

THE NORTH CAROLINA STATE BAR

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# JOURNAL



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# NCLAP, LAP Foundation of NC, and the “Butterfly Effect”

BY DARRIN D. JORDAN

In December 1972, at the 139th meeting of the American Association for the Advancement of Science, Edward Lorenz, an American mathematician and meteorologist who established the theoretical basis of weather and climate predictability, asked the question, “Does the flap of a butterfly’s wings in Brazil set off a tornado in Texas?”<sup>1</sup> While the question was intended for scientific purposes and discussion, the concept was soon referred to as the “butterfly effect” and was “embraced by popular culture, where the term is often used to emphasize the outsize significance of minute occurrences.”<sup>2</sup>

While I don’t normally subscribe to concepts and ideas that “pop culture” has adopted or embraced, the butterfly effect is a concept that I see in my life and in the lives of family members, friends, and clients...most especially clients. Because “everything that happens is influenced by what came before and in its turn influences what comes after,”<sup>3</sup> I believe that the smallest gestures or actions of kindness can create results that have a profound effect in our homes, businesses, and communities.

During a recent dinner with some officers, staff, and councilors of the North Carolina State Bar, our conversation evolved into a discussion about the North Carolina Lawyer Assistance Program (NCLAP)<sup>4</sup> and the great job that Robynn Moraites, LAP executive director, and her staff are doing to assist attorneys who are experiencing problems with substance abuse and/or mental health issues. For those wondering how NCLAP fits into the mission of the State Bar, consider that many times ethical violations which could be grounds for discipline are the result of sub-



stance abuse or mental health issues. The work of NCLAP protects the public—the State Bar’s core mission—by identifying and providing assistance, hopefully before discipline is required or harm to the public has occurred. The price that the State Bar pays to fund the NCLAP pales in comparison to the monumental benefit NCLAP provides to the general public and to the attorneys that the program helps. It truly is the best thing we lawyers do for lawyers and the general public. I believe that NCLAP is an example of the

butterfly effect where an “outsize” result occurs from a “minute occurrence.” But there are other small gestures of kindness that attorneys in North Carolina can participate in that will produce monumental results.

In the late 1990s, volunteers of the Positive Action for Lawyers (PALS) Committee, the substance abuse predecessor of NCLAP, discovered that “the sad reality is that many lawyers and judges cannot afford the treatment they so desperately need because their impairment has either clouded their judgement or left them incapable of adequately managing their affairs to the point they are in financial ruin.”<sup>5</sup> To provide needed financial assistance to these lawyers and judges, volunteers formed a 501(c)(3) foundation that “provides grants and loans to lawyers and judges who qualify financially for assistance.”<sup>6</sup> Today this foundation is known as the LAP Foundation of North Carolina, Inc., which “exists solely to raise funds to support NCLAP in its efforts to help lawyers and judges with mental health issues and drug and alcohol problems obtain the treatment they need.”<sup>7</sup> In 2016, in an effort to replenish the foundation’s funds, the

## Stories from Two Attorneys Helped by the LAP Foundation

“NC LAP and the LAP Foundation stood up for me when I could not stand on my own. I had survived my entire life with the mistaken idea that seeking help was an indication of weakness. I was knocked down. I was afraid, and I was angry. I was facing the potential loss of my career and inability to provide for my family along with the realization that I could not fix the situation. Though I did not believe in mental health treatment, counseling, or support groups, I did all three. Miraculously, they all helped. I had no reliable income, and the LAP Foundation supported my recovery by loaning me money to obtain the services I needed. I am back to practicing law full-time and I could not be more grateful.”

“After 25 years of child abuse and neglect cases, I was incapacitated by depression. I had stopped sending in fee apps for court-appointed work and stopped billing private clients. It took what little energy I had to show up in court. I broke down in court one day. I could not go on. LAP was a Godsend. But I had no money, no health insurance, and my house was in foreclosure. I could not afford medication or counseling. The LAP Foundation paid for my medication and counseling until I was stable enough to work and bill again. I cannot imagine where I’d be today without the help I received. Thank you from the bottom of my heart.”

# THE JERNIGAN LAW FIRM



Leonard T. Jernigan, Jr. is pleased to announce that his 2021-2022 supplement to Jernigan's *North Carolina Workers' Compensation: Law and Practice* (5th Edition) is now available from Thomson Reuters (1-800-328-9352).

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foundation's board launched a major gifts fundraising campaign that sought funding by soliciting lump sum donations. Since the 2016 campaign, the foundation's board has also reached out to possible donors requesting legacy donations and, more recently, monthly donations.

The assistance provided by the foundation's assets can come either as a grant or a loan. "About half of the funds are used in a revolving loan program, with monies repaid by lawyers and judges over time [and] [a]bout half of the funds are given as grants for short term emergency care (such as crisis stabilization, medication and counseling, or short-term treatment)."<sup>8</sup> And "[t]he eligibility guidelines require that a lawyer or judge meet slightly modified federal poverty guidelines to qualify for financial assistance from the foundation. There can be no 401K or IRA resources in the background."<sup>9</sup>

Many of you may not be aware of the LAP Foundation of North Carolina, Inc. I must admit that even though it has been in existence since the late 1990s, I wasn't sure what it was and what it did for attorneys in North Carolina. The 2016 fundraising campaign changed all of that for me as I spent some time learning about their mission. Like most of you, I practice in a small firm in a small town and in a rural county. When the bills are paid, the employees are compensated, and the profits are disbursed each month, there is not always a lot of extra money lying around. What is available has

usually been pledged to a local cause or non-profit. Even so, I wanted to get involved with the work of the foundation, partly because of the impact that it had on the attorneys who were beneficiaries of the foundation's loans or grants, but more importantly because it advances the mission of NCLAP, a program whose success is vital to the mission of the State Bar. So, in 2016 during the height of the foundation's fundraiser, I set up a small and, what I considered, an insignificant contribution each month through my PayPal account. In comparison to the lump sum contributions that were made by large firms and well-heeled attorneys all over our great state, I considered my contribution to be similar to the wind created by the "flap of a butterfly's wings." For a significant amount of time, my monthly contribution was the only one of its kind. I know this because after receiving a "thank you" note for several of my "minute" donations, I notified Robynn that she didn't need to thank me for each individual donation, and she told me that my donation was "one of a kind." Even though I felt my contributions were not doing a lot to help, Robynn assured me that, added up over the year, my contributions would pay for a couple sessions with a counselor or maybe a couple of days of inpatient care that an attorney needed. Most importantly, my contributions, combined with the much larger contributions, advanced the mission of NCLAP.

Since 2016, this small insignificant amount has been withdrawn from my bank account without my really noticing. As some of the officers, staff, and councilors of the State Bar had dinner on the occasion I mentioned above, I told them about this contribution. I can assure you it wasn't to boast as the amount is so small. I wondered out loud what kind of effect we could get if attorneys in North Carolina would go to the foundation's website and pledge to donate an amount that would seem to be insignificant because they wouldn't even know it was taken out of their account each month. I was encouraged to share this story and so, as my last chance to write to you as president of the North Carolina State Bar, I am doing just that, and in doing so I am asking each of you to consider making a small donation to the LAP Foundation of North Carolina. They have made it so easy to do so. Just go to [lapfoundationnc.org](http://lapfoundationnc.org), click on "Make a Contribution," check the box to "make this a monthly donation," and then enter an amount that makes you comfortable. It is important that I support the foundation and I hope you will consider it to be something you can do to bring about the butterfly effect to the foundation and the mission of NCLAP. ■

*Darrin D. Jordan is a partner with the law firm of Whitley, Jordan, Inge & Rary, PA. He maintains a criminal practice in both state and federal court and is a board certified specialist in state criminal law. While he practices in his hometown of Salisbury, he lives in Kannapolis.*

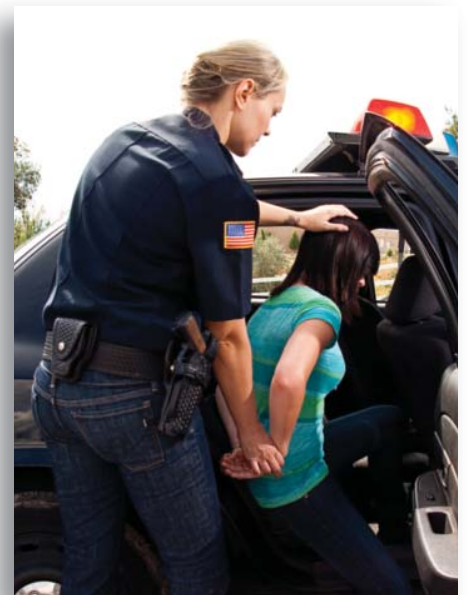
## Endnotes

1. *Understanding the Butterfly Effect*, by Jamie L. Vernon, American Scientist, July-August 2022, Volume: 110 Number: 4.
2. *Id.*
3. Quotation of "a black man named Crowe" in *Fugitives of the Heart* by William Gay.
4. NCLAP is a service of the North Carolina State Bar which provides free, confidential, non-disciplinary assistance to lawyers, judges and law students in addressing mental health issues, including problems with drugs or alcohol, and other life stresses which impair or may impair an attorney's ability to effectively practice law. NCLAP assistance is designed to promote recovery, protect the public, prevent disciplinary problems for lawyers, and strengthen the profession." ([nclap.org/mission](http://nclap.org/mission))
5. [lapfoundationnc.org/the-need](http://lapfoundationnc.org/the-need).
6. *Id.*
7. *Id.*
8. [lapfoundationnc.org/faqs](http://lapfoundationnc.org/faqs).
9. *Id.*

# Supporting Criminal Justice Reform

BY JESSICA SMITH

Stakeholders and leaders throughout the state are seeking to improve the criminal justice system. First and foremost, they want improved public safety. But they also want a fair and effective system and economic prosperity, for individuals and communities. At the UNC School of Government Criminal Justice Innovation Lab, we are proud to support this work and the state and local officials leading these efforts.



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## What's Driving the Interest?

Interest in improving the criminal justice system isn't limited to any one type of jurisdiction. We know this because we're supporting stakeholders in rural, suburban, and urban jurisdictions. Nor is it limited by politics. We're supporting stakeholders in counties that vote blue, purple, and red. The interest isn't contained by geography. We're supporting jurisdictions in Eastern North Carolina, Central North Carolina, and Western North Carolina. And the interest isn't isolated to one type of stakeholder. It is coming from the full range of justice system actors including judges, prosecutors, clerks, magistrates, sheriffs, and police chiefs. And it's coming from state legislators who budget

for the court and prison systems and local elected officials who budget for police services and the county jail. Interest also is coming from business leaders concerned about the system's impact on the state's workforce and the barriers it creates for individual and community prosperity. And it's coming from community members and a broad range of advocates, such as those seeking better results for victims, seeking more efficient government, and wanting to address racial disparities in the system.

To help understand the tsunami of interest in this area, consider the following case examples:

John, a homeless veteran dependent on alcohol and experiencing behavioral health

issues, lives in "Anytown," North Carolina. John, and several other individuals like him, have taken to sleeping in the public park in the center of town. A local store owner, concerned that this is creating an undesirable and unsafe environment and is discouraging residents from visiting the downtown shopping district, calls 911 to request police assistance in clearing the park. Police officers respond and ask John to move along. Having nowhere to go, John declines. Officers then arrest John for sleeping in a public park. This particular offense isn't created by state law. Rather, it's made criminal by a local town ordinance and is a low-level misdemeanor offense. John is taken before a magistrate for bail

conditions. The magistrate imposes a \$50 secured bond in John's case. But because John doesn't have \$50, he remains in jail until his case comes up for trial some weeks later. Ultimately, John is convicted because, after all, he was violating the local ordinance—he was sleeping in a public park. However, since this is a low-level conviction that cannot be punished with incarceration, John immediately is released. But nothing about John's situation has changed. John still is homeless, dependent on alcohol, and experiencing behavioral health issues. So, when John is released back into the community at the conclusion of his criminal case, he resumes the same activity that caused him to enter the system in the first place: sleeping in the public park. And the process begins anew with another call to 911.

When stakeholders and community leaders consider John's case and those like it, they are asking questions like: Are there less expensive and more effective options outside of the justice system to address issues like homelessness, substance use, and mental health? What if the call for service had been routed to a homeless outreach or behavioral health team instead of the police—could John have been connected with community-based services that might have addressed the root causes of his behavior and broken the cycle of criminal justice involvement? Is it appropriate to incarcerate people not because they present a risk to the community, but because they can't pay to get out of jail? Is it appropriate to do so for offenses that don't carry the potential for incarceration upon conviction? And, more fundamentally, is criminalizing behavior the most effective public policy option for addressing the types of issues John is experiencing?

