsistent with the financial policies of the North Carolina State Bar.

The financial affairs of the IOLTA Board shall be conducted generally in accordance with the financial policies of the North Carolina State Bar unless specific deviations are authorized by the IOLTA budget, or by the State Bar rules governing the IOLTA program or this document.

All contracts in excess of \$5,000, or not specifically authorized in the budget of IOLTA, excluding grant agreements between the IOLTA Board and its grantees, shall be executed by the executive director of the State Bar. All grant agreements and the executive director of the IOLTA Program shall execute related documents.

The North Carolina State Bar shall, with the approval of the North Carolina State Auditor, select an independent auditor on an annual basis to perform an official audit of the financial records of the IOLTA program, the cost of the audit being borne by the IOLTA program.

(Adopted April 14, 1995)

XI. Investment Policy

The North Carolina State Bar, an agency of the State of North Carolina is required to make sure uninsured balances on deposit are fully collateralized in accordance with G.S. 159-30. *

Note: The State Bar's primary private depository, BB&T, pledges securities for all deposits in excess of FDIC coverage so that the account is fully collateralized. The pledged securities are municipal bonds and Freddie Mac mortgage backed securities. These collateralized deposits are "pooled" with the State Treasurer. All public funds except for Clerk of Court accounts and Public Housing Authority accounts are secured through a single escrow account established by BB&T with the State Treasurer.

XII. Internal Controls

Internal Controls Policy

The North Carolina State Bar, in response to the recent enactment of “the State Governmental Accountability and Internal Control Act” (the Act) outlines below in summary form, the internal controls in place at the State Bar to provide reasonable assurance of the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

Definition of Internal Control

Internal control is defined by the Act as an integral process, effected by an entity’s governing body, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives related to the effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations. The process establishing an internal control necessarily involves a cost/benefit analysis. The State Bar has chosen to implement cost effective internal controls as described below:

- Segregation of duties (a control activity)
- Additional internal control activities such as approvals, authorizations, verifications, reconciliations, and reviews of operating performance and security of assets
- Risk assessment
- Mitigation of management override risk
- Officer and Council oversight
- Monitoring activities
 - completion of an annual internal control questionnaire from the Office of the State Controller

Segregation of duties

Segregation of duties assures that no single individual has control over two or more phases of a transaction or operation. This is used to ensure that errors or irregularities are prevented or detected on a timely basis by employees in the normal course of business. Some examples of incompatible duties are:

- Authorizing a transaction, and receiving and maintaining custody of the asset that resulted from the transaction.
- Receiving checks (payment on account) and approving write-offs.
- Depositing cash and reconciling bank statements.
- Having unlimited access to assets, accounting records and computer terminals and programs. For instance, having access to and using checks as the source documents to post to accounting records rather than using a check log or receipts.

In those instances where duties cannot be fully segregated, mitigating or compensating controls are established. These are additional procedures designed to reduce the risk of errors or irregularities. Compensating controls include passwords, inquiry only access, logs, dual authorization requirements, and documented reviews of input/output. For instance, the State Bar relies on its IT department to aid in controlling access to data through passwords and licensing controls. Also, the State Bar requires dual signatures in check signing over a specified dollar threshold. Additional discussion of both mitigating and compensating controls is located in the accounting department's procedure manual.

Internal control activities

Internal control activities are processes, both manual and automated, that help to prevent or reduce the risks that can impede accomplishment of the State Bar's objectives and mission. Management has established internal control activities that help to effectively and efficiently achieve the State Bar's objectives and mission.

These internal control activities include, but are not limited to, the following:

- Making sure a person with appropriate approval authority authorizes transactions.
- Ensuring records are routinely reviewed and reconciled by someone other than the preparer or transactor to determine that transactions have been properly processed on a timely basis
- Making certain that equipment, inventories, cash and other properties are secured physically, counted periodically, and compared with item descriptions shown on control records.
- Providing employees with appropriate training and guidance to ensure they have the knowledge necessary to carry out their job duties, are provided with an appropriate level of direction and supervision, and are aware of the proper channels for reporting suspected improprieties.
- Making sure all State Bar policies and operating procedures (including authority limits) are formalized and communicated to employees. Documenting policies and procedures and making them accessible to employees helps provide day-to-day guidance to staff and promotes continuity of activities in the event of prolonged employee absences or turnover.
- Reviewing expense related documents, including timesheets, for completeness, accuracy and compliance with policies and procedures.
- Providing performance appraisals to reflect an objective assessment of each employee's abilities and their measured achievements of goals and objectives.

Risk Assessment

Risk assessment identifies and analyzes relevant financial risks to achievement of the State Bar's objectives and forms a basis for determining how the risks should be managed. The Executive Director and Accounting Manager are responsible for identifying and managing those risks, which can be associated with changing economic, industry, regulatory, and operating conditions. See the Risk Assessment Policy in herein for additional information.

Management Override

Since management developed the internal control system, it is uniquely able to intentionally bypass controls. Otherwise effective internal controls cannot be relied upon to prevent, detect or deter fraudulent reporting perpetrated by senior management. The State Bar has chosen to mitigate this risk through encouraging an organizational culture where integrity and ethics are highly valued. In addition, the Finance and Audit committee and the members of Council take their oversight responsibilities seriously.

Officers and Council Oversight

Management of the State Bar is accountable to the all lawyers licensed in North Carolina. However, representative councilor and officers are primarily responsible for providing governance, guidance and oversight. Each councilor is responsible for understanding the management of the State Bar, identified and unidentified risks to the organization, organizational culture and information sharing. By performing these functions, the Council aids the State Bar in reducing management override risk and strengthens the organization as a whole.

Monitoring activities

Internal control systems need to be monitored to assess the quality of the systems' performance over time. This is accomplished through ongoing monitoring activities, separate evaluations or a combination of the two. Ongoing monitoring occurs in the course of operations and includes regular management and supervisory activities, such as reviewing reconciliations and summary reports, and other actions personnel take in performing their duties. The scope and frequency of separate evaluations depend primarily on an assessment of risks and the effectiveness of ongoing monitoring procedures. Internal control deficiencies are reported to the Executive Director and Council. Corrective actions are taken to ensure the continuous improvement of the internal control system.

Annually, the State Bar must complete an internal control questionnaire for submission to the State Controller. This self-assessment tool is integral to the State Bar's monitoring activities and helps identify ways of improving the internal control procedures employed by the State Bar.

Adopted: 2007

XIII. Conflict of Interest

In order to avoid even the appearance of impropriety, the North Carolina State Bar shall not do business with any firm, organization, or business entity in which members of the North Carolina State Bar Council or employees of the North Carolina State Bar or members of their law firms or immediate families have a substantial interest, nor shall the North Carolina State Bar engage in any business transaction the effect of which will be to confer substantial financial benefit upon any of the persons above referenced. Provided, however, that where it is plain that the best interests of the North Carolina State Bar would be served by a transaction which would otherwise be prohibited by this policy, and the president and the executive director so certify, the transaction will be permitted upon the filing of a statement of full disclosure with the executive director .