Michael is 20 years old and works at a local auto body shop. One Friday night, Michael drives down main street. An officer stops him and issues a citation for the crime of speeding, a common, low-level traffic misdemeanor offense. Michael shows up for his first court date as directed on the citation. He doesn't have money to hire a lawyer, so he shows up alone. The courtroom is packed with people waiting for their cases to be heard. Michael waits around for about three hours. When his case is called, some preliminary matters are addressed, and the case scheduled for a trial date. Because Michael's offense doesn't carry the possibility of incar-

ceration upon conviction, Michael doesn't receive a court-appointed lawyer. Michael shows up on his trial date and again waits a few hours for his case to be called. But when that happens, the charging officer is unavailable because of mandatory training. Because of that, the case is continued to another date, several weeks later. When the next court date rolls around, Michael can't get off work. He's already taken two days off for his prior court dates, a couple of team members at the auto body shop are out with COVID, and his boss can't spare him. The court system gives Michael no option to reschedule his court date to a more convenient time—there is no call-in line that he can use or website that he can visit to reschedule. And, of course, going to court isn't a quick matter—it likely will be another all-day affair between travel, wait time, and having his case heard. So, Michael misses this third court date. When his case is called, the judge follows standard procedure and issues an order for Michael's arrest. Michael is taken into custody, and following statutory law, the magistrate imposes a \$1,000 secured bond. Because Michael can't pay the bond, he remains in custody—like John—on an offense that's unlikely to result in incarceration upon conviction. Also, because Michael doesn't have the money to resolve his case, the court system reports his non-appearance to the Department of Motor Vehicles and Michael's driver's license is revoked. Because Michael's town has no public transportation, he's in a bind: He is barred from driving because of his missed court date, but if he doesn't go to work, he'll lose his job. Michael chooses to drive to work. When he gets pulled over for a minor traffic infraction, the officer sees that Michael's license is revoked and charges him with the crime of driving while license revoked. And the whole process starts again.

When stakeholders and community leaders consider Michael's case and those like it, they are asking questions like: Can we streamline case processing to make resolving minor traffic offenses more efficient and effective? Can we offer supportive services, like court date notifications, to promote court appearance? Would easy scheduling and rescheduling options promote appearance? Is it appropriate to jail someone pretrial for a first missed court date in a low-level offense when they clearly are trying to comply? Given the consequences of Michael's case, should he have a lawyer? And, does

revoking a driver's license because of a failure to appear really advance our policy objectives or does it just trap people in the system?

Now consider Mary, a single mom with two children who works at the local home improvement store. Mary lives paycheck to paycheck. As it gets to the end of the month, Mary is low on cash and needs gas to drive to work. Mary then makes a bad decision. She goes to the local gas station and pumps \$10 worth of gas and drives off. An officer sees this behavior, pulls over her vehicle, and arrests her for larceny of motor fuel, a misdemeanor offense. Mary is brought before the magistrate for a bail decision. Using the local bond table, the magistrate sets a \$1,000 secured bond in Mary's case, thinking that she'll come up with the money. Mary can't pay the bond; after all, she didn't have \$10 to pay for gas. Mary then sits in jail until she can get before a judge and hopefully have her bond reduced. But meanwhile, she misses two days of work and loses her job. Because she's a single mom and couldn't take care of her children while she was in jail, her children are put into the custody of social services. By the time she gets out of jail, Mary has lost her job, gotten behind on rent and is at risk of losing her housing, and doesn't have her children. All these factors, of course, set her up for additional involvement with the criminal justice system.

In cases like Mary's, stakeholders are asking: Could the system have worked more effectively to hold Mary accountable for her actions without creating the cascading set of consequences that she and her children experienced? What if, for example, the officer had chosen to issue Mary a citation for this low-level, non-violent offense instead of taking her into custody? What if the magistrate had considered Mary's risk to the community when setting bail instead of consulting a bond table to determine her conditions of pretrial release? And, if the magistrate had considered Mary's ability to pay bail, might this have avoided her unintended detention?

A final case example involves Samuel, who is charged with trafficking in heroin. Samuel has been held on a \$1 million bond set by the magistrate and is in court for judicial review of his bail. The prosecutor argues for a \$5 million bond, asserting that Samuel has resources to buy his way out of jail and that once he does, he will intimidate or eliminate the witnesses so that he can't be brought to trial. The judge sets a \$5 million bond.

Samuel negotiates a fee with a bondsman, bonds out of jail, and the witnesses disappear.

In cases like Samuel's, stakeholders are asking: Is it right that Samuel—the most dangerous defendant in our case examples—can bond out of jail while John, Michael, and Mary end up detained not because of risk, but because of lack of resources? What can we do to ensure that the most dangerous defendants like Samuel remain in custody pretrial?

These scenarios illustrate just some of the questions that stakeholders and local leaders are asking about the criminal justice system. And if you're wondering how common some of these scenarios are, read on to learn more.

### What We Do

At the Criminal Justice Innovation Lab, we support stakeholders and leaders as they work to address these and other challenging issues. The Lab seeks to promote a fair and effective criminal justice system, public safety, and economic prosperity through an evidence-based approach to criminal justice policy. We are strategically focused on “front-end” issues, such as policing, overcriminalization, and bail. We do this for the simple reason that improvements at the system's entry point have the greatest potential for impact. We also work on “back-end” issues, such as reentry, that if not handled correctly can result in people cycling back into the system, as we saw in John and Michael's cases. Our work falls into three buckets: foundational research, pilot projects, and model tools.

### Foundational Research

Our foundational research spotlights challenges and opportunities in the system. It includes legal briefings, research summaries, and empirical research. Our legal briefings unpack the complex constitutional and statutory rules governing the system. For example, our legal briefing on preventative pretrial detention sets out the statutory and constitutional guardrails to establishing a preventative detention scheme in North Carolina, to address the public safety issue presented by Samuel's case.<sup>1</sup> Likewise, our legal briefings on national bail litigation keep stakeholders current on emerging constitutional issues that may create litigation risk.<sup>2</sup> And our legal briefings on new legislation help stakeholders plan for compliance with new statutory rules.<sup>3</sup>

In our research summaries, we curate and summarize empirical research on key topics, making this important work accessible so that stakeholders can apply it to current, real-world issues. For example, one of our briefings summarizes the national research on the effectiveness of various types of pretrial supervision services, such as GPS monitoring, court date reminders, and the like. For jurisdictions that are considering how to best spend limited pretrial supervision dollars, this briefing helps them understand which supervision services are and aren't effective so that they can wisely use taxpayer dollars to promote public safety.<sup>4</sup> Another summarizes the literature on the effectiveness of indigent defense delivery systems, informing policy choices about how the state's indigent defense system can best be administered.<sup>5</sup>

Finally, our empirical research organizes and analyzes data to pinpoint where stakeholder efforts would be most effective. One of our most popular empirical research projects is our new Measuring Justice Dashboard.<sup>6</sup> The dashboard is free and available to all online. It provides simple data visualizations to help stakeholders and leaders better understand state and local criminal justice systems. Consider, for example, Figure 1, shows the com-

position of criminal charges in the North Carolina justice system in 2021. Those who get their information about the criminal justice system from the newspaper or the nightly news might think that violent crimes are driving the state system. But that's not the case. As shown below, nearly 1.2 million of the 1.3 million charges that made up the state's criminal justice system in 2021 were misdemeanors. And over 1 million of those misdemeanor charges were for non-violent offenses.

Figure 1 also shows that even among felony offenses—which make up a very small proportion of the charges in the system—the vast majority of charges are for non-violent offenses. Our research shows there was nothing special about criminal charging in 2021. We see the same pattern year after year. And we see the same pattern both at the state level, as shown in Figure 1, and in counties across North Carolina. With the click of a mouse, stakeholders can engage with this data on the dashboard.

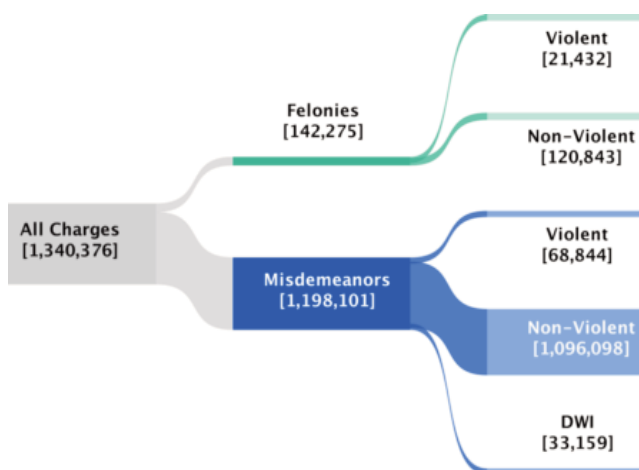
Other sections of the dashboard show that the single most commonly charged group of non-violent misdemeanor offenses—by a longshot—are non-impaired driving traffic offenses. Figure 2 shows the ten most commonly charged offenses statewide in 2021. Non-impaired driving traffic offenses occupy nine of the top ten spots. Remember Michael from our case scenarios at the outset? His original charge—speeding—is the single most commonly charged offense in North Carolina. Michael's second charge—driving while license revoked, non-impaired revocation—was the third most commonly charged offense in 2021. Again, there is nothing special about this information in 2021. On the dashboard, stakeholders can see this pattern repeated year after year, at both state and county levels.

Why does this research matter? Having this information is changing the way people think about the justice system. When stakeholders see this data, it creates opportunities for discussion and common ground on improvements targeted to lower-level offenses that make up the bulk of the system. And because there are so many of these offenses, improvements that address these offenses will have the greatest impact.

Ever since the protests following the death of George Floyd, questions about racial issues in the criminal justice system have captured attention at national, state, and local levels. Simple dashboard tools

**Figure 1. Criminal charging in North Carolina, statewide 2021**

*Note: DWI refers to impaired driving and related charges.*



Rank	Description	Type	Category	Offense Total
1	Speeding	Misdemeanor	Non-DWI Traffic	281,910
2	Expired registration card/tag	Misdemeanor	Non-DWI Traffic	139,091
3	Driving while license revoked, non-impaired	Misdemeanor	Non-DWI Traffic	124,120
4	No operator's license	Misdemeanor	Non-DWI Traffic	96,775
5	Reckless driving to endanger	Misdemeanor	Non-DWI Traffic	37,742
6	Operating vehicle no insurance	Misdemeanor	Non-DWI Traffic	37,454
7	Fictitious/alterd title/registration card/tag	Misdemeanor	Non-DWI Traffic	31,035
8	Driving while impaired	Misdemeanor	DWI	28,210
9	Reckless driving - wanton disregard	Misdemeanor	Non-DWI Traffic	26,535
10	Drive/allow motor vehicle no registration	Misdemeanor	Non-DWI Traffic	22,817

Figure 2. Ten most commonly charged criminal offenses, statewide in North Carolina, 2021.

Note: DWI refers to impaired driving and related charges.

allow stakeholders to explore these important issues. Figure 3—again, taken directly from the dashboard—shows warrantless arrests in North Carolina misdemeanors cases in 2021, by race and local demographics. As shown there, while Black individuals make up just 22.1% of the population, they make up 37.4% of misdemeanor warrantless arrests. As we note on the dashboard, racial differences may or may not be explained by other factors. But notwithstanding that, these data points give stakeholders a starting point for exploring racial differences in the system.

### Pilot Projects

The Lab also supports pilot projects throughout the state. In these efforts, we help local stakeholders as they seek to better understand how their systems currently function; support their efforts to innovate consensus solutions; help them implement those solutions; and follow up with empirical evaluations to help them understand the impact of their efforts. For example, in 2019, Forsyth

County stakeholders asked us to support their efforts to examine and improve their local pretrial system. As is typical of our projects, a wide range of stakeholders were involved, including the senior resident superior court judge, chief district court judge, the chief public defender, representatives from the District Attorney's Office and the Sheriff's Office, local law enforcement leaders, the clerk of court, the chief magistrate, the chief probation officer, and others. In that project, stakeholders were primarily focused on avoiding the unnecessary detention of low-level, low-risk defendants and the negative downstream consequences those detentions cause for public safety, the individuals detained, their families, and the larger community—people like John, Michael, and Mary.

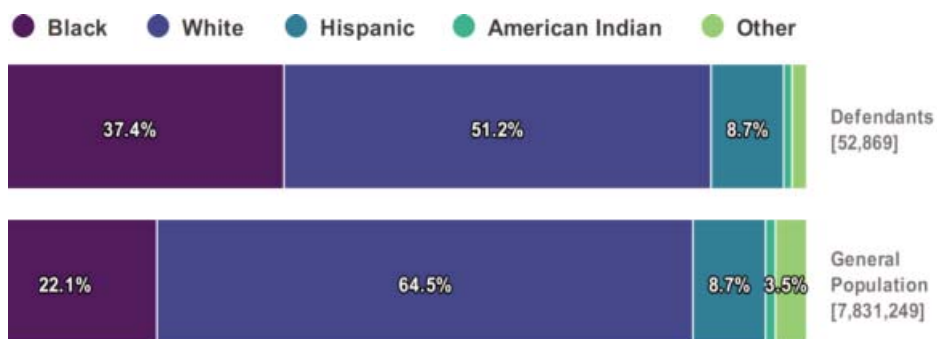
We supported local efforts, and in January 2020, with unanimous agreement of all involved stakeholders, Forsyth County implemented significant changes to local pretrial procedures; specifically, a new structured decision-making tool for judges and magistrates to use when making bail deci-

sions. We supported their efforts in developing the tool, including developing necessary procedures, executing training for all involved stakeholders, reviewing forms, and following up with implementation feedback as the project progressed. We are executing an empirical evaluation to help stakeholders understand the impact of their efforts, after working with them to define the relevant process and outcome measures. In April 2022 we released a report ana-

lyzing over a year of post-implementation data.<sup>7</sup> Project results were positive across every metric: reduced rates of imposition of secured bond, especially in lower-level misdemeanor cases that were the target of reforms; no racial differences in imposition of secured bond or secured bond amounts; a reduction in the percent of people who incurred new charges during the pretrial period; a reduction in nonappearance rates; and a reduction in monthly jail detentions and detention lengths. Throughout the evaluation phase of this project, we have been producing twice-yearly reports to stakeholders. This is important because their work can impact public safety. As stakeholders implement changes, they want timely information about the impact that their efforts are having on key public safety and related measures. Our reporting does that and gives them an opportunity, as may be necessary, to modify or improve their reforms.