Miscellaneous Policies and Procedures

XIV. Use of State Bar Building

This policy sets forth the terms and conditions upon which certain conference rooms, hearing rooms and common areas of the new State Bar building will be made available for use by active members of the North Carolina State Bar (NCSB) and bar-related organizations. Only the Executive Director¹, with the consent of the President of the NCSB, may make exceptions to this policy.

- I. North Carolina State Bar Council, Disciplinary Hearing Commission and NCSB-Related Uses
 - A. Shall have the highest priority for the use of all conference rooms, hearing rooms and common areas in the building.
 - B. Rooms shall be reserved in advance by use of the building scheduling calendar.

- II. Professional and Business Use by NCSB Active Members
 - A. Use of designated conference rooms, hearing rooms and common areas subject to prior approval of the Executive Director.
 - B. Use shall be limited to regular business hours (8:00 a.m. to 5:00 p.m., Monday-Friday).
 - C. No charge for use during regular business hours unless the Executive Director determines that the proposed use justifies a damage deposit, security personnel or liability insurance.
 - D. Flat fee of \$200 if users do not vacate the building by 5:00 p.m.
 - E. Under no circumstances may use of the building persist after 8:30 p.m unless approved by the Executive Director.
 - F. No charge for cancellation.
 - G. No weekend or holiday use².

- III. Professional and Business Events Sponsored by Bar-Related Groups

Examples include NC Bar Association, NC Advocates for Justice, NC Association of Women Attorneys, NC Legal Aid, Chief Justice's Commission on Professionalism, Equal Access to Justice Commission, judicial entities and law schools.

 - A. Same procedures as II. above.
 - B. If there is a question as to whether it is a bar-related group, the Executive Director will make the determination.

- IV. Reservations by State Bar Active Members and Bar-Related Groups.
 - A. Shall be on a first-come, first-served basis (with priority to NCSB uses as noted in I. above).
 - B. Shall be made as far in advance as possible using the Use Agreement Form [attached].
 - C. The agreement shall set forth (1) the intended use, (2) the date and hours of use,

¹ All references hereafter to the Executive Director also include his designee for management of the building.

² After the adoption of this policy, use on weekends and holidays was permitted when approved by the Executive Director.

(3) estimated number of persons expected to attend, (4) the name of a responsible State Bar member or responsible person with a bar-related group.

- D. The Executive Director shall have the discretion to decline to schedule or to cancel, without penalty, any event or reservation that might compromise or otherwise conflict with the goals and objectives of the NCSB.

V. Other Conditions of Use

- A. Use shall be restricted to the rooms designated for a given event as well as ingress and egress from the building.
- B. Members and bar-related organizations using the building shall leave the building in the condition in which it was found. Any expense for cleaning or repair will be the responsibility of the member or group using the building.
- C. Parking arrangements shall be the sole responsibility of members or bar-related organizations using the building.
- D. The Executive Director has the discretion to require security personnel to be hired, at the user's expense, as necessary to protect the NCSB employees and property.
- E. No food shall be brought into the building unless previously approved by the Executive Director. Catered events shall require use of a caterer approved by the Executive Director.
- F. No alcohol shall be served at any function unless previously approved by the Executive Director. Any event at which alcohol is served shall require an approved caterer with all legally required licenses or permits and with a certificate of insurance, naming the NCSB as an additional insured, for comprehensive general liability coverage and liquor liability endorsement with minimum limits of \$1,000,000.

Adopted 1-25-13; Revised 6-10-16 to add footnote 2 and to attach Use Agreement.

ATTACHMENT to XIV. Use of State Bar Building

State of North Carolina
Wake County

North Carolina State Bar Headquarters Use Agreement

This agreement is made and entered into this _____ day of _____, 20____, by and between the North Carolina State Bar ("STATE BAR") and _____ ("USER"), address: _____, telephone: _____, email: _____; and contact person: _____.

STATE BAR owns and operates, or lawfully controls the use of, the State Bar Headquarters Building at 217 East Edenton Street, Raleigh, North Carolina ("PROPERTY"). STATE BAR agrees to make the space in PROPERTY referenced below available to USER at the date(s) and time(s) and for the purposes referenced below. In consideration for being permitted to use the described space in PROPERTY for the stated purposes (the EVENT), USER agrees to pay the fees and expenses and to abide by the terms and conditions set out in this agreement.

Room(s), floors, or other applicable description of the space in PROPERTY reserved for the EVENT: _____

Date(s) of EVENT: _____

Time(s) of EVENT: _____

Purpose(s) of EVENT: _____

Number of participants anticipated at the EVENT: _____

Parking: STATE BAR will not provide parking for the EVENT. Parking is available on the streets adjacent to the PROPERTY and in state government and public parking lots in the vicinity of the PROPERTY.

FEES, TERMS AND CONDITIONS

1. Usage Fee. USER agrees to pay the sum of \$_____ as a fee for the use of PROPERTY. This fee is due on _____ or two business days before the day of the use, whichever is sooner.
2. Deposit. A deposit of \$_____ shall be paid on _____ or two business days before the EVENT, whichever is sooner. The deposit shall be used to pay any expense described in Paragraph [3]. STATE BAR shall provide an accounting to USER for any amount of the deposit used and shall refund any unused amount within 30 days of the payment of the last expense.
3. Expenses. USER will be responsible for paying any and all expenses incurred by USER and/or STATE BAR in support of or as a result of the EVENT. Such expenses may include, but are not limited to, cleaning costs, security costs, parking fees, and costs to repair any damage to

PROPERTY arising from the EVENT. Expenses will be charged as soon as possible after the conclusion of the EVENT and payment in excess of the deposit will be due on _____.

4. Security. Security will be/ will not be provided for the EVENT as necessary based on a security assessment by STATE BAR. If security is required, USER shall be responsible for paying all costs for the security personnel and for other security measures including, but not limited to, barricades and metal detectors. USER will be consulted about security needs; however, the decision of STATE BAR relative to security needs shall be final.
5. Approved Caterer. Food will be/ will not be served at the event. Any caterer hired by USER for the event shall be approved by STATE BAR. Approved caterers must carry all legally required licenses and permits.
6. Alcoholic Beverages. Alcoholic beverages will be/ will not be served at the event. If alcohol will be served, USER will hire an approved caterer with all legally required licenses or permits and a certificate of insurance, naming STATE BAR, including its officers, councilors, agents and employees, as Additional Insureds, for comprehensive general liability coverage and a liquor liability endorsement with minimum limits of \$1,000,000.
7. Prohibition on Commercial Use. USER will not engage in sales or solicitation of sales of goods or services except as described in the "Purposes of EVENT" above.
8. Clear Access and Limitation on Use. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the premises must be kept unobstructed by USER and must not be used by USER for any purpose other than ingress to or egress from the premises. Use of PROPERTY by USER shall be confined to the rooms and floors identified on the first page of this Agreement and the public spaces adjacent thereto.
9. Responsibility for Damage. USER agrees to be responsible for all damages to the building, grounds, furniture, and equipment incident to the EVENT, including all damages caused by participants and attendees. USER shall make no temporary or permanent modifications to the PROPERTY without the prior written consent of STATE BAR.
10. State Bar Policies. USER agrees to use and occupy the PROPERTY in accordance with all STATE BAR policies, regulations, rules, and practices and with all applicable municipal, state and federal laws, including but not limited to fire codes. USER may not use STATE BAR'S name or marks, or imply STATE BAR endorsement or support, without express permission from an authorized STATE BAR official.
11. Safety Instruction to Participants. USER is responsible for providing all necessary and appropriate safety instruction to all participants and attendees at USER'S event.

12. Abandoned Property. Any property left on the PROPERTY shall, after a period of ten days from the last day of the EVENT, be deemed abandoned and shall become property of STATE BAR to be disposed of or utilized at STATE BAR'S sole discretion.
13. No Assignment. USER shall not assign this agreement nor allow any other person, group or entity to use the PROPERTY during the EVENT without the prior written consent of STATE BAR.
14. Force Majeure. If the PROPERTY is rendered unsuitable for the conduct of USER's activity by reason of force majeure, STATE BAR and USER are released from their obligations under this contract. Force majeure shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, governmental agency or authority, or any other cause which is beyond the control of STATE BAR.
15. Termination. STATE BAR or USER may terminate this agreement at any time in its discretion. Termination by STATE BAR shall result in a refund of any applicable fee or deposit, less any expenses incurred by STATE BAR.
16. Release and Indemnity of State Bar. STATE BAR shall have no responsibility for the safety and/or security of property belonging to USER or to those persons participating in the use of the PROPERTY by USER. USER expressly releases and discharges STATE BAR for any and all liabilities for any loss, injury, or damages to any such property.

STATE BAR shall have no responsibility for the safety and/or security of any person participating in the use of the PROPERTY by USER except as may arise from the negligence of STATE BAR. USER expressly agrees to indemnify and hold harmless STATE BAR, its officers, councilors, employees, and agents, from all cost, loss and expense arising out of any liability or claim of liability or injury or damage to persons resulting directly or indirectly from their participation in USER'S use of the PROPERTY, regardless of whether such use was authorized or not, and regardless of whether the liability or claim of liability arises out of the act or omission of USER. If USER is a state or federal government agency, indemnification is not required where prohibited by law.

17. Insurance. At all times during the EVENT, USER is required to have a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, and a liquor liability endorsement, written by a company licensed to do business in the state of North Carolina, covering the EVENT and the use contemplated by this agreement with the combined single limits of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. USER shall name STATE BAR, including its officers, councilors, agents and employees, as Additional Insureds on the policy. USER agrees that the insurance will be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity insofar as said person or entity may have claims against STATE BAR. Said insurance shall be in addition to any insurance required pursuant to Paragraph [6] of this agreement. USER shall also maintain Workers' Compensation insurance to meet the requirements of the Workers'

Compensation laws of North Carolina where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to STATE BAR.

- 18. Complete Agreement. This writing contains the whole and complete agreement between STATE BAR and USER.
- 19. Severability. The terms of this Agreement are severable such that if one or more provisions are declared illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 20. Controlling Law. This Agreement shall be governed by and construed under the laws of the State of North Carolina, which shall also be the forum for any lawsuits arising from or incident to this Agreement. USER consents to the exclusive personal jurisdiction and venue of the courts of North Carolina.

This agreement is executed by the parties on the first date appearing above.

NC STATE BAR

USER

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

XV. Approval of Law Schools

Bar Examination Policy

A person who was permitted to sit for the bar examination prior to August 1, 1995, and failed such examination, will be deemed to have satisfied the educational requirement and be permitted to sit for subsequent examinations on the theory that applications filed subsequent to August 1, 1995, should relate back to the initial application for the purposes of satisfying the educational requirement.

(Adopted January 12, 1996)

Withdrawal of Law School Approval

A law student who is matriculating at the time ABA approval is withdrawn from his or her school, shall be deemed to have graduated from an approved law school if he or she graduates on schedule.

XVI. Lobbying and Amicus Briefs

The North Carolina State Bar, as an integrated bar which all lawyers licensed by the State of North Carolina are compelled to join and support, recognizes that it may legitimately seek to influence the legislature and the courts in making policy and in developing the law only where there is a direct relationship between the matters at issue and the State Bar's core regulatory responsibility, which is the government of the legal profession. Under no circumstances will the North Carolina State Bar through any of its agencies, officials or employees engage in lobbying activities or file amicus curiae briefs unless such a relationship exists. Under no circumstances may any board, committee or subdivision of the State Bar undertake any such activity unless authorized by the State Bar Council or, in an emergency, by the Executive Committee.

XVII. Practice before the Council and the Disciplinary Hearing Commission

To avoid conflicts of interest, disclosure of confidential information of the State Bar relative to grievances and the legal representation of the State Bar, and the appearance of undue influence, the following limitations on the representation of a person or party with a matter before the State Bar or the Disciplinary Hearing Commission (DHC) shall apply:

1. A **current member of the DHC** shall not represent any person or party with a matter before the State Bar or the DHC. After service on the DHC ends, the **former member of the DHC** shall comply with Rule of Professional Conduct 1.12, *Former Judge, Arbitrator, Mediator or Other Third-Party Neutral*. **Lawyers affiliated in a law firm with a current member of the DHC** may not represent a person or party with a matter before the DHC. Rule 1.12(c) shall apply to any lawyer affiliated in a law firm with a former member of the DHC.
2. A **State Bar councilor** shall not represent any person or party with a matter before the State Bar or the DHC during service as a councilor and for a period of one year after service on the council ends.
3. Subject to the duty to protect confidential information learned during service on the Grievance Committee (see Paragraph 8), a **current advisory member of a State Bar committee** may represent a person or party before the State Bar or the DHC if the matter that is the subject of the representation will not be considered by the committee upon which the advisory member serves. A **former advisory member of a State Bar committee** may represent a person or party before the State Bar or the DHC if the matter that is the subject of the representation was not considered by a committee during the former advisory committee member's service thereon.
4. **Lawyers affiliated in a law firm with a current councilor or advisory committee member** may represent a person or party with a matter before the State Bar if (i) the relationship is disclosed to the committee or entity of the State Bar considering the matter; (ii) the councilor or advisory committee member abstains from any consideration of the matter by the State Bar; and (iii) the councilor is timely screened within the law firm from participation in the matter under all circumstances and the advisory committee member is timely screened within the law firm from participation in the matter if the committee upon which the advisory committee member serves will consider the matter.
5. **Lawyers affiliated in a law firm with a former councilor or former advisory committee member** may represent a person or party with a matter before the State Bar if the former councilor or advisory committee member is timely screened within the law firm from any participation in the matter whenever a committee upon which the former councilor or advisory committee member served considered the matter during the former councilor's or advisory