Our docket of pilot projects is large and growing. We just completed the first phase of the North Carolina Court Appearance Project, executed in partnership with The Pew Research Center. In that project, we worked with three county-level teams to help them improve court appearance rates and judicial responses to non-appearances (Figure 4). Those teams included rural (Robeson), suburban (Orange), and urban (New Hanover) counties. Research developed in that project highlights just how common Michael's experience really is. Project research showed that missed court appearances occurred in about one in six North Carolina criminal cases. These included people who missed their very first court hearing and individuals who missed a hearing after having successfully appeared multiple times.

Figure 3. Misdemeanor warrantless arrests, by race and local demographics, statewide 2021.



Collectively, they amounted to almost 250,000 missed hearings a year, a significant strain on court systems. Missed appearances require additional resources from court and law enforcement personnel and generate orders for arrest and other collateral harms for court users. We supported stakeholders as they innovated policy solutions to address this important issue.<sup>8</sup> In a planned second phase of this work, we will support the three project teams as they seek to implement these initiatives, share their work more broadly, and develop an online “self-service” project page where stakeholders anywhere in North Carolina can access models and tools

to address court appearance issues.

In the Rural Jail Project, we are working with a similar group of stakeholders in Columbus County to help them better understand the factors that influence local pretrial practices in their rural jurisdiction and support their efforts to develop solutions that make sense for their county. In that project, we’re focused on helping stakeholders better understand trends in local pretrial populations and answering questions like: How many people are being booked into and released from the local jail? Who are they and why are they being booked? How long are they in jail pretrial? We will present this infor-

mation to stakeholders and help them identify issues and explore solutions. As always, local stakeholders control all policy solutions. We hope this project will be a springboard for an even greater docket of work supporting rural communities that often lack the resources of their urban and suburban counterparts to address pressing issues.

Policing is another important area of work for the Lab. We are executing a large multiyear project in collaboration with the North Carolina Association of Chiefs of Police (NCACP) called the Citation Project.<sup>9</sup> In that project, we worked with the police chief members of the project team to develop a model citation in lieu of arrest policy and implement that policy in four North Carolina pilot police departments (Figure 5). That project, now in the evaluation phase, goes directly to a question asked about Mary’s case: What if the officer had chosen to issue Mary a citation rather than make a custodial arrest?

The Citation Project is not our only major policing project. In 2022 we launched another project with the NCACP designed to support police and community leaders as they explore the benefits and challenges of alternate response models. Interest is growing nationally and in North Carolina in alternative responder systems to better promote public safety, better connect people with needed services, and reduce reliance on the justice system to address social problems—an issue we saw front and center in John’s case. These systems can include police-based systems, such as crisis intervention teams and law enforcement assisted diversion; co-responder systems, such as homeless outreach and co-responder teams; and community responder systems, such as mobile crisis teams. That project begins with a survey of North Carolina police chiefs so that state and local leaders can better understand what models already are in place in North Carolina and what new programs are planned. Once that work is complete, we will execute case studies of promising programs, digging deeper into the benefits and challenges of these initiatives. And, as always, we’ll share project results to foster collaboration and advances in the field.

Although not an exhaustive list of our pilot projects, these examples illustrate range of the projects that we support.

## Model Tools

Finally, we take the work from our foun-

Figure 4. Policy solutions developed by Court Appearance Project stakeholder teams

## Policy Solutions at a Glance

Steps to Increase Court Appearance	New Hanover	Orange	Robeson
Improve text message reminders for court	✓	✓	✓
Design law enforcement “palm cards” with helpful links and information		✓	✓
Offer support with transportation to court		✓	✓
Reduce wait times for hearings with block scheduling		✓	
Formalize and expand options for remote or virtual participation in court	✓	✓	✓
Launch diversity and inclusion initiatives to foster community trust		✓	
Set benchmarks for reducing disposition times and continuances	✓	✓	
Better Responses to Nonappearance	New Hanover	Orange	Robeson
Implement walk-in hours for people to resolve missed court appearances	✓	✓	
Reduce unnecessary orders for arrest through a nonappearance bench card	✓	✓	
Implement a grace period before issuing some orders for arrest		✓	✓
Provide driver’s license restoration support	✓	✓	✓
Partner with service providers to help high-needs populations get to court	✓	✓	
State-Level Recommendations	Joint Recommendation		
Stop revoking driving privileges for missed court dates		✓	
Eliminate mandatory bond doubling statute		✓	
Expand access to state’s criminal justice database with nonappearance history and jail custody status		✓	
Simplify forms given to people charged with crimes by law enforcement and courts		✓	

✓ Indicates new or improved policies prioritized in the project.

✓ Indicates pre-existing initiatives

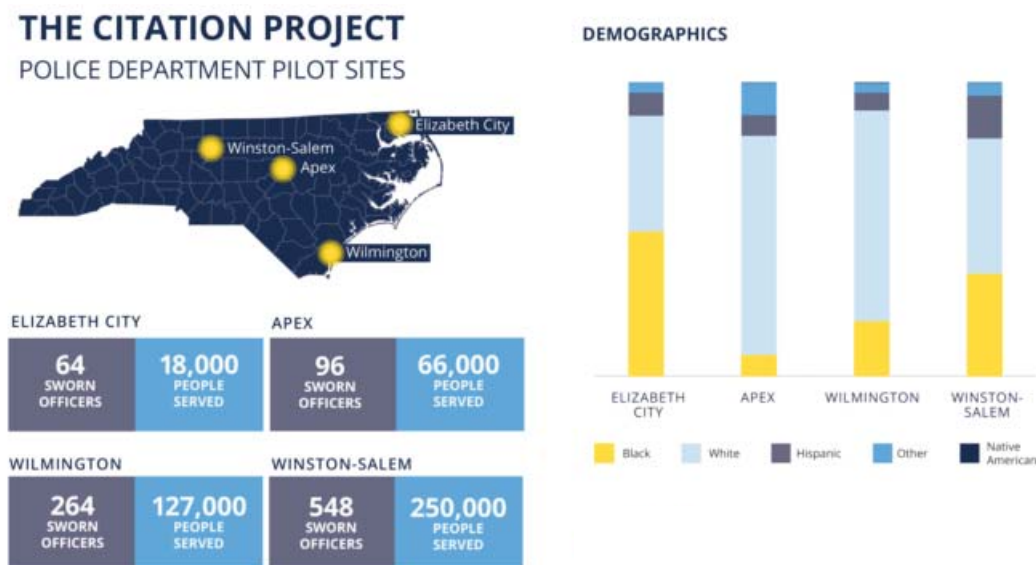
dational research and pilot projects and develop model tools that stakeholders can put to use today to improve state and local justice systems. These tools include things like flowcharts, templates, model procedures, implementation plans, forms, and more. Stakeholders and local leaders can take these tools and use them “as is” or tailor them to meet local needs. An example is our Model North Carolina Local Bail Policy, a free online tool that provides policymakers with the legal and evidence-based guardrails for local bail policy. Where the law or evidence supports a multitude of approaches, we provide a multitude of options, including standard language that can be used without change or modified as needed.

We love helping stakeholders through pilot projects, but we’ll never have the capacity to accept every project that lands on our doorstep. By open sourcing innovations developed in those pilot projects, we aim to create a toolbox of legal and evidence-based tools that stakeholder can access when and where they need them.

## Who We Are

**Team**—The Lab is a small but mighty team. I serve as the Lab’s director. Other team members include three full-time project managers, a post-doctoral fellow, and a group of PhD and master’s students. With generous foundation funding, we’ve just expanded our team to include a research director and a legal research specialist. But the Lab is more than our internal team. Each of our pilot projects includes one or more expert empirical researchers from UNC, other universities, or research organizations such as RTI International, Policy Research Associates, or The Pew Research Center. And, most importantly, all our pilot projects are led by state and local stakeholders, who drive the work and make all the policy decisions. Those stakeholders vary, depending on the nature of the project. For projects where we are supporting local stakeholders in improving pretrial systems, for example, those local stakeholders

Figure 5. Citation Project Police Department Pilot Sites



may include judges, prosecutors, defenders, the clerk of court, magistrates, law enforcement leaders, county officials, and community representatives.

**Funding**—In addition to support from the UNC School of Government, the Lab’s work is funded through foundation grants and gifts and services that we provide under contract. We are proud that the diversity of our donors reflects the diversity of the stakeholders that we support. And we never accept funds from any entity that seeks to control or direct any substantive aspect of our work. This value-based restriction ensures that stakeholder priorities drive our work and that stakeholder decisions control all policy issues.

**Values**—The mission of the UNC School of Government is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials understand and improve state and local government. For 90 years the school has built a legacy of trust with North Carolina’s public officials. The foundation for that legacy includes three core values: nonpartisan, policy-neutral, and responsive. The Lab’s work falls squarely within the school’s mission, and these core values are part of our DNA.

Non-advocacy is central to our work, and that value informs our efforts every day. For example, in the pilot projects that we support, stakeholders always are in the driver’s seat. Our job is to provide them with the legal- and evidence-based map. But the

roads they choose to travel—the policy choices—are entirely their decision. We’re scrupulous about staying in our lane on those matters.

Our process is a deeply collaborative one, and that’s by necessity and design. It’s by necessity because we believe that the people who are closest to the work have the best ideas for fixing the system. Not sure about that? Spend time with a prosecutor, defender, magistrate, clerk, law enforcement officer, or someone impacted by the system and you’ll have a basketful of ideas. Our collaborative process is by design because we know from experience that having diverse perspectives results in stronger projects. Diverse perspectives ensure that all issues and ideas get fully vetted and protect against blind spots.

Lab values also include openness and transparency. When you check out the dashboard online, you’ll notice that it contains a Methodology section where we fully explain our processes and analyses. There is no mystery about where the data comes from or how we process it to produce the dashboard’s visualizations. Likewise, our empirical reports contain detailed data and methodological notes.

Another Lab value is integrity. Among other things, that means that we’ll always be straight with the stakeholders we support. We hope that their projects yield positive results, but if they don’t, we won’t sugarcoat

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## IMPORTANT NOTICE REGARDING STATE BAR EMAILS

As a member of the North Carolina State Bar, you are routinely sent critical emails regarding dues notices, CLE report forms, etc. To increase efficiency and reduce waste, many reports and forms that were previously sent by US mail will now only be emailed. To receive these emails, make sure you have a current email address on file with the State Bar. You can check membership information by logging into your account at [portal.ncbar.gov](http://portal.ncbar.gov).

If you have unsubscribed or fear your email has been cleaned from our email list, you can resubscribe by going to [bit.ly/NCBarResubscribe](http://bit.ly/NCBarResubscribe).

Thank you for your attention to this important matter.



# Proposed Changes to CLE Rules Republished with Amendments

BY PETER BOLAC

On July 21, 2022, the State Bar Council voted to republish the proposed changes to the CLE rules for another quarter along with additional amendments recommended by the CLE Board. The board made several revisions to the proposed rules following a review of the comments received from the initial publication of the rules in the Summer 2022 edition of the *Journal* and from meetings with various district bars and bar organizations over the past quarter. The Summer 2022 *Journal* article can be found on the State Bar's website ([bit.ly/CLErules](http://bit.ly/CLErules)). This executive summary details the new revisions and answers some of the frequently asked questions we received from lawyers. The full text of proposed rule changes follows this summary, and the new revisions are highlighted in bold, red text.

## New Revisions to Proposed Rules

The CLE Board recommended and State Bar Council approved the following revisions to the proposed rules:

### Carryover Credit is Back

- The board voted to allow lawyers to carry over up to six hours of credit from one reporting period to the next.
- The revisions also clarify the board's intent to permit any carryover hours earned pursuant to the current CLE rules to transfer into the first reporting period under the new rules.
- Carryover hours cannot be used to satisfy a lawyer's ethics, professional well-being, or technology training requirements.
- The elimination of carryover credit elicited the most comment from members,

and the board recognized that carryover credit provides value by incentivizing lawyers to take an additional course or two that might be helpful for their practices.

### New Rules will Not be Effective until 2024

- The board voted to delay the proposed effective date of the new rules from March 1, 2023, to March 1, 2024.
- This change gives the board and the council additional time to properly program, implement, and communicate the rule changes to members and gives providers an opportunity to adjust to the new procedures.

### Other Changes

- The State Bar Council voted to remove the board's proposed CLE exemption for State Bar Councilors.
- Non-substantive revisions to the definition of professional well-being programs (currently known as substance abuse/mental health) to improve word usage.
- Sponsors seeking approval for repeat courses in the same CLE year would be charged a reduced application fee.
- Edits to the annual CLE attendance fee rule to include a deadline aligned with the annual membership fee (June 30), and an enforcement provision.

## Frequently Asked Questions

**Q. How will these rule changes affect the CLE requirements for my board certified specialty?**

A. Specialization CLE requirements are separate from a lawyer's general CLE requirements. All specialties have "look-back" reporting period requirements (e.g., 72 hours



over the past three years for initial certification for estate planning; 120 hours over five years to maintain your estate planning certification), and none of the specialties have carry-over provisions/allowances. The proposed changes should have no impact on lawyers seeking to be certified or maintain their certifications.

**Q. How will the board create the initial staggered reporting periods?**

A. Assuming the rules are adopted with a three-year reporting period, the board will use a temporary rule to create a stagger where approximately 1/3 of lawyers have their reporting period end every year. The current plan is to base the groups on the year of admittance to the bar, for example (note that this isn't set in stone):

- Year of admittance ends in 0, 1, 2: One-year period, 12 hours, due by February 2025
- Year of admittance ends in 7, 8, 9: Two-

year period, 24 hours, due by February 2026

- Year of admittance ends in 3, 4, 5, 6: Three-year period, 36 hours, due by February 2027

Following this initial stagger, everyone will be on a three-year reporting cycle. Any newly admitted lawyers (including lawyers admitted in 2024) would start out on a three-year cycle beginning the year they are admitted.