committee member's service thereon.³

6. After leaving the employment of the State Bar, a **former employee of the State Bar** who is a lawyer and represented the State Bar while employed by the State Bar, shall be subject to Rule of Professional Conduct 1.11, *Special Conflicts of Interest for Former and Current Government Officers and Employees*, and to Rule 1.9(c), *Duties to Former Clients*, relative to any confidential information acquired during the representation of the State Bar. Rule 1.11(b) shall apply to any **lawyer affiliated in a law firm with a former employee** of the State Bar.
7. The President of the State Bar may **consent**, on behalf of the State Bar, to any former councilor, former employee, or current or former advisory committee member representing a person or party with a matter before the State Bar or the DHC notwithstanding any prohibition in this policy. In situations described in this policy that are governed by the Rules of Professional Conduct, the President may consent only if consent by a client is allowed under the applicable rule. If the President declines or is disqualified from making a decision on consent because of a conflicting duty or interest, the decision on whether to consent shall be made by the President-Elect.
8. In addition to honoring and preserving the confidentiality described in 27 NCAC 1B §0129, **current and former members of the Grievance Committee who are lawyers** shall consider information acquired while serving on the Grievance Committee to be confidential information to be protected from use and disclosure to the same extent that client information is protected under Rule of Professional Conduct 1.6, *Confidentiality of Information*. Members of the Grievance Committee who are lawyers shall be subject to paragraph (c) of Rule of Professional Conduct 1.9, *Duties to Former Clients*, after service on the Grievance Committee ends. *See also* North Carolina State Bar Policy XXXIV, *Confidentiality of Information Acquired During Service on the Council or on a Committee, Board or Commission of the State Bar*.

(Adopted: February 1, 2016)

³ A former councilor or former member of a committee, board or commission of the State Bar may contact the State Bar for assistance in determining whether a matter was considered by a committee, board or commission upon which the councilor or member served.

XVIII. Release of Client Security Fund Information

The council, pursuant to Rule .1418(k) of the Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar, authorizes the staff of the Client Security Fund to release pertinent information and documents upon the written request of a federal, state, or local law enforcement agency in any case in which the lawyer under investigation by the law enforcement agency is the same lawyer named in a Client Security Fund Application and the alleged victim in the criminal matter is the same person as is alleged to have suffered a loss in the Client Security Fund Application.

Adopted January 14, 1994

XIX. Judicial Selection and Retention

Because issues relating to how judges should be elected and retained are political questions with respect to which no consensus is likely to exist within the membership of the North Carolina State Bar, neither the State Bar nor any of its constituent district bars shall support, financially or otherwise, any position in regard to such issues.

Adopted October 21, 1994

XX. Relative Responsibilities of the Council and the IOLTA Board

Personnel Matters

The IOLTA Board of Trustees is a standing committee of the North Carolina State Bar Council, operating under rules adopted by the North Carolina State Bar and approved by the Supreme Court. All persons employed to implement the IOLTA program are employees of the North Carolina State Bar and as such are governed by the State Bar's personnel policies.

As employees of the North Carolina State Bar, all persons working on behalf of the IOLTA program are ultimately responsible to the State Bar's executive director, who shall have the general supervisory authority over such employees.

The IOLTA Board, with the approval of the executive director of the State Bar, shall hire all persons employed to implement and administer the IOLTA program ("IOLTA employees").

The executive director of IOLTA shall manage and supervise all IOLTA employees, maintain their personnel files, consult with and report to the Executive Director of the State Bar on the performance of IOLTA employees and make available to the executive director of the State Bar all personnel records of the IOLTA employees in order for the executive director of the State Bar to make an informed decision concerning the performance and other review of the IOLTA employees, including termination after consultation with members of the IOLTA Board. The chairperson of the IOLTA Board and the executive director of the State Bar shall share information with respect to the performance of duties by the executive director of the IOLTA Program.

In consultation with IOLTA trustees, the State Bar's executive director shall have the power to discharge IOLTA employees, including the director of the IOLTA program.

The director of the IOLTA program is considered a department head within the administrative structure of the North Carolina State Bar with direct responsibility for implementing policies and decisions of the IOLTA Board within the context of the rules of the IOLTA program.

Financial Matters (This section is identical to Policy X. above)

The State Bar shall not be an applicant for IOLTA funds.

The IOLTA Board shall submit the IOLTA budget to the executive director of the North Carolina State Bar for review and approval by the State Bar at its meeting in January of the year for which the IOLTA Board has proposed the budget.

Neither the State Bar nor any of its officers or employees has authority to participate in or otherwise influence the grant making process or decisions of the IOLTA Board, unless a

participating individual is a member of the staff of the IOLTA Program or is a member of the IOLTA Board, in which event participation shall be appropriate.

The IOLTA Board shall be responsible for maintaining its own financial records separate and apart from those of the North Carolina State Bar. Such records shall at all times be available for inspection by representatives of the State Bar.

Representatives of the IOLTA Board designated by its chairperson shall review the IOLTA Board's financial records at least quarterly.

The director of the IOLTA program shall be responsible for making disbursements from funds maintained by the IOLTA Board in accordance with the IOLTA budget in a manner not inconsistent with the financial policies of the North Carolina State Bar.

The financial affairs of the IOLTA Board shall be conducted generally in accordance with the financial policies of the North Carolina State Bar unless specific deviations are authorized by the IOLTA budget, or by the State Bar rules governing the IOLTA program or this document.

All contracts in excess of \$5,000, or not specifically authorized in the budget of IOLTA, excluding grant agreements between the IOLTA Board and its grantees, shall be executed by the executive director of the State Bar. All grant agreements and the executive director of the IOLTA Program shall execute related documents.

The North Carolina State Bar shall, with the approval of the North Carolina State Auditor, select an independent auditor on an annual basis to perform an official audit of the financial records of the IOLTA program, the cost of the audit being borne by the IOLTA program.

Miscellaneous Matters

The IOLTA Board shall not attempt to influence any state or federal legislation or other governmental process: (legislative, judicial, or administrative) without the specific approval of the North Carolina State Bar Council.

The IOLTA Board shall not initiate any litigation or participate in any litigation as amicus curiae or otherwise without the specific approval of the North Carolina State Bar Council, or, in a circumstance determined by the president of the State Bar to be an emergency, the Executive Committee of the State Bar Council.