**Q. If the Annual Report requirement is eliminated, how can I prove my compliance with the CLE rules in other states where I'm licensed? How will I track my hours?**

A. The State Bar's member portal will provide a way for lawyers to download and/or print out a report showing CLE compliance that can be sent to other states. Additionally, our new database will allow the CLE Department to send periodic updates and reminders to lawyers who still owe hours and allow lawyers to update their records at any time.

**Q. I take advantage of free CLE programs offered by my local government agency or legal aid office. I'm afraid that a course application fee might prevent these groups from continuing to offer these programs. Will the board adjust application fees for providers offering free CLE?**

A. Yes. The proposed rules provide that a course offered for free to all lawyers will be charged a reduced course application fee. The CLE Board is working on a proposed fee schedule this quarter and will share it with members and providers as soon as it is completed. The board recognizes the value that free, local, CLE provides to many public sector (e.g., public defenders) and low-income lawyers and intends to adopt a fee schedule that will not be cost prohibitive to providers of free CLE.

**Q. Why is the proposed CLE year running from March 1 through the end of February? This feels arbitrary. Wouldn't a calendar year be easier for everyone to remember?**

A. The CLE Board considered moving to a traditional calendar year for the CLE period, but decided that 1) lawyers are already accustomed to a February CLE deadline, and 2) ending the CLE year in December would be very difficult for lawyers trying to complete remaining hours during the holidays and difficult for the CLE department staff to be able to assist lawyers with questions and issues while also trying to take holiday time off at the end of year.

## What Comes Next?

Be on the lookout for more information about the proposed changes throughout the quarter, including a proposed fee schedule. State Bar staff will continue to meet with organizations and district bars, and we will host a YouTube Live Q&A session in September on the State Bar's YouTube channel. The proposed rules, along with your comments and any revisions proposed by the board, will be back before the State Bar Council in October.

## Contact Us

As you can see from the proposed revisions, your comments and questions do matter! Please continue to send your comments and questions about the proposed rules to Peter Bolac, assistant executive director of the North Carolina State Bar and director of the Board of Continuing Legal Education, at [Pbolac@ncbar.gov](mailto:Pbolac@ncbar.gov). Comments may also be sent to [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov).

## Proposed Amendments to Rules of the Standing Committee of the North Carolina State Bar

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

### .1501 Scope, Purpose, and Definitions

#### (a) Scope.

Except as provided herein, these rules shall apply to every active member licensed by the North Carolina State Bar.

#### (b) Purpose.

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining lawyers attorneys who do not comply with such rules. The ~~Revised~~ Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

At a time when all aspects of life and society are changing rapidly or becoming subject

to pressures brought about by change, laws and legal principles are also in transition (through additions to the body of law, modifications, and amendments) and are increasing in complexity. One cannot render competent legal services without continuous education and training.

The same changes and complexities, as well as the economic orientation of society, result in confusion about the ethical requirements concerning the practice of law and the relationships it creates. The data accumulated in the discipline program of the North Carolina State Bar argue persuasively for the establishment of a formal program for continuing and intensive training in professional responsibility and legal ethics.

~~It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients' affairs while avoiding the ethical problems which can be caused by disorganization.~~

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these minimum continuing legal education requirements is the same as the purpose of the ~~Revised~~ Rules of Professional Conduct themselves—to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

#### (c) Definitions.

(1) "Active member" shall include any person who is licensed to practice law in the state of North Carolina and who is an active member of the North Carolina State Bar.

(2) "Administrative Committee" shall mean the Administrative Committee of the North Carolina State Bar.

(3) "Approved program" shall mean a specific, individual educational program approved as a continuing legal education program under these rules by the Board of Continuing Legal Education.

(4) "Board" means the Board of Continuing Legal Education created by these rules.

(5) "Continuing legal education" or "CLE" is any legal, judicial or other educational program accredited by the ~~h~~Board. Generally, CLE will include educational programs designed principally to

maintain or advance the professional competence of lawyers and/or to expand an appreciation and understanding of the professional responsibilities of lawyers.

(6) "Council" shall mean the North Carolina State Bar Council.

(7) "Credit hour" means an increment of time of 60 minutes which may be divided into segments of 30 minutes or 15 minutes, but no smaller.

(8) "Ethics" shall mean programs or segments of programs devoted to (i) professional responsibility, (ii) professionalism, or (iii) social responsibility as defined in Rules .1501(c)(14), (15), and (20) below.

(89) "Inactive member" shall mean a member of the North Carolina State Bar who is on inactive status.

(910) "In-house continuing legal education" shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, or similar entities primarily for the education of their members. ~~The board may exempt from this definition those programs which it finds~~

~~(A) to be conducted by public or quasi-public organizations or associations for the education of their employees or members;~~

~~(B) to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law.~~

~~(1011) A "newly admitted active member" is one who becomes an active member of the North Carolina State Bar for the first time, has been reinstated, or has changed from inactive to active status.~~

~~(1112) "On demand" program shall mean an accredited educational program accessed via the internet that is available at any time on a provider's website and does not include live programming.~~

~~(1213) "Online" program shall mean an accredited educational program accessed through a computer or telecommunications system such as the internet and can include simultaneously broadcast and on demand programming.~~

~~(13) "Participatory CLE" shall mean programs or segments of programs that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situ-~~

~~ations, role playing, mock trials, round-table discussions, or debates.~~

(14) "Professional responsibility" shall mean those programs or segments of programs devoted to ~~(a)~~ the substance, underlying rationale, and practical application of the Rules of Professional Conduct; ~~(b)~~ the professional obligations of the lawyer to the client, the court, the public, and other lawyers; or ~~(c)~~ moral philosophy and ethical decision-making in the context of the practice of law; ~~and d) the effects of stress, substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities and the prevention, detection, treatment, and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions. This definition shall be interpreted consistent with the provisions of Rule .1501(c)(4) or (6) above.~~

(15) "Professionalism" programs are programs or segments of programs devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct which transcend the requirements of the Rules of Professional Conduct. Such programs address principles of competence and dedication to the service of clients, civility, improvement of the justice system, diversity of the legal profession and clients, advancement of the rule of law, service to the community, and service to the disadvantaged and those unable to pay for legal services.

~~(16) "Registered sponsor" shall mean an organization that is registered by the board after demonstrating compliance with the accreditation standards for continuing legal education programs as well as the requirements for reporting attendance and remitting sponsor fees for continuing legal education programs.~~

~~(1716) "Rules" shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina. (Section .1500 of this subchapter).~~

~~(1817) "Sponsor" is any person or entity presenting or offering to present one or more continuing legal education programs, whether or not an accredited sponsor.~~

(18) "Professional well-being" ~~and~~ **impairment** (PWB) is a program focused

on the relationship between stressors inherent in the profession, **impairment** competence, ~~and~~ professionalism, ~~and~~ **fitness to practice**. Topics may include the prevention, detection, treatment, and etiology of a range of substance use and mental health conditions, as well as resources available for assistance and strategies for improving resilience and well-being. Experiential exercises, practices, or demonstrations of tools for improving resilience and well-being are permitted provided they do not exceed a combined total of 20 minutes in any 60-minute presentation.

(19) "Technology training" shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. § 143B-1320(a)(11), or successor statutory provision, for a definition of "information technology"), including education on an information technology product, device, platform, application, or other tool, process, or methodology. That is specific or uniquely suited to the practice of law. A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 and the course content requirements in Rule .1602(c) of this subchapter.

(20) "Year" shall mean calendar year.

(20) "Social responsibility" programs shall mean programs, directly related to the practice of law, devoted to education about diversity, inclusion, bias, or equal access to justice.

#### .1502 Jurisdiction: Authority

The Council of the North Carolina State Bar hereby establishes the Board of Continuing Legal Education (~~b~~**B**oard) as a standing committee of the ~~c~~**C**ouncil, which ~~b~~**B**oard shall have authority to establish regulations governing a continuing legal education program ~~and a law practice assistance program for attorneys lawyers~~ licensed to practice law in this state.

#### .1503 Operational Responsibility

The responsibility for operating the continuing legal education program ~~and the law practice assistance program~~ shall rest with the ~~b~~**B**oard, subject to the statutes governing the

practice of law, the authority of the eCouncil, and the rules of governance of the bBoard.

#### .1504 Size of Board

The bBoard shall have nine members, all of whom must be ~~attorneys~~ lawyers in good standing and authorized to practice in the state of North Carolina.

#### .1505 Lay Participation

The bBoard shall have no members who are not licensed ~~attorneys~~ lawyers.

#### .1506 Appointment of Members; When; Removal

The members of the bBoard shall be appointed by the eCouncil. ~~The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting.~~ Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the eCouncil at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the bBoard may be removed at any time by an affirmative vote of a majority of the members of the eCouncil in session at a regularly called meeting.

#### .1507 Term of Office

Each member who is appointed to the bBoard shall serve for a term of three years beginning as of the first day of the month following the date on which the appointment is made by the eCouncil. ~~See, however, Rule .1508 of this Section.~~

#### .1508 Staggered Terms

~~It is intended that m~~Members of the bBoard shall be elected to staggered terms such that three members are appointed in each year. ~~Of the initial board, three members shall be elected to terms of one year, three members shall be elected to terms of two years, and three members shall be elected to terms of three years. Thereafter, three members shall be elected each year.~~

#### .1509 Succession

Each member of the bBoard shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Thereafter, no person may be reappointed without having been off the

bBoard for at least three years.

#### .1510 Appointment of Chairperson

The chairperson of the bBoard shall be appointed from time to time as necessary by the eCouncil. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the bBoard. The chairperson shall preside at all meetings of the bBoard, shall prepare and present to the eCouncil the annual report of the bBoard, and generally shall represent the bBoard in its dealings with the public.

#### .1511 Appointment of Vice-Chairperson

The vice-chairperson of the bBoard shall be appointed from time to time as necessary by the eCouncil. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the bBoard. The vice-chairperson shall preside at and represent the bBoard in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the bBoard.

#### .1512 Source of Funds

(a) Funding for the program carried out by the bBoard shall come from ~~sponsor's fees and attendee's fees~~ an annual CLE attendance fee and program application fees as provided below, as well as from duly assessed penalties for noncompliance and from reinstatement fees.

(1) Annual CLE Attendance Fee – all members, except those who are exempt from these requirements under Rule .1517, shall pay an annual CLE fee in an amount set by the Board and approved by the Council. Such fee shall accompany the member's annual membership fee. Annual CLE fees are non-refundable. **Any member who fails to pay the required Annual CLE fee by the last day of June of each year shall be subject to (i) a late fee in an amount determined by the Board and approved by the Council, and (ii) administrative suspension pursuant to Rule .0903 of this Subchapter.** ~~Registered sponsors located in North Carolina (for programs offered in or outside North Carolina), registered sponsors not located in North Carolina (for programs offered in North Carolina), and all other sponsors located in or outside of~~

~~North Carolina (for programs offered in North Carolina) shall, as a condition of conducting an approved program, agree to remit a list of North Carolina attendees and to pay a fee for each active member of the North Carolina State Bar who attends the program for CLE credit. The sponsor's fee shall be based on each credit hour of attendance, with a proportional fee for portions of a program lasting less than an hour. The fee shall be set by the board upon approval of the council. Any sponsor, including a registered sponsor, that conducts an approved program which is offered without charge to attendees shall not be required to remit the fee under this section. Attendees who wish to receive credit for attending such an approved program shall comply with paragraph (a)(2) of this rule.~~

(2) Program Application Fee – The sponsor of a CLE program shall pay a program application fee due when filing an application for program accreditation pursuant to Rule .1520(b). Program application fees are non-refundable. A member submitting an application for a previously unaccredited program for individual credit shall pay a reduced fee. ~~The board shall fix a reasonably comparable fee to be paid by individual attorneys who attend for CLE credit approved continuing legal education programs for which the sponsor does not submit a fee under Rule .1512(a)(1) above. Such fee shall accompany the member's annual affidavit. The fee shall be set by the board upon approval of the council.~~

(3) Fee Review – The Board will review the level of fees at least annually and adjust the fees as necessary to maintain adequate finances for prudent operation of the Board in a nonprofit manner. The Council shall annually review the assessments for the Chief Justice's Commission on Professionalism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.

(4) Uniform Application and Financial Responsibility – Fees shall be applied uniformly without exceptions or other preferential treatment for a sponsor or member.

(b) Funding for a law practice assistance program shall be from user fees set by the

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board upon approval of the council and from such other funds as the council may provide.

~~(c) No Refunds for Exemptions and Record Adjustments.~~

~~(1) Exemption Claimed. If a credit hour of attendance is reported to the board, the fee for that credit hour is earned by the board regardless of an exemption subsequently claimed by the member pursuant to Rule .1517 of this subchapter. No paid fees will be refunded and the member shall pay the fee for any credit hour reported on the annual report form for which no fee has been paid at the time of submission of the member's annual report form.~~

~~(2) Adjustment of Reported Credit Hours. When a sponsor is required to pay the sponsor's fee, there will be no refund to the sponsor or to the member upon the member's subsequent adjustment, pursuant to Rule .1522(a) of this subchapter, to credit hours reported on the annual report form. When the member is required to pay the attendee's fee, the member shall pay the fee for any credit hour reported after any adjustment by the member to credit hours reported on the annual report form.~~

### .1513 Fiscal Responsibility

All funds of the bBoard shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit. —The North Carolina State Bar shall maintain a separate account for funds of the bBoard such that such funds and expenditures therefrom can be readily identified. The accounts of the bBoard shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria. —The funds of the bBoard shall be handled, invested and reinvested in accordance with investment policies adopted by the eCouncil for the handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursement. —Disbursement of funds of the bBoard shall be made by or under the direction of the secretary ~~treasurer~~ of the North Carolina State Bar pursuant to authority of the eCouncil. The members of the bBoard shall serve on a voluntary basis without compensation, but may be reimbursed for the reasonable expenses incurred in attending meetings of the bBoard or its committees.