Should the IOLTA program become the subject of litigation or should the board or any of its members or employees become parties to litigation relating to their service on behalf of the IOLTA program, the management of such litigation shall be the sole responsibility of the State Bar, subject to the right of any individual to seek personal counsel to manage his or her defense.

Adopted April 14, 1995

XXI. Undercover Operation

The policy of the North Carolina State Bar is that its employees shall not conduct undercover type investigations "without the prior approval of the president of the North Carolina State Bar or the executive director."

(Adopted January 12, 1996)

XXII. Model Law Firm Alcohol and Drug Policy

Explanatory Statement

A law firm desiring to provide appropriate assistance to employees suffering from substance abuse or addiction should consider doing three things: (1) adopting a policy, (2) implementing the policy, and (3) educating the members and employees of the firm.

The North Carolina State Bar has recommended to its membership a law firm policy, which recognizes that alcoholism and other forms of drug addiction are treatable illnesses; however, the policy condones neither impaired job performance nor illegal conduct.

The model policy provides for the establishment of an understanding and supportive atmosphere within which attorneys and employees may seek personal help or express concern about a colleague or other employee.

The two major obstacles to reaching out for help for oneself or another are based on the fear of being punished and the fear of causing harm to one's reputation

These can be overcome by express recognition of the medical model of addiction and the establishment of appropriate safeguards as to confidentiality.

The firm's partners should fully understand the model policy before adopting it. Representatives from the PALS Committee are available to assist them in its understanding.

It is very important for the partners to understand that the firm should not ignore impaired job performance. Work related problems are a major indicator that "something" may be wrong. If that "something" is alcohol or drug related, then trying to protect the employee from the consequences of his or her own action is harmful, not helpful to the employee. This is called "enabling" and it is the direct result of not understanding the disease process.

Existing policies or employee assistance programs (EAP) should be reviewed and any real or potential conflicts should be identified and resolved.

The partners need to agree on who will handle these matters and establish appropriate safeguards for confidentiality.

They may wish to retain an independent provider of EAP services. Law firm sponsored medical insurance needs to be reviewed to verify what is covered by the insurance before a need arises.

Once a policy is adopted, the firm should announce it and visibly post it. PALS is available to conduct educational programs, at no charge, for the benefit of the firm's attorneys and employees.

These programs discuss the prevalence and impact of the problem in the workplace, explain the progressive and the harmful nature of the disease of addiction, teach how to identify job related symptoms, explore how supervisors and co-workers enable sick colleagues, and explain how to appropriately respond to a possible problem using the firm's policy.

Always keep in mind that PALS is a ready and willing resource to help your firm, using recovering attorney volunteers and referral to treatment professionals. PALS exists to serve and save lives.

North Carolina State Bar's Model Law Firm Alcohol and Drug Policy

The firm regards alcoholism and drug addiction as illnesses and desires to assist employees suffering from such illnesses to obtain effective treatment.

The firm regards the unauthorized possession and distribution of controlled substances as crimes and will discipline any employee proved to be involved in such a crime, whether or not such employee is addicted to drugs.

The impairment of any employee's performance due to drug or alcohol addiction is deemed to be the firm's business, not a reserved aspect of the employee's private life. It is the firm's policy to encourage and offer qualified medical assistance to any employee who appears to the firm's management to suffer from such illness.

No employees will be disciplined solely for impairment due to any illness so long as the employee cooperates with a qualified treatment program agreed to by the firm and the employees. The employee's choice of treatment will be accepted only if approved by a specialist retained by the firm after consultation with the employee's personal physician. Any treatment undertaken in accordance with this policy shall be entirely confidential and no disclosure by an employee to treatment personnel will be reported to the firm nor will any such disclosure be available to any legal authority whatever except in accordance with the requirements of applicable law.

The firm will name a supervisory employee as administrator of this policy and as the firm's representative in all matters pertaining to its execution. This person shall be the firm's liaison with the PALS Committee; no other person within the firm shall be informed of any consultation or referral under this policy without the consent of the affected employee except as necessary to complete the ongoing work of the employee.

Adopted January 12, 1996

XXIII. Whistleblower Policy

The State Bar is committed to protecting employees from interference with making a protected disclosure (as defined in this policy) and from retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy. This policy is derived from the Protection for Reporting Improper Government Activities Act, N.C. Gen. Stat. 126-84 *et seq.*

Defined Terms

A “**protected disclosure**” is a verbal or written report, made in good faith, to a supervisor, department head, or other appropriate authority (including an officer of the State Bar), or the offering of testimony to or testifying before appropriate legislative panels or in court, of evidence of activity by another State Bar employee, by the State Bar, or by another State agency or State employee, of the following:

- (1) A violation of State or federal law, rule or regulation;
- (2) Fraud;
- (3) Misappropriation of State resources;
- (4) Substantial and specific danger to the public health and safety; or
- (5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

An “**illegal order**” is a directive which constitutes a violation of state or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

No Retaliation

No State Bar employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because

- (1) the employee, or a person acting on behalf of the employee, makes or attempts to make a protected disclosure unless the supervisory employee knows or has reason to believe that the report is inaccurate; or
- (2) the employee refused to carry out an illegal order.

No State Bar employee shall retaliate against another employee because

- (1) the employee, or a person acting on behalf of the employee, makes or attempts to make a protected disclosure; or
- (2) the employee refused to carry out an illegal order.

An employee who retaliates against an employee who has made a protected disclosure in good faith or who has refused in good faith to carry out an illegal order is subject to discipline up to and including termination of employment.

Acting in Good Faith

An employee making a disclosure or refusing to carry out an order must be acting in good faith and have reasonable grounds for believing the information disclosed constitutes a protected disclosure or the activity refused constitutes an illegal order. An employee who makes allegations that are not substantiated and which subsequently prove to have been made maliciously or with knowledge of their falsehood is subject to discipline up to and including termination of employment.

Reporting Violations

Violations or suspected violations of this policy shall be report to an employee's supervisor, the office manager, the assistant executive director, the State Bar counsel, the executive director, or an officer of the State Bar, as appropriate under the circumstances. The person receiving the report shall initiate an investigation in conjunction with the appropriate authorities at the State Bar.

Confidentiality

Violations or suspected violations of this policy may be submitted on a confidential basis by the employee or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation and take employment action and consistent with the requirements of law.

XXIV. Harassment Policy

HARASSMENT COMPLAINT PROCEDURE

The State Bar will not tolerate any form of job-related harassment, based on sex, race, age, national origin, religion, or other protected class status. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual or otherwise improper nature, especially where:

- submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's employment;
- submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Any and all such activities described as sexual harassment are expressly prohibited. These activities are also prohibited between fellow employees; it is not necessary that there be a supervisory relationship between the employees.