(d) All revenues resulting from the CLE program, ~~including fees received from attendees and sponsors, late filing penalties, late compliance fees, reinstatement fees, and interest on a reserve fund~~ shall be applied first to the expense of administration of the CLE program including an adequate reserve fund; provided, however, that a portion of each ~~sponsor or attendee fee, annual CLE fee and program application fee~~, in an amount to be determined by the eCouncil, shall be paid to the Chief Justice's Commission on Professionalism and to the North Carolina Equal Access to Justice Commission for administration of the activities of these commissions. Excess funds may be expended by the eCouncil on lawyer competency programs approved by the eCouncil.

### .1514 Meetings

The Board shall meet at least annually, an annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar. The bBoard by resolution may set regular meeting dates and places. Special meetings of

the bBoard may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the bBoard. Notice of meeting shall be given at least two days prior to the meeting by mail, electronic mail, telegram, facsimile transmission or telephone. A quorum of the bBoard for conducting its official business shall be a majority of the members serving at a particular time.

### .1515 Annual Report

The bBoard shall prepare at least annually a report of its activities and shall present the same to the eCouncil ~~one month~~ prior to its annual meeting.

### .1516 Powers, Duties, and Organization of the Board

(a) The bBoard shall have the following powers and duties:

- (1) to exercise general supervisory authority over the administration of these rules;
- (2) to adopt and amend regulations consistent with these rules with the approval of the eCouncil;
- (3) to establish an office or offices and to employ such persons as the bBoard deems necessary for the proper administration of these rules, and to delegate to them appropriate authority, subject to the review of the eCouncil;
- (4) to report annually on the activities and operations of the bBoard to the eCouncil and make any recommendations for changes in ~~the fee amounts, rules, or methods of operation of the continuing legal education program; and~~
- (5) to submit an annual budget to the eCouncil for approval and to ensure that expenses of the bBoard do not exceed the annual budget approved by the eCouncil;
- ~~(6) to administer a law office assistance~~

program for the benefit of lawyers who request or are required to obtain training in the area of law office management.

(b) The bBoard shall be organized as follows:

(1) Quorum. ~~Five members~~ A majority of members serving shall constitute a quorum of the bBoard.

(2) ~~The Executive Committee. –The Board may establish an executive committee.~~ The executive committee of the bBoard shall be comprised of the chairperson, ~~the~~ the vice-chairperson, ~~elected by the members of the board,~~ and a member to be appointed by the chairperson. Its purpose is to conduct all necessary business of the bBoard that may arise between meetings of the full bBoard. In such matters it shall have complete authority to act for the bBoard.

(3) Other Committees. –The chairperson may appoint committees as established by the bBoard for the purpose of considering and deciding matters submitted to them by the bBoard.

(c) Appeals. –Except as otherwise provided, the bBoard is the final authority on all matters entrusted to it under ~~Section 1500 and Section 1600 of~~ this subchapter. Therefore, any decision by a committee of the bBoard pursuant to a delegation of authority may be appealed to the full bBoard and will be heard by the bBoard at its next scheduled meeting. A decision made by the staff pursuant to a delegation of authority may also be reviewed by the full bBoard but should first be appealed to any committee of the bBoard having jurisdiction on the subject involved. All appeals shall be in writing. The bBoard has the discretion to, but is not obligated to, grant a hearing in connection with any appeal regarding the accreditation of a program.

### .1517 Exemptions

(a) Notification of Board. To qualify for an exemption, ~~for a particular calendar year,~~ a member shall notify the bBoard of the exemption ~~induring the annual membership renewal process or in another manner as directed by the Board report for that calendar year sent to the member pursuant to Rule 1522 of this subchapter.~~ All active members who are exempt are encouraged to attend and participate in legal education programs.

(b) Government Officials and Members of Armed Forces. The governor, the lieutenant governor, and all members of the council of state, members of the United

States Senate, members of the United States House of Representatives, members of the North Carolina General Assembly, full-time principal chiefs and vice-chiefs of any Indian tribe officially recognized by the United States or North Carolina state governments, and members of the United States Armed Forces on full-time active duty are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity.

(c) Judiciary and Clerks. Members of the state judiciary who are required by virtue of their judicial offices to take ~~an average of (twelve) 12 or more hours of~~ continuing judicial or other legal education ~~annually~~ and all members of the federal judiciary are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such judicial capacities. ~~Additionally, A~~ a full-time law clerk for a member of the federal or state judiciary is exempt from the requirements of these rules for any calendar year in which the clerk serves some portion thereof in such capacity, provided, however, that

(1) the exemption shall not exceed two consecutive calendar years; and, ~~further provided, that~~

(2) the clerkship begins within one year after the clerk graduates from law school or passes the bar examination for admission to the North Carolina State Bar whichever occurs later.

(d) Nonresidents. Any active member residing outside of North Carolina who does not practice in North Carolina for at least six ~~(6)~~ consecutive months and does not represent North Carolina clients on matters governed by North Carolina law shall be exempt from the requirements of these rules.

(e) Law Teachers. An exemption from the requirements of these rules shall be given to any active member who does not practice in North Carolina or represent North Carolina clients on matters governed by North Carolina law and who is:

(1) A full-time teacher at the School of Government ~~(formerly the Institute of Government)~~ of the University of North Carolina;

(2) A full-time teacher at a law school in North Carolina that is accredited by the American Bar Association; or

(3) A full-time teacher of law-related courses at a graduate level professional school accredited by its respective profes-

sional accrediting agency.

(f) Special Circumstances Exemptions. The bBoard may exempt an active member from the continuing legal education requirements for a period of not more than one year at a time upon a finding by the bBoard of special circumstances unique to that member constituting undue hardship or other reasonable basis for exemption, ~~or for a longer period upon a finding of a permanent disability.~~

(g) Pro Hac Vice Admission. Nonresident ~~attorneys~~ lawyers from other jurisdictions who are temporarily admitted to practice in a particular case or proceeding pursuant to the provisions of G.S. 84-4.1 shall not be subject to the requirements of these rules.

(h) Senior Status Exemption. The bBoard may exempt an active member from the continuing legal education requirements if

(1) the member is sixty-five years of age or older; and

(2) the member does not render legal advice to or represent a client unless the ~~member associates with~~ under the supervision of another active member who assumes responsibility for the advice or representation.

(i) ~~Bar Examiners and State Bar Councilors.~~ Members of the North Carolina Board of Law Examiners ~~and councilors on the North Carolina State Bar Council~~ are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity. ~~CLE Record During Exemption Period. During a calendar year in which the records of the board indicate that an active member is exempt from the requirements of these rules, the board shall not maintain a record of such member's attendance at accredited continuing legal education programs. Upon the termination of the member's exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education program attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such programs will be required by the board.~~

(j) ~~Permanent Disability. Attorneys who have a permanent disability that makes attendance at CLE programs inordinately difficult may file a request for a permanent~~

~~substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The board shall review and approve or disapprove such plans on an individual basis and without delay.~~

(ki) Application for Substitute Compliance and Exemptions. Other requests for substitute compliance, partial waivers, and/or other exemptions for hardship or extenuating circumstances may be granted by the Board on an annual yearly basis upon written application of the attorney member.

(l) Bar Examiners. ~~Credit is earned through service as a bar examiner of the North Carolina Board of Law Examiners. The board will award 12 hours of CLE credit for the preparation and grading of a bar examination by a member of the North Carolina Board of Law Examiners.~~

(k) Effect of Annual Exemption on CLE Requirements. Exemptions are granted on an annual basis and must be claimed each year. An exempt member's new reporting period will begin on March 1 of the year for which an exemption is not granted. No credit from prior years may be carried forward following an exemption.

(l) Exemptions from Professionalism Requirement for New Members.

(1) Licensed in Another Jurisdiction. A newly admitted member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA program requirement and must notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board.

(2) Inactive Status. A newly admitted member who is transferred to inactive status in the year of admission to the North Carolina State Bar is exempt from the PNA program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA program in the reporting period that the member is subject to the requirements set forth in Rule .1518(b) unless the member qualifies for another exemption in this rule.

(3) Other Rule .1517 Exemptions. A newly admitted active member who qualifies for an exemption under Rules .1517(a) through (i) of this subchapter shall be exempt from the PNA program requirement during the period of the Rule .1517 exemption. The member shall notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board. The member must complete the PNA program in the reporting period the member no longer qualifies for the Rule .1517 exemption.

#### .1518 Continuing Legal Educations Requirements

(a) Reporting period. Except as provided in Paragraphs (1) and (2) below, the reporting period for the continuing legal education requirements shall be three years, beginning March 1 through the last day of February:

(1) New admittees. The reporting period for newly admitted members shall begin on March 1 of the calendar year of admission.

(2) Reinstated members.

(A) A member who is transferred to and subsequently reinstated from inactive or suspended status before the end of the reporting period in effect at the time of the original transfer shall retain the member's original reporting period and these Rules shall be applied as though the transfer had not occurred.

(B) Except as provided in Subparagraph (A) above, the first reporting period for reinstated members shall be the same as if the member was newly admitted pursuant to Paragraph (1) above.

(ab) ~~Annual Hours Requirement.~~ Each active member subject to these rules shall complete ~~4236~~ hours of approved continuing legal education during each ~~calendar year beginning January 1, 1988~~ reporting period, as provided by these rules, ~~and the regulations adopted thereunder.~~

Of the ~~4236~~ hours:

(1) at least ~~26~~ hours shall be devoted to the ~~areas of professional responsibility or professionalism or any combination thereof~~ ethics as defined in Rule .1501(c)(8) of this subchapter;

(2) at least 1 hour shall be devoted to technology training as defined in Rule .1501(c)(4719) of this subchapter. This credit must be completed in at least 1-hour increments; and ~~further explained in Rule .1602(e) of this subchapter; and~~

(3) ~~effective January 1, 2002, at least once every three calendar years, each member~~

~~shall complete an hour of continuing legal education at least 1 hour shall be devoted to programs instruction on professional well-being and impairment substance abuse and debilitating mental conditions as defined in Rule .1501(c)(18) of this subchapter.1602-(a). This credit must be completed in at least 1-hour increments. This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.~~

(bc) ~~No~~ Carryover Credit. Members may ~~not~~ carry over up to 6 credit hours from one reporting period to the next reporting period. Carryover hours will count towards a member's total hours requirement but may not be used to satisfy the requirements listed in Paragraphs (b)(1)-(3) of this Rule. carry over up to 12 credit hours earned in one calendar year to the next calendar year, which may include those hours required by paragraph (a)(1) above. Additionally, a newly admitted active member may include as credit hours which may be carried over to the next succeeding year any approved CLE hours earned after that member's graduation from law school.

(d) The Board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits from prior reporting years. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

(ec) Professionalism Requirement for New Members. Except as provided in Rule .1517(l), ~~paragraph (d)(1),~~ each newly admitted active member ~~admitted to~~ of the North Carolina State Bar ~~after January 1, 2011,~~ must complete ~~the an approved North Carolina State Bar~~ Professionalism for New Attorneys Pprogram (PNA Pprogram) as described in Rule .1525 ~~induring the member's first reporting period, year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter.~~ It is strongly recommended that newly admitted members complete the PNA program within their first year of admission. CLE credit for the PNA Pprogram shall be applied to the annual mandatory continuing legal educa-

tion requirements set forth in ~~p~~Paragraph (a**b**) above.

(1) ~~Content and Accreditation.~~ The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish the required content on or before January 1 of each year. To be approved as a PNA Program, the program must be provided by a sponsor registered under Rule .1603 of this subchapter and a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the program. A registered sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no program that is not so designated shall satisfy the PNA Program requirement for new members.

(2) ~~Timetable and Partial Credit.~~ The PNA Program shall be presented in two six hour blocks (with appropriate breaks) over two days. The six hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six hour block unless a special circumstances exemption is granted by the board. The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12 hour program unless a special circumstances exemption is granted by the board.

(3) ~~Online and Prerecorded Programs.~~ The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken online (via the Internet) on demand. The program may also be taken as a prerecorded program provided the requirements of Rule .1604(d) of this subchapter are satisfied and at least one

~~hour of each six hour block consists of live programming.~~

~~(d) Exemptions from Professionalism Requirement for New Members.~~

(1) ~~Licensed in Another Jurisdiction.~~ A member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA Program requirement and must notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter.

(2) ~~Inactive Status.~~ A newly admitted member who is transferred to inactive status in the year of admission to the State Bar is exempt from the PNA Program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA Program in the year that the member is subject to the requirements set forth in paragraph (a) above unless the member qualifies for the exemption under paragraph (d)(1) of this rule.

(3) ~~Exemptions Under Rule .1517.~~ A newly admitted active member who qualifies for an exemption under Rule .1517 of this subchapter shall be exempt from the PNA Program requirement during the period of the Rule .1517 exemption. The member shall notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter. The member must complete the PNA Program in the year the member no longer qualifies for the Rule .1517 exemption or the next calendar year unless the member qualifies for the exemption under paragraph (d)(1) of this rule.

(e) The board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

#### .1519 Accreditation Standards

The ~~b~~Board shall approve continuing legal education programs that meet the following standards and provisions.

(a) They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence and proficiency as a lawyer.

(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.

(c) ~~Participation in an online or on-demand program must be verified as provided in Rule .1520(d). Credit may be given for continuing legal education programs where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape, satellite transmitted, and online programs.~~

(d) Continuing legal education materials are to be prepared, and programs conducted, by an individual or group qualified by practical or academic experience. Credit shall not be given for any continuing legal education program taught or presented by a disbarred lawyer except a programs on professional responsibility (including a program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities) and professional well-being ~~and impairment~~ programs taught by a disbarred lawyer whose disbarment date is at least five years (60 months) prior to the date of the program. The advertising for the program shall disclose the lawyer's disbarment.

(e) Live continuing legal education programs shall be conducted in a setting physically suitable to the educational nature of the program, and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the program is presented; ~~unless These may include written materials printed from a website or computer presentation. A written agenda or outline for a program satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.~~

(g) A sponsor of an approved program must timely remit fees as required in Rule .1606 and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be timely furnished to the ~~b~~Board in accordance with Rule .1520(g), regulations. Participation in an online program must be verified as provided in Rule .1601(d).

(h) Except as provided in Rules .1523(d) ~~.1501 and .1602(h)~~ of this ~~s~~Subchapter, in-house continuing legal education and self-study shall not be approved or accredited, ~~for the purpose of complying with Rule .1518 of this subchapter.~~

(i) Programs that cross academic lines, such as accounting-tax seminars, may be considered for approval by the ~~b~~Board. However, the ~~b~~Board must be satisfied that the content of the program would enhance legal skills or the ability to practice law.

#### **.1520 Requirements for Program Approval Registration of Sponsors and Program Approval**

(a) Approval. CLE programs may be approved upon the application of a sponsor or an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:

- (1) The application shall be submitted in the ~~b~~manner directed by the Board.
- (2) The application shall contain all information requested by the Board and include payment of any required application fees.
- (3) The application shall be accompanied by a program outline or agenda that describes the content in detail, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.
- (4) The application shall disclose the cost to attend the program, including any tiered costs.
- (5) The application shall include a detailed calculation of the total CLE hours requested, including whether any hours satisfy one of the requirements listed in Rules .1518(b) and .1518(d) of this subchapter, and Rule 1.15-2(s)(3) of the Rules of Professional Conduct.

(b) Program Application Deadlines and Fee Schedule.

- (1) Program Application and Processing Fees. Program applications submitted by sponsors shall comply with the deadlines and Fee Schedule set by the Board and approved by the Council, including any additional processing fees for late or expedited applications.
- (2) Free Programs. Sponsors offering programs without charge to all attendees, including non-members of any membership organization, shall pay a reduced

application fee.

(3) Member Applications. Members may submit a program application for a previously unapproved program after the program is completed, accompanied by a reduced application fee.

(4) On-Demand CLE Programs. Approved on-demand programs are valid for three years. After the initial three-year term, programs may be renewed annually in a manner approved by the Board that includes a certification that the program content continues to meet the accreditation standards in Rule .1519 and the payment of a program renewal fee.

(5) Repeat Programs. Sponsors seeking approval for a repeat program that was previously approved by the Board within the same CLE year (March 1 through the end of February) shall pay a reduced application fee.

(c) Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors and active members seeking credit for an approved program shall furnish, upon request of the Board, a copy of all materials presented and distributed at a CLE program. Any sponsor that expects to conduct a CLE program for which suitable materials will not be made available to all attendees may be required to show why materials are not suitable or readily available for such a program.

(d) Online and On-Demand CLE. The sponsor of an online or on-demand program must have a reliable method for recording and verifying attendance and reporting the number of credit hours earned by each participant.

(e) Notice of Application Decision. Sponsors shall not make any misrepresentations concerning the approval of a program for CLE credit by the Board. The Board will provide notice of its decision on CLE program approval requests pursuant to the schedule set by the Board and approved by the Council. A program will be deemed approved if the notice is not timely provided by the Board pursuant to the schedule. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the Board or if the Board timely notifies the sponsor that the matter has been delayed.

(f) Denial of Applications. Failure to pro-

vide the information required in the program application will result in denial of the program application. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of denial. The decision by the Board on an appeal is final.

(g) Attendance Records. Sponsors shall timely furnish to the Board a list of the names of all North Carolina attendees together with their North Carolina State Bar membership numbers in the manner and timeframe prescribed by the Board.

(h) Late Attendance Reporting. Absent good cause shown, a sponsor's failure to timely furnish attendance reports pursuant to this rule will result in (i) a late reporting fee in an amount set by the Board and approved by the Council, and (ii) the denial of that sponsor's subsequent program applications until the attendance is reported and the late fee is paid.

~~(a) Registration of Sponsors. An organization desiring to be designated as a registered sponsor of programs may apply to the board for registered sponsor status. The board shall register a sponsor if it is satisfied that the sponsor's programs have met the accreditation standards set forth in Rule .1519 of this subchapter and the application requirements set forth in Rule .1603 of this subchapter.~~

~~(1) Duration of Status. Registered sponsor status shall be granted for a period of five years. At the end of the five year period, the sponsor must apply to renew its registration pursuant to Rule .1603(b) of this subchapter.~~

~~(2) Accredited Sponsors. A sponsor that was previously designated by the board as an "accredited sponsor" shall, on the effective date of paragraph (a)(1) of this rule, be re-designated as a "registered sponsor." Each such registered sponsor shall subsequently be required to apply for renewal of registration according to a schedule to be adopted by the board. The schedule shall stagger the submission date for such applications over a three year period after the effective date of this paragraph (a)(2).~~

~~(b) Program Approval for Registered Sponsors:~~

~~(1) Once an organization is approved as a registered sponsor, the continuing legal education programs sponsored by that~~

organization are presumptively approved for credit; however, application must still be made to the board for approval of each program. At least 50 days prior to the presentation of a program, a registered sponsor shall file an application, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(2) The board shall evaluate a program presented by a registered sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the registered sponsor that the program is not approved for credit. Such notice shall be sent by the board to the registered sponsor within 45 days after the receipt of the application. If notice is not sent to the registered sponsor within the 45-day period, the program shall be presumed to be approved. The registered sponsor may request reconsideration of an unfavorable accreditation decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

~~(c) Sponsor Request for Program Approval.~~

(1) Any organization not designated as a registered sponsor that desires approval of a program shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(2) The board may at any time decline to accredit CLE programs offered by a sponsor that is not registered for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519, and Section .1600 of this subchapter.

~~(d) Member Request for Program Approval.~~ An active member desiring approval of a program that has not otherwise been approved shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submit-

ting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.

~~.1513 Noncompliance~~

(a) Failure to Comply with Rules May Result in Suspension. A member who is required to file a report of CLE credits and does not do so or who fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and attendee fees, may be suspended from the practice of law in the state of North Carolina.

(b) Late Compliance. Any member who fails to complete his or her required hours by the end of the member's reporting period (i) shall be assessed a late compliance fee in an amount set by the Board and approved by the Council, and (ii) shall complete any outstanding hours within 60 days following the end of the reporting period. Failure to comply will result in a suspension order pursuant to paragraph (c) below.

~~(b) Notice of Suspension Order for Failure to Comply.~~ 60 days following the end of the reporting period, ~~The board~~ Council shall ~~notify~~ issue an order suspending any member who appears to have failed to meet the requirements of these rules, that the member will be suspended from the practice of law in this state, unless (i) the member shows good cause in writing why the suspension should not take effect; be made or (ii) the member shows in writing that he or she has complied with meets the requirements within the 30-day period after service of the notice order. The order shall be entered and served as set forth in Rule .0903(d) of this subchapter. Additionally, the member shall be assessed a non-compliance fee as described in paragraph (d) below. Notice shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the notice may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the

records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar acknowledging such service.

~~(d) Non-Compliance Fee.~~ A member to whom a suspension order is issued pursuant to paragraph (c) above shall be assessed a non-compliance fee in an amount set by the Board and approved by the Council; provided, however, upon a showing of good cause as determined by the Board as described in paragraph (g)(2) below, the fee may be waived. The non-compliance fee is in addition to the late compliance fee described in Paragraph (b) above.

~~(e) Effect of Non-compliance with Suspension Order. Entry of Order of Suspension Upon Failure to Respond to Notice to Show Cause.~~ If a member fails to meet the requirements during the 30-day period after service of the suspension order under paragraph (c) above, the member shall be suspended from the practice of law subject to the obligations of a disbarred or suspended member to wind down the member's law practice as set forth in Rule .0128 of subchapter 1B. ~~written response attempting to show good cause is not postmarked or received by the board by the last day of the 30-day period after the member was served with the notice to show cause upon the recommendation of the board and the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d) of this Subchapter.~~

~~(f) Suspended members must petition for reinstatement to active status.~~

~~(dg) Procedure Upon Submission of a Timely Response to a Notice to Show Cause Evidence of Good Cause.~~

(1) Consideration by the Board. If the member files a timely ~~written~~ response to the ~~notice~~, suspension order attempting to show good cause for why the suspension should not take effect, the suspension order shall be stayed and the ~~b~~Board shall consider the matter at its next ~~regularly scheduled~~ meeting, or may delegate consideration of the matter to a duly appointed committee of the board. If the matter is delegated to a committee of the board and the committee determines that good cause has not been shown, the member may file an appeal to the board. The appeal must be filed within 30 cal-

calendar days of the date of the letter notifying the member of the decision of the committee. The ~~b~~Board shall review all evidence presented by the member to determine whether good cause has been shown, ~~or to determine whether the member has complied with the requirements of these rules within the 30-day period after service of the notice to show cause.~~

(2) Recommendation of the Board. The ~~b~~Board shall determine whether the member has shown good cause ~~as to why the member should not be suspended.~~ If the ~~b~~Board determines that good cause has not been shown, ~~the member's suspension shall become effective 15 calendar days after the date of the letter notifying the member of the decision of the Board. The member may request a hearing by the Administrative Committee within the 15-day period after the date of the Board's decision letter. The member's suspension shall be stayed upon a timely request for a hearing, or that the member has not shown compliance with these rules within the 30-day period after service of the notice to show cause, then the board shall refer the matter to the Administrative Committee that the member be suspended.~~

(3) ~~Consideration by and Recommendation of Hearing Before the Administrative Committee.~~ The Administrative Committee shall consider the matter at its next regularly scheduled meeting. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for ~~the apparent~~ failure to comply with the rules governing the continuing legal education program. ~~Except as set forth above, the procedure for such hearing shall be as set forth in Rule .0903(d)(1) and (2) of this Subchapter.~~

(4) Administrative Committee Decision. If the Administrative Committee determines that the member has not met the burden of proof, the member's suspension shall become effective immediately. The decision of the Administrative Committee is final. ~~Order of Suspension.~~ Upon the recommendation of the Administrative Committee, the council may determine that the member has not complied with these rules and may enter

an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d)(3) of this Subchapter.

(e) Late Compliance Fee. Any member to whom a notice to show cause is issued pursuant to Paragraph (b) above shall pay a late compliance fee as set forth in Rule .1522(d) of this Subchapter; provided, however, upon a showing of good cause as determined by the board as described in Paragraph (d)(2) above, the fee may be waived.

#### .15242 Reinstatement

##### (a) Reinstatement Within 30 Days of Service of Suspension, Order

A member who is suspended for non-compliance with these rules governing the continuing legal education program may petition the ~~s~~Secretary of the State Bar for an order of reinstatement ~~of the member's license at any time up to during the 30-day wind-down period of the member's suspension, after the service of the suspension order upon the member.~~ The ~~s~~Secretary shall enter an order reinstating the member to active status upon receipt of a timely written request and satisfactory showing by the member that the member (i) cured the continuing legal education deficiency for which the member was suspended, and (ii) paid the reinstatement fee as set forth in Paragraph (c) below. Such member shall not be required to file a formal reinstatement petition, ~~or pay a \$250 reinstatement fee.~~

(b) Procedure for Reinstatement More than 30 Days After Service of the Order of Suspension.

Except as noted below, the procedure for reinstatement more than 30 days after ~~service of the order of~~ suspension shall be as set forth in Rule .0904(c) and (d) of this subchapter, and shall be administered by the Administrative Committee.

##### (c) Reinstatement Petition

At any time more than 30 days after ~~service of an order of suspension on a member, a member who has been suspended for non-compliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary. The secretary shall transmit a copy of the petition to each member of the board. The reinstatement petition shall contain the information and be in the form required by Rule .0904(c) of this sub-~~

chapter. If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education programs that the member has attended and the number of credit hours obtained in order to cure any continuing legal education deficiency for which the member was suspended.

##### (d) Reinstatement Fee.

In lieu of the \$125.00 reinstatement fee required by Rule .0904(c)(4)(A), the petition-Reinstatements pursuant to paragraphs (a) and (b) above shall be accompanied by a reinstatement fee payable to the ~~b~~Board, in ~~the an amount of \$250.00 set by the Board and approved by the Council.~~

(d) Reinstatement by Secretary of the State Bar. At any time during the 12-month period after the effective date of a suspension order, the Secretary of the State Bar may reinstate a member who has petitioned for reinstatement upon finding that the suspended member has (i) cured the deficiency for which the member was suspended, and (ii) paid any outstanding fees. Reinstatement by the Secretary is discretionary. If the Secretary declines to reinstate the member, the member's petition shall be transmitted to the Board for review before consideration by the Administrative Committee.