Any employee who feels he or she has been subjected to job-related harassment by a co-worker, supervisor, State Bar councilor or officer, member of the State Bar or agent of the State Bar should report the incident promptly to his or her immediate supervisor. If the employee believes it would be inappropriate to discuss the matter with his or her supervisor, he or she should report it directly to the office manager, the executive director or the assistant director. If the employee is uncomfortable reporting the incident to the office manager or the executive or assistant director, he or she may report it to any one of the officers of the State Bar. Supervisors should report all complaints of harassment to the office manager, the executive director or assistant director to ensure that they are resolved promptly and effectively. Following a report of harassment, an appropriate person will be appointed to undertake an investigation. The complaint and the investigation will be kept confidential to the maximum extent possible, and the investigation will be conducted in as impartial a manner as possible. Employees are required to cooperate in any investigation.

If it is determined that an employee has engaged in harassment of another employee, appropriate disciplinary action will be taken against the offending employee. The State Bar prohibits any form of retaliation against any employee for filing a bona fide complaint under this policy or for assisting in a complaint investigation.

COMPLAINT RESOLUTION PROCEDURE

The State Bar recognizes that the accumulation of unspoken, unanswered complaints results in dissatisfaction and destroys what otherwise can be a pleasant work relationship. To ensure effective working relations, it is important such matters be resolved before serious problems develop. Most incidents resolve themselves naturally; however, should a situation

persist that you believe is detrimental to you or to the State Bar, you should follow the procedure described here for bringing your complaint to the attention of the administration.

When you have a concern, problem or complaint, review the matter with your supervisor as soon as possible. It is his or her responsibility to answer your concerns and questions. The problem may be resolved by you and your supervisor to your mutual satisfaction. If you do not believe a discussion with your supervisor is appropriate or if your problem is not resolved after discussion with your supervisor, you are encouraged to request a meeting with the office manager, the counsel, the assistant director, or the executive director. If appropriate, the executive director may discuss the problem with the officers of the State Bar. These individuals will endeavor to work out a satisfactory solution to the problem. The decision of the executive director and the officers is final.

The State Bar does not tolerate retaliation against employees availing themselves of this procedure. The procedure should not be construed, however, as preventing, limiting or delaying the State Bar from taking disciplinary action against any individual, up to and including termination, in circumstances (such as those involving problems of overall performance, conduct, attitude, or demeanor) where the State Bar deems disciplinary action is appropriate.

If the complaint involves any form of discriminatory harassment, the employee should dispense with the normal complaint resolution procedure and follow the procedure set forth in preceding section, "Harassment Complaint Procedure."

XXV. Public Records Request Policy (New)

The North Carolina State Bar, as an agency of the state of North Carolina, must comply with the public records laws of the state. This entails providing copies of non-exempt records to the public or other organizations as requested. The State Bar is authorized to charge “reasonable fees” for any copies provided. At no time may reasonable fees exceed the actual costs incurred (G.S. 132-6.2 (b)). The following is the schedule of charges for responding to a public records request.

North Carolina State Bar Schedule of Charges for Public Records Requests

Photocopies per page	\$ 0.10
Routine File Retrieval (flat rate)	\$1.00
Special Project Service Charge (hourly rate)	
Administrative time	\$15.00/hour
Managerial time	\$35.00/hour

All payments for public records requests will be required prior to delivery. Invoices for copies and related charges must be requested from the Accounting Department. All invoices will charge the routine file retrieval rate and the costs of copies unless special project charges apply. If the request requires more than a half an hour of administrative time and /or any managerial time, special project service charges will apply in addition to the photocopying charges. Should special project charges apply, written documentation of the time worked must be provided to Accounting prior to invoice generation.

The North Carolina State Bar reserves the right to revise this schedule of costs or to charge additional fees as necessary to recover “actual costs”.

XXVI. Defense of District Bar Grievance Committee Members

It shall be the policy of the North Carolina State Bar to provide a defense against any legal claim against any member of a duly constituted district bar grievance committee where it appears that the matters at issue occurred during the course and within the scope of the defendant's official duties. It shall further be the policy of the North Carolina State Bar to provide representation to any representative of a duly constituted district bar grievance committee for the purpose of resisting any legal process, such as a subpoena, seeking confidential information relating to the investigation of any grievance or claim of disability.

Adopted 4/16/10

XXVII. Administrative Fee Schedule

It shall be the policy of the North Carolina State Bar to assess administrative fees incident to the imposition of professional discipline by the Grievance Committee or the Disciplinary Hearing Commission as follows:

- \$350 for consensual discipline imposed by the Grievance Committee
- \$750 for discipline imposed by the Disciplinary Hearing Commission incident to an uncontested hearing, plus \$350 for investigation by the Grievance Committee
- \$1500 per day or any portion of a day spent in trying a contested case before the Disciplinary Hearing Commission, plus \$350 for investigation by the Grievance Committee

Adopted 4/16/10

XXVIII. Policy on Denial of Petitions for Reinstatement

This policy is adopted to guide the Administrative Committee in the exercise of its discretion when ruling on petitions for reinstatement.

The Administrative Committee may recommend to the State Bar Council that a petition for reinstatement from administrative suspension or inactive status be denied only upon a finding by the committee that there is probable cause to believe that the reinstatement of the petitioner will be detrimental to the administration of justice and subversive of the public interest. 27 N.C.A.C. 1D, Rule .0902(b)(3) and Rule .0904(c)(3).

Such a finding shall be based upon one of the following:

1. **Disability:** There is evidence that the petitioner has a mental or physical condition that significantly impairs the professional judgment, ability to perform or competence of the petitioner and the State Bar Counsel confirms that the evidence, if true, is sufficient to initiate a disability proceeding against the petitioner under 27 N.C.A.C. 1B, Rule .0118(b).
2. **Serious Misconduct:** There is evidence that the petitioner's actions resulted in significant harm or potential significant harm to clients, the public, the administration of justice, or the legal profession; the public will be at risk if the petitioner is reinstated; and the State Bar Counsel confirms that, in a disciplinary proceeding, the evidence, if true, would be sufficient to warrant suspension or disbarment of the petitioner, consistent with the factors for suspension and disbarment set forth in 27 N.C.A.C. 1B, Rule .0114(w).

If a petition for reinstatement is denied by the Council upon the recommendation of the Administrative Committee, the petitioner shall be notified of his or her right to request a hearing pursuant to 27 N.C.A.C. 1D, Section .1000.