(e) Determination of Board; Transmission to Administrative Committee.

~~Within 30 days of the filing of the petition for reinstatement with the secretary, the board shall determine whether the deficiency has been cured. If the petition is referred to the Board, The bBoard's written determination recommendation and the reinstatement petition shall be transmitted to the sSecretary, within five days of the determination by the board. The sSecretary shall transmit provide a copy of the petition and the bBoard's recommendation to each member of the Administrative Committee.~~

(f) Consideration by Administrative Committee.

The Administrative Committee shall consider the reinstatement petition ~~and, together with the bBoard's determination, recommendation pursuant to the requirements of Rule .0902(c)-(f) of this subchapter.~~

(g) Hearing Upon Denial of Petition for Reinstatement.

The procedure for hearing upon the denial by the Administrative Committee of a petition for reinstatement shall be as pro-

vided in Section .1000 of this subchapter.

### **.16021523 Course Content Requirements Credit for Non-Traditional Programs and Activities**

~~(a) Professional Responsibility Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions — Accredited professional responsibility programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such program or segment of a program.~~

~~(ba) Law School Courses. —Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved programs. Computation of CLE credit for such courses shall be as prescribed in Rule .1524-1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.~~

~~(b) Service to the Profession Training. A program or segment of a program presented by a bar organization may be granted up to 3 hours of credit if the bar organization's program trains volunteer lawyers in service to the profession.~~

#### **(c) Teaching Law Courses.**

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(e) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school.

(2) Graduate School Courses. A member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-

long course at a graduate school of an accredited university.

(3) Courses at Paralegal Schools or Programs. A member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.

(4) Other Law Courses. The Board, in its discretion, may give CLE credit to a member for teaching law courses at other schools or programs.

(5) Credit Hours. Credit for teaching described in this paragraph may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:

(A) Teaching a Course. 3.5 hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit.)

(B) Teaching a Class. 1.0 hour of CLE credit for every 50 – 60 minutes of teaching.

(c) Law Practice Management Programs —A CLE accredited program on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited program on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster

planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Programs —A program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g. word processing); learning to use office equipment (except as permitted by paragraph (c) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Technology Training Programs —A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer or improving law office management and must satisfy the requirements of paragraphs (c) and (d) of this rule as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool, process, or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation;

g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training programs on Microsoft Office, Excel, Access, Word, Adobe, etc.; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology unless the program is solely about using the IT tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT tool, process, or methodology.

(f) Activities That Shall Not Be Accredited CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

- (1) courses within the normal college curriculum such as English, history, social studies, and psychology;
- (2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(e);
- (3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from programs dealing with development of law office procedures and management designed to raise the level of service provided to clients);

(g) Service to the Profession Training—A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's

program trains volunteer attorneys in service to the profession, and if such program or segment meets the requirements of Rule .1519(b) (g) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such program or program segment.

(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys lawyers, except, in the discretion of the Board, as follows:

- (1) programs exempted by the board under Rule .1501(c)(9) of this subchapter to be conducted by public or quasi-public organizations or associations for the education of their employees or members; and
- (2) programs to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law; or
- (3) live ethics programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

(i) Bar Review/Refresher Course. Programs designed to review or refresh recent law school graduates or attorneys lawyers in preparation for any bar exam shall not be approved for CLE credit.

(f) CLE credit will not be given for (i) general and personal educational activities; (ii) courses designed primarily to sell services; or (iii) courses designed to generate greater revenue.

#### **.16051524 Computation of Credit**

(a) Computation Formula — Credit CLE and professional responsibility hours shall be computed by the following formula:  
Sum of the total minutes of actual instruction / 60 = Total Hours

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

- (1) introductory remarks;

(2) breaks;

(3) business meetings;

(4) speeches in connection with banquets or other events which are primarily social in nature; and

(5) unstructured question and answer sessions at a ratio in excess of 15 minutes per CLE hour, and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.

(c) Computation of Teaching Credit - As a contribution to professionalism, eCredit may be earned for teaching in an approved continuing legal education program or a continuing paralegal education program held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Programs accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of these rules at a ratio of three 3 hours of CLE credit for each thirty 30 minutes of presentation. Repeat programs qualify for one-half of the credits available for the initial program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit, and the repeat program would qualify for 2.25 hours of credit.

#### **(d) Teaching Law Courses**

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester long course at an ABA accredited law school. A member may also earn CLE credit by teaching a course or a class at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.

(2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester long course at a graduate school of an accredited university.

~~(3) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester long course at an ABA approved paralegal school or program.~~

~~(4) Credit Hours. Credit for teaching described in Rule .1605(d)(1) — (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:~~

~~(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).~~

~~(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 — 60 minutes of teaching.~~

~~(5) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.~~

#### .1525 Confidentiality Professionalism Requirement for New Members (PNA)

(a) Content and Accreditation. The State Bar PNA program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish any changes to the required content on or before January 1 of each year. To be approved as a PNA program, the program must satisfy the annual content requirements, and a sponsor must submit a detailed description of the program to the Board for approval. A sponsor may not advertise a PNA program until approved by the Board. PNA programs shall be specially designated by the Board and no program that is not so designated shall satisfy the PNA program requirement for new members.

(b) Timetable and Partial Credit. The PNA program shall be presented in two 6-hour blocks (with appropriate breaks) over two days. The 6-hour blocks do not have to

be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire 6-hour block unless a special circumstances exemption is granted by the Board. The Board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the Board.

(c) Online programs. The PNA program may be distributed over the internet by live streaming, but no part of the program may be taken on-demand unless specifically authorized by the Board.

(d) PNA Requirement. Except as provided in Rule .1517(1), each newly admitted active member of the North Carolina State Bar must complete the PNA program during the member's first reporting period. It is strongly recommended that newly admitted members complete the PNA program within their first year of admission.

#### .1526 Effective Date Procedures to Effectuate Rule Changes

(a) ~~The effective date of these Rules shall be January 1, 1988.~~ Subject to approval by the Council, the Board may adopt administrative policies and procedures to effectuate the rule changes approved by the Supreme Court on [date], in order to:

(1) create staggered initial reporting periods;

(2) provide for a smooth transition into the new rules **beginning March 1, 2024;** and

(3) maintain historically consistent funding for the Chief Justice's Commission on Professionalism and the Equal Access to Justice Commission.

**(b) Carryover hours earned pursuant to the rules in effect at the time the hours are earned will carry over as total hours to the first reporting period under the amended rules. Active members licensed prior to July 1 of any calendar year shall meet the continuing legal education requirements of these Rules for such year.**

**(c) Active members licensed after June 30 of any calendar year must meet the continuing legal education requirements of these Rules for the next calendar year. ■**

## Supporting Criminal Justice Reform (cont.)

it. We will give them the results while rolling up our sleeves and supporting their efforts to do what's needed to get where they want to be. And it's not just talk—it's what we do.

### Learn More and Connect

To learn more or to connect with the Lab, including offering suggestions regarding how we can be more effective, please reach out. One of the easiest ways to do that is through our webpage, [cjl.sog.unc.edu](http://cjl.sog.unc.edu). We hope to hear from you. ■

*Jessica Smith is the W. R. Kenan Jr. Distinguished Professor of Public Law and Government and the director of the UNC School of Government Criminal Justice Innovation Lab.*

*The UNC School of Government is non-partisan, non-advocacy and responsive to the needs of public officials. We do not advocate for any political ideology or policy outcome or allow our personal beliefs or those of our audiences to influence our work.*

### Endnotes

1. Jessica Smith, *Pretrial Preventative Detention in North Carolina* (UNC School of Government, March 2019), [unc.live/3RBYFYZ](http://unc.live/3RBYFYZ).
2. See, e.g., Jessica Smith, *Lesson from the Alamance County Bail Litigation*, NC Crim. L. Blog (Sept. 23, 2020), [unc.live/3OeRkBR](http://unc.live/3OeRkBR).
3. See, e.g., Christopher Tyner, *2021 Legislative Reforms to North Carolina Ordinance & Regulatory Crimes* (UNC School of Government, October 2021), [unc.live/3co6tUq](http://unc.live/3co6tUq).
4. Ross Hatton & Jessica Smith, *Research on the Effectiveness of Pretrial Support and Supervision Services: A Guide for Pretrial Services Programs* (UNC School of Government, July 2021), [unc.live/3aQkl9x](http://unc.live/3aQkl9x).
5. Maggie Bailey, *Empirical Research on the Effectiveness of Indigent Defense Delivery Systems* (UNC School of Government, February 2021), [unc.live/3AYJIG8](http://unc.live/3AYJIG8).
6. Visit the dashboard at [cjl.shinyapps.io/MeasuringJustice](http://cjl.shinyapps.io/MeasuringJustice).
7. Jessica Smith, Jamie Vaske, C. Ross Hatton, *Bail Reform in North Carolina Judicial District 21: Evaluation Report* (UNC School of Government, April 2022), [unc.live/3PulBo](http://unc.live/3PulBo).
8. For the full project report, see *North Carolina Court Appearance Project: Findings and Policy Solutions from New Hanover, Orange, and Robeson Counties* (April 22, 2022), [unc.live/3AYJAKw](http://unc.live/3AYJAKw).
9. *The Citation Project: A Collaborative Project to Inform Policing Policy*, [unc.live/3odKges](http://unc.live/3odKges).

# Getting to Know North Carolina's Three New US Attorneys

BY CARI BOYCE

A deep commitment to the state of North Carolina and a desire to make its communities safer and stronger is what drove all three of the state's top federal prosecutors to accept President Biden's nomination to serve as US attorneys. All three were confirmed unanimously by the US Senate on November 19, 2021, and were officially sworn in shortly thereafter. They were among the first of the new class of US attorneys to be confirmed in the country.

Michael Easley Jr., a native of Southport, NC, serves as the US attorney for the Eastern District, which includes the 44 counties from Raleigh to the coast. Sandra Hairston, a native of Walnut Cove, NC, serves as the US attorney for the Middle District and its 24 counties. Dena King, a native of Charlotte, NC, also known as the "Queen City," serves as the US attorney for the Western District, which covers the remaining 32 counties in the tar heel state.

All three are products of North Carolina's acclaimed public university sys-

tem and share a healthy rivalry when it comes to collegiate sports. Easley earned his undergraduate and law degrees from UNC-Chapel Hill. Hairston's undergraduate degree comes from UNC-Charlotte and King's from North Carolina State University. Both Hairston and King earned their law degrees from North Carolina Central University.

The three are not only colleagues, but also longtime friends who share a deep admiration and respect for one another. They routinely collaborate and work together on issues of importance across the

jurisdictions. All three are close, but Easley and Hairston share a special bond. Hairston worked as an assistant prosecutor for Michael Easley Sr. when he served as district attorney for Brunswick, Bladen, and Columbus Counties. That gives US Attorney Easley the ability to fact check his father's war stories as well as hear firsthand about his mother's legal skills, as she also served as an assistant prosecutor in the area.

Not surprisingly, all three prosecutors have prioritized violence reduction efforts to make communities safer by prosecuting gun violence and drug trafficking while at the same time investing in community intervention, prevention, and reentry programs. All three are responsible for coordinating Project Safe Neighborhood (PSN) in their districts. PSN brings together federal, state, local and tribal law enforcement officials, community leaders, and other stakeholders to identify and solve the most pressing violent crime problems in a community.

Other common priorities across all three districts include the protection of civil rights, promoting access to justice, and protecting vulnerable populations, including children and older adults, from crimes of exploitation.

North Carolina's three US attorneys may share a common commitment to service and a consistent platform for fighting crime and promoting justice and equality, but they also bring differences to the position that reflect their personalities and the unique traits of their particular districts.

Read our Q and A with each of North Carolina's federal prosecutors to learn more.

## Michael Easley (Eastern District)

**Why did you choose to pursue a career in law?**

I was raised the son of two criminal prosecutors in Eastern North Carolina and saw firsthand how rewarding it can be to use your skills, talents, and abilities in service of others, and the tremendous good you can do seeking justice for the less advantaged.

**Who were the people most influential in shaping your career path?**

Two people immediately come to mind. My former law partner, Colon Willoughby, served as the district attorney in Raleigh for nearly 30 years. We spent years working side by side on complex, long-term grand jury investigations and matters at the trial court level. He modeled how to be a zealous advocate without sacrificing decency and humility. And my mother, Mary Easley, is another great prosecutor and trial lawyer who has been formative in my career. She was a trailblazer as the first female prosecutor in Eastern North Carolina, and went on to teach trial and appellate advocacy. I get much of my work ethic and attention to detail from her.

**If you were told you could not be a lawyer anymore, what career would you pursue?**

Federal agent. I love the work of putting a case together.

**What made you sign on to be a US attorney for North Carolina?**

I spent most of my youth crisscrossing the 44 counties of Eastern North Carolina and represented clients there for years. I have seen the harm that drug trafficking, violent crime, and financial exploitation have caused for people in the eastern half of our state. I signed on to serve as US attorney to do my part in holding criminals accountable, bringing justice to victims, and setting things right.

**What has been the most surprising thing to you in your role as US attorney?**

Law enforcement and the communities they serve are eager to work together to solve issues around violent crime, drug trafficking,



and crimes of exploitation. I never cease to be amazed what we can do when we all come together in good faith to help our fellow North Carolinians.

**What has been most rewarding since you started work as US attorney?**

The most rewarding part of the job has been serving alongside 125 dedicated public servants in the US Attorney's Office who get up every day committed to making Eastern North Carolina safer, fairer, and freer.

**What are your top priorities as US attorney?**

My top priority is keeping North Carolinians safe from gun violence and trans-national drug traffickers pushing dangerous opioids like fentanyl into our communities.

We are also prioritizing white collar fraud, civil rights, cybercrime, and national security prosecutions.

**What advice would you give to a young law student/lawyer looking to pursue a career in the US Attorney's Office?**

Get on-your-feet litigation experience and be persistent in applying to vacancies and getting to know assistant US attorneys.

**What is the last book that you read?**

*Goodnight Moon / Buenos Noches, Luna* by Margaret Wise Brown. It is my daughter's current favorite.

**If you had the chance to go to any live music event, what performer/band would you go see?**

Turnpike Troubadours.

**Are you currently binge-watching anything of note?**

*Dopesick*.

**If you could have dinner with any famous person (living or dead) who would it be and why?**

Sandra Hairston and Dena King because they are good friends and colleagues, and we are all dealing with many of the same issues now.

**What is your favorite pizza topping?**

Hot peppers.

**What do you like to do outside the office for fun?**

Hunt, fish, and exercise.

## Sandra Hairston (Middle District)

**Why did you choose to pursue a career in law?**

A legal career seemed to be the best way for me help people. I thought I might get a job with a law firm and maybe practice as a

defense attorney. I had no idea in law school that my path would lead to public service as a career prosecutor.

**Who were the people most influential in shaping your career path?**

My career as a prosecutor was shaped by former Governor Easley, because he gave me my first job as an assistant district attorney, and by retired North Carolina Supreme Court Justice Robert (Bob) Edmunds Jr., because he hired me as an assistant US attorney in 1990.

I will always lift my mother up as my role model and inspiration of courage and fortitude. She raised us as a single parent after our father's sudden passing. She taught me and my brother growing up that we could and should pursue any career path we wanted. We were taught to work hard and to treat others as we want to be treated.

**If you were told you could not be a lawyer anymore, what career would you pursue?**

I hope the choice to leave the legal profession, i.e., retire, would be mine. In that vein, I think I would like to work with the public schools to develop effective prevention and intervention programs for middle school children, designed to help them make good choices when confronted with difficult issues that could result in their having contact with the justice system.



**What made you sign on to be a US attorney for North Carolina?**

I felt my experience as a career prosecutor and my knowledge of the Middle District would allow me to successfully lead the office. I have served as the lead attorney in the Organized Crime Drug Enforcement Task Force section of the office; I have served as deputy chief of the Criminal Division; and I have served as the first assistant US attorney. Over the past three decades I have worked with federal, state, and local law enforcement agencies in pursuing justice for victims of crime.

**What has been the most surprising thing to you in your role as US attorney?**

The number of requests I have received to

speak at community events. I have enjoyed sharing with community members and leaders what we do in the US Attorney's Office, i.e., priorities and goals.

**What has been most rewarding since you started work as US attorney?**

The support I have received from my colleagues in the US Attorney's Office has been the most rewarding aspect of the job. I have worked with some of the members of our staff for one and two decades. To have them voice their support for me as I pursued the nomination, and to show their continued, genuine support of my leadership has been incredible.

**What are your top priorities as US attorney?**

- Protecting our citizens from both foreign and domestic violent extremists.
- Combatting violent crime in our local communities. Through the Project Safe Neighborhoods initiative, we will continue to work with our federal, state, and local partners to address the rise in violent crime in the district.
- Combatting drug trafficking and preventing opioid deaths.
- Combatting financial crimes and fighting cyber-crimes.
- Protecting vulnerable populations through the Project Safe Child initiative.

**What advice would you give to a young law student/lawyer looking to pursue a career in the US Attorney's Office?**

Successful applicants with our office often have prior experience as state court prosecutors, either from North Carolina or elsewhere, or they have worked in private law firms and have been exposed to the litigation practice in those firms.

**What is the last book that you read?**

*Becoming*, by former First Lady Michelle Obama.

**If you had the chance to go to any live music event, what performer/band would you go see?**

I have attended many live music events over the years. Those that stand out in my mind are Prince, Stevie Wonder, and Paul McCartney.

**Are you currently binge-watching anything of note?**

No.

**If you could have dinner with any famous person (living or dead) who would it be and why?**

Nelson Mandela. Why? Because he was

Nelson Mandela, one of the greatest figures in world history.

**What is your favorite pizza topping?**

Boring answer: pepperoni.

**What do you like to do outside the office for fun?**

I like to travel with my cousins when time permits.

**Dena King (Western District)**

**Why did you choose to pursue a career in law?**

As a kid, the first influential African American I saw portrayed on television was Clair Huxtable from *The Cosby Show*. She was a professional woman and worked as an attorney, but also had a family as she was married with kids. She appeared to have it all, and at that moment I decided I wanted to be like her, an attorney.

**Who were the people most influential in shaping your career path?**

The two people who shaped my career path were my father and my brother. My



brother was killed at the age of 15, a few days before Christmas, after being hit by a car. I was 13 years old at the time, and due to the unexpected nature of his death, it truly shocked my entire family. My father mourned his son's

loss and died of a heart attack, a broken heart really, ten months later. In a manner of ten months I had lost two important people in my life, and I learned for the first time what grief was.

I was spoiled by my brother and father, and, in their eyes, I was the smartest girl on earth. So, in my grief, I thought that the best way to honor my brother and father's legacy was to make them proud by continuing to be the smartest girl on earth, at least in their eyes. They both knew I wanted to be an attorney, and fulfilling that dream in their honor became the driving force in my life.

**If you were told you could not be a lawyer anymore, what career would you pursue?**

Life coach because I enjoy helping people discover their own potential and achieve their best.

**What made you sign on to be a US attorney for North Carolina?**

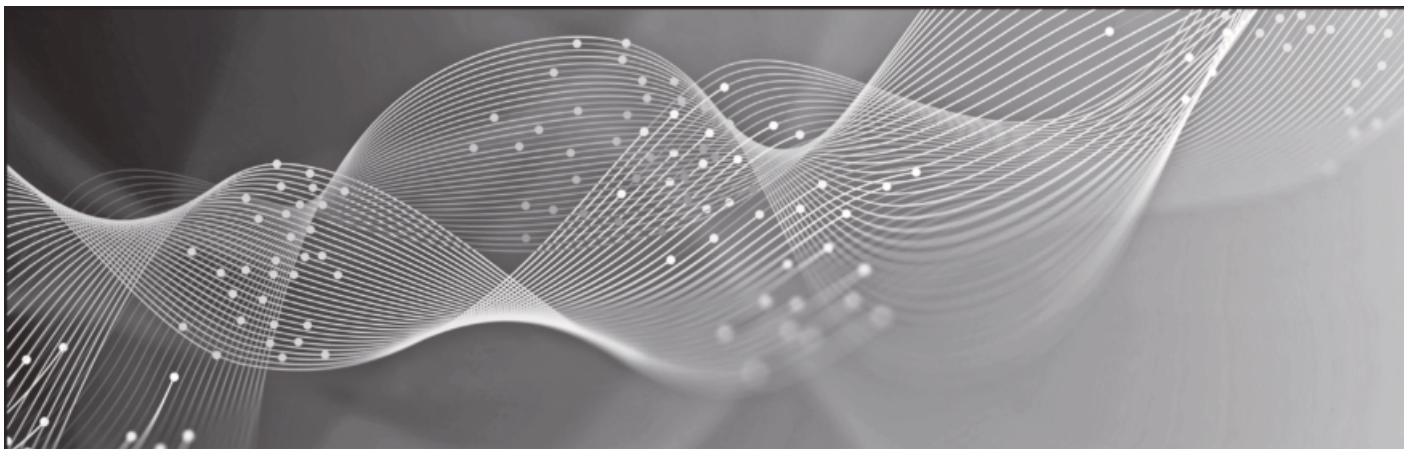
I am excited to serve in this role because I care deeply about our state, the Western District of North Carolina, and its people, and I feel a great sense of responsibility toward our communities. That is why when I was presented with the opportunity to serve as US attorney, I vowed to lead with honor and integrity and to use my time in the office to make our communities stronger. I believe deeply in the Justice Department's core mission—the advancement of civil rights. I also believe in adhering to the rule of law and ensuring the safety of our communities. As US attorney I can accomplish these objectives throughout the 32 westernmost counties we serve, and do so with the help of so many talented federal prosecutors and staff in my office who are equally committed to public service.

**What has been the most surprising thing to you in your role as US attorney?**

The most surprising thing has been the unexpected and overwhelming positive response of those who learn about my personal story. For a long time, I did not speak about my personal tragedy and my own struggles growing up. However, opening up about the challenges in my life and sharing my story has helped me connect on a personal level with so many people from vastly different backgrounds. It has been eye opening realizing that in sharing there is personal growth and the ability to establish an instant connection that I did not think was possible.

**What has been most rewarding since you started work as US attorney?**

I enjoy talking to and mentoring young people. It is a passion of mine as I believe I can help inspire and motivate the next generation of leaders while also teaching them the importance of making good decisions. Since taking office, I have made youth engagement a priority of our community outreach efforts. To date, I have collaborated with school districts throughout Western North Carolina to promote youth engagement, support young people in developing the skills they need for future success, and empower students to reach their full potential. I've spoken with students from Charlotte to Asheville and all the way to the Qualla Boundary. During these interactions with the students, I have learned that they all share challenges that, although may appear vastly different on the surface, actually have a lot in common. It has



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been rewarding to meet with students, share my personal story, encourage them to discuss the challenges they face, and inspire them to find their voice and become ambassadors for change. I believe my interactions with them also serve as crime prevention and intervention strategies.

**What are your top priorities as US attorney?**

As a US attorney, my priorities are protecting civil rights, keeping our communities safe through violence reduction efforts, protecting our vulnerable populations, including children and older adults, upholding the rule of law, and promoting access to justice.

**What advice would you give to a young law student/lawyer looking to pursue a career in the US Attorney's Office?**

I would advise them to find their "why." Why do you want to pursue a career as a federal prosecutor? Is it enforcing our nation's laws? Is it holding those who break the law accountable? Is it giving a voice to victims and delivering justice? Whatever your "why" is, let that be your lodestar and guide you throughout your career as a public servant—

in both your successes and your challenges.

**What is the last book that you read?**

*Bleeding Out: The Devastating Consequences of Urban Violence and a Bold New Plan for Peace in the Streets* by Thomas Abt.

**If you had the chance to go to any live music event, what performer/band would you go see?**

Any 90s hip hop performer/band.

**Are you currently binge-watching anything of note?**

*Ozark*.

**If you could have dinner with any famous person (living or dead) who would it be and why?**

Thurgood Marshall. He was brilliant, fearless, methodical, passionate, and used his deep understanding of our own legal system to fight discrimination, advance civil rights, and promote racial equality.

**What is your favorite pizza topping?**

Bacon. Hands down.

**What do you like to do outside the office for fun?**

Travel. And shop for shoes. ■

*Cari Boyce is a retired Duke Energy executive now serving as an advisor in the US Attorney's Office for the Eastern District of North Carolina. She previously spent 15 years in state government in New York and North Carolina.*

### Notice

In October 2022, the State Bar Council will consider increasing the fee for initial and annual renewal registrations of prepaid legal services plans from \$100 to \$300. Send comments to: Executive Director, NCSB, PO Box 25908, Raleigh, NC 27611.

# Unconventional Activist—The Enduring Legacy for Black Women Lawyers of Judge Elreta Melton Alexander

A BOOK REVIEW BY MATTHEW CALLOWAY

**N**early a half-century ago, North Carolina's legal community braced itself for a groundbreaking state Supreme Court election. Only men had served as the Court's chief justice, but the situation appeared certain to change with the



state's two most experienced women judges filing to run for the seat in the 1974 midterm.

Susie Marshall Sharp—an associate justice on the Court and well known across the state—was running unopposed as the Democratic candidate. Her likely opponent, Elreta Melton Alexander (1919–1998), was a well-respected Guilford County district court judge seeking the Republican nomination.

Both women were already trailblazers in a legal profession dominated by men, but the stakes were higher for Alexander. As a middle-class Black woman who grew up in the Jim Crow south, Alexander belonged to what scholar W.E.B. Du Bois called the “talented tenth,” the cadre of well-educated African American professionals seeking uplift for the entire Black community. To secure the Republican nomination, Judge Alexander faced an obviously unqualified

primary opponent—a white salesman with no legal training or experience—but her victory was anything but guaranteed.

In *The Life of Elreta Melton Alexander: Activism Within the Courts*, historian and North Carolina native Dr. Virginia L. Summey situates the state's 1974 Supreme Court race as the culmination of Alexander's impressive list of accomplishments.<sup>1</sup> Graduate of Greensboro's Dudley High School at 15 (1934) and North Carolina Agricultural & Technical State University (A&T) at 18 (1937). First Black woman to be admitted (1943) and graduate from Columbia Law School (1945). Second Black woman to pass the North Carolina bar exam and first to practice law in the state (1947). First Black woman to argue a case before the

state Supreme Court (1955). Member of the state's first integrated law firm (1966). First Black woman elected district court judge in North Carolina, and likely the entire country (1968).

However, drawing on Alexander's oral histories and other archival sources, Summey contends that Judge Alexander's legacy is greater than the sum of her long list of firsts. Summey demonstrates how Alexander worked within the legal system—both as a practicing lawyer and as a judge—to expose systemic inequities that disproportionately disadvantaged the Black community and to create opportunities for meaningful change. In this way, Summey seeks to expand traditional conceptions of civil rights activism, which