Adopted 7/23/10

XXIX. Policies Governing the Interaction between the Lawyer Assistance Program and the State Bar Disciplinary Program

1. What kinds of cases are appropriate for LAP deferral?

A. The subcommittee identified “LAP deferral” as the procedure in which a grievance pending against a lawyer is stayed, typically for two years, while the lawyer participates in the LAP program to receive assistance with a substance abuse or mental health problem that contributed to the conduct giving rise to the grievance. The lawyer is required to sign a contract with LAP and to fulfill that contract. At the end of the LAP deferral, the grievance is returned to the Grievance Committee agenda. If the respondent lawyer has not successfully completed the LAP contract, the Grievance Committee will proceed with imposition of discipline as if the LAP deferral had not occurred. If the respondent lawyer has successfully completed the LAP contract, the Grievance Committee can (i) dismiss the grievance or (ii) consider successful completion of the LAP contract as a mitigating factor in imposing professional discipline. A lawyer who successfully completes the LAP deferral, who has no other ethical or disciplinary issues and who has otherwise complied with the conditions of deferral would not be subject to suspension or disbarment.

B. LAP deferral should only occur in cases involving small numbers of allegations of neglect and failure to communicate or other minor misconduct. LAP deferral should not occur (i) in cases involving serious misconduct which has historically been considered to warrant suspension or disbarment, such as criminal conduct, lying, stealing or other dishonesty or sexual misconduct, including but not limited to conduct that constitutes a violation of Rule of Professional Conduct 1.19, or (ii) when numerous allegations of misconduct are pending or if the lawyer has more than one previous imposition of professional discipline within the past 3 years (Letters of Warning and Letters of Caution are not professional discipline), even if the current allegations are of a type that, in smaller numbers, would be appropriate for LAP deferral.

C. If the Grievance Committee receives a new grievance against a respondent lawyer whose existing grievance file is the subject of a LAP deferral, the Chair of the Grievance Committee may immediately terminate that LAP deferral and return the deferred grievance file to the Grievance Committee’s next agenda for action.

2. Flow of information to the Grievance Committee about lawyers during and after LAP deferrals.

In LAP deferrals, the LAP will communicate the following information to the Grievance Committee:

A. Whether the respondent lawyer has been in appropriate communication with LAP;

B. If the recommended treatment includes appointments with a medical, mental health or substance abuse professional, whether the respondent lawyer is making and keeping such appointments; and

C. If the recommended treatment regimen includes regular attendance at peer support meetings, whether the respondent lawyer regularly attends such meetings.

The Office of Counsel will designate one deputy counsel to meet quarterly with an employee of the LAP program to review the cases of all respondent lawyers with current LAP deferrals to receive the information set forth in paragraphs A-C above.

The LAP Director or Assistant Director will inform the Office of Counsel within one month when a respondent lawyer fails to comply with his or her LAP contract. Upon such notice, the LAP deferral is automatically revoked and the deferred grievance file is returned to the Grievance Committee's next agenda for action.

The subcommittee does not recommend LAP be required to provide reports to the Grievance Committee about whether the deferred respondent lawyer poses a risk if allowed to practice law. This is because LAP does not believe the treatment providers with whom it regularly works would be willing to provide such information. The subcommittee concluded that the Grievance Committee could function appropriately without such reports because under the policy proposed in paragraph 1(B) above, the Grievance Committee will not implement LAP deferral in the case of any respondent lawyer it believes poses a risk to the public.

3. What kinds of cases are appropriate for LAP referral instead of LAP deferral?

The Grievance Committee and/or the Counsel can refer a respondent lawyer to the LAP program and encourage the respondent lawyer to avail himself or herself of the resources offered by LAP. Successful participation in the LAP program in these circumstances will be given whatever weight the Grievance Committee or the DHC considers appropriate as a mitigating factor.

4. Policy of asking LAP volunteers to contact lawyers who have been confronted about suspected misappropriation.

This policy will continue. There is not enough data at this time to know if it is successful, but the LAP and the Office of Counsel believe there is merit in continuing this program.

Adopted 7-23-10

XXX. Policy Regarding Exemption from Random Audit of Trust Accounts

BE IT RESOLVED: Henceforth, it will be the policy of the North Carolina State Bar Council that a lawyer may seek exemption from the random audit of trust accounts authorized by 27 NCAC 1B, Rule .0128(b), by having a CPA or CPA firm perform an examination of his/her trust account pursuant to procedures approved by the Council and having the CPA or CPA firm send a report showing compliance to the North Carolina State Bar. The required period covered by the CPA examination is 12 months. Exemptions are good for 15 months from the date the CPA examination was concluded. A lawyer is prohibited from seeking exemption from the random audit of his/her trust accounts during the quarter in which the lawyer's Judicial District Bar has been selected for review.

Adopted 7-20-12

XXXI. Delegation of Authority

It shall be the policy that any action authorized by 27 N.C.A.C. 1 to be performed by the secretary, may be performed, in the secretary's absence, by the assistant executive director acting as assistant secretary.

Adopted 10-26-12

XXXII. Winding Down the Practices of Lawyers who Die, Disappear, are Disciplined, or Become Disabled

The State Bar, by and through its staff, will when necessary and appropriate, seek the appointment of qualified members of the Bar as trustees pursuant to G.S. 84-28 (j) and 27 N.C. A.C. 1B, .0122, and support their efforts in winding-down the practices of the subject lawyers. Support shall consist of consultation and direction, as well as compensation in the event no other source of funds is available. Compensation shall be determined and paid by the Executive Director in his or her discretion. The Executive Director is also authorized to reimburse such expenses of the trusteeship as he or she deems reasonable and appropriate. The Executive Director shall report to the President, or to any committee he or she may designate, at least annually regarding the trusteeships that have been concluded since the last report, the trusteeships that remain active, and the expenditures that have been made or are contemplated. It is hereby recognized that the primary purpose of each trusteeship will be to protect the interests of the subject lawyer's clients, and that trusteeships will generally be administered to discontinue, rather than conserve or perpetuate, the practices involved.

Adopted 04-25-14

XXXIII. Guidelines for the Use of Excess Funds of a State Bar Board or Program

Subject to any legal prohibition, State Bar boards and programs that have their own revenue streams are allowed to contribute excess reserve funds (that exceed anticipated expenses for the current year plus a reasonable reserve for future expenses) to other programs or entities subject to the following hierarchy of preferences:

1st Preference: Contributed to another State Bar board or program.

2nd Preference: Contributed to an organization that is affiliated with the State Bar but not a part of the State Bar (e.g., LAP Foundation, Inc.).

3rd Preference: Given to a law-related, nonprofit organization.

In all instances, it is always preferred that funds be contributed to a program or entity that advances the mission or interests of the State Bar board or program donating the funds.

The approval of the State Bar officers must be obtained for any contribution of excess funds made pursuant to this policy.

The approval of the Council must be obtained for any contribution of excess funds to a program or entity that is not law-related or that does not advance the mission or interests of the State Bar program donating the funds.

Adopted: October 23, 2015

XXXIV. Confidentiality of Information Acquired During Service on the Council or on a Committee, Board or Commission of the State Bar

All **current and former members of the Grievance Committee**, regardless of whether lawyer, nonlawyer, councilor member, or advisory member, shall honor and preserve the confidentiality described in 27 NCAC 1B §0129. Current and former members of the committee who are lawyers shall also consider information acquired while serving on the committee to be confidential information to be protected from use and disclosure to the same extent that client information is protected under Rule of Professional Conduct 1.6, *Confidentiality of Information*.

Information acquired by a member of the council or by a member of a committee, board or commission of the State Bar **during a closed session meeting** is confidential and shall not be disclosed or utilized for any purpose during or after the member's service. Current and former council, board, and committee members who are lawyers shall also consider information acquired during a closed session meeting to be confidential information to be protected from use and disclosure to the same extent that client information is protected under Rule of Professional Conduct 1.6, *Confidentiality of Information*.

Adopted: February 1, 2016

XXXV. North Carolina State Bar Social Media Policy

Purpose

Social media provides an important and developing way to communicate and share information with State Bar members and the public. The North Carolina State Bar supports the sensible use of social media to carry out the mission and purpose of the State Bar, to increase member engagement, to enhance the State Bar’s public profile, and to improve access to information about the State Bar.

Scope

This policy applies to the North Carolina State Bar and its committees, boards, related programs or groups (each, a “NCSB entity” and, collectively, the “NCSB”).

For the purposes of this policy, “social media” means websites that may permit interaction and communication, including but not limited to online posting, commentary and publication, also known as “social networking,” among users. Some examples of social media include, but are not limited to, Facebook, LinkedIn, Twitter, and YouTube.

Policy

All NCSB social media activity shall be administered responsibly, professionally, ethically, and lawfully, and in accordance with this policy.

The Executive Director of the North Carolina State Bar is authorized to administer all NCSB social media activity. The Executive Director may designate an individual or individuals, including but not limited to members of the North Carolina State Bar Council and NCSB staff members, to administer any aspect of NCSB social media activity.

Using social media

NCSB entities are expected to use good judgment and common sense when using social media in ways that pertain to, concern, or relate to the North Carolina State Bar. The following content standards apply to any NCSB social media presence:

- A. Unless specifically authorized by the Executive Director or his or her designee, all NCSB social media activity shall be administered by the NCSB communications department.
- B. Content posted to a NCSB social media presence should be relevant to the mission of the NCSB entity and the North Carolina State Bar, including but not limited to regulating the legal profession, and advancing the administration of justice. The following is a non-exhaustive list of potential uses for NCSB social media:
 - i. To enhance the ability of the public and NCSB membership to access digital NCSB information.
 - ii. To supplement education of and information to NCSB members, including informal notices regarding membership and CLE deadlines.
 - iii. As a portal to guide users to the NCSB’s regular website.

- iv. To make available short- and long-term information about the NCSB.
 - v. For community and professional outreach and education about the NCSB's mission and activities, including information about recipients of the John B. McMillan Distinguished Service Award.
 - vi. To post NCSB updates in addition to adding content to websites or sending e-mails.
 - vii. To issue press releases.
 - viii. To notify the public about upcoming events such as official meetings of the NCSB.
 - ix. To notify NCSB staff members, Council members, NCSB members, governmental agencies, and the public during emergency situations or other circumstances that make the NCSB unable to operate in a normal fashion.
- C. Unless specifically authorized by the Executive Director or his or her designee, social media content should derive from pre-existing State Bar material and/or be available on the State Bar website (www.ncbar.gov). Content must be of professional quality and must be carefully considered. All statements must be true to the best of the knowledge and belief of the NCSB and not misleading. Content must adhere to all statutory prescriptions and Rules of Professional Conduct, including but not limited to laws and rules governing the privacy of individuals and confidential information of clients. No NCSB social media activity shall contain material that is obscene, defamatory, profane, libelous, threatening, harassing, or abusive to another person or entity or to the North Carolina State Bar.
- D. Content posted to NCSB social media must comply with the rules and terms of use of the applicable social network or social media page, to the extent those rules and terms of use are not inconsistent with this policy.
- E. Unless otherwise approved by the Executive Director or his or her designee, NCSB social media activity shall be purely informational and not interactive. To the extent possible, content (including any comments, posts, etc.) posted by a non-NCSB individual or entity on NCSB social media shall not be permitted or approved.
- F. Any NCSB staff member or volunteer using NCSB social media must ensure that content posted on NCSB social media is in compliance with copyright law by ensuring that the NCSB entity has permission to use or reproduce any copyrighted text, photos, graphics, video or other material owned by others. Any copyrighted or borrowed material must be identified with appropriate citations and links, giving credit to the original publisher or author.
- G. Content posted by a NCSB entity must comply with all other applicable North Carolina State Bar policies, including, without limitation, the North Carolina State Bar's policies concerning legislative and regulatory activities. In addition, no NCSB entity shall use a NCSB social media presence for the purpose of interfering with or affecting the result of an election or a nomination for public office, or advocating for or against a partisan political party, candidate for partisan political office, or partisan political group.

Records Retention

Social media sites contain communications sent to or received by the NCSB and its employees, and such communications are therefore public records subject to North Carolina public records laws. The NCSB shall preserve records pursuant to a relevant records retention schedule for the required retention period in a format that preserves the integrity of the record. The NCSB utilizes an automated archiving solution provided by the NC Department of Cultural Resources to comply with applicable public records law and fulfill the above record retention requirements. The archive is available at: nc.gov.archivesocial.com.

Media Inquiries

Social media postings may generate media coverage. If a member of the media contacts a NCSB entity about NCSB social media activity, that contact should be referred to the North Carolina State Bar's Executive Director or his or her designee.

Enforcement

If the Executive Director or his or her designee deems any NCSB social media activity to be inappropriate, immediate action may be taken to enforce this policy as deemed appropriate. NCSB entities failing to comply with this policy may forfeit the right to participate in social media activities sponsored by, administered by, approved by, or affiliated with the North Carolina State Bar. Moreover, nothing in this policy alters, derogates from, or otherwise affects North Carolina State Bar staff members' or volunteers' (a) legal obligations under civil or criminal law or (b) ethical and professional obligations under the Rules of Professional Conduct.

Security

Each social media site shall have at least two account administrators to provide backup in the event one of the administrators is unavailable. The Executive Director or his or her designee shall have administrative access to each social media platform, including the account passwords. Passwords to social media platforms shall be unique and shall be changed on a quarterly basis. The account administrator(s) shall have primary responsibility for oversight of design and legitimacy of social media content and for content management, including use of appropriate language and frequency of updates.

Approved Social Media Platforms

The following platforms are approved for use by NCSB:

- A. Facebook
- B. Twitter
- C. LinkedIn
- D. YouTube

ADOPTED: April 22, 2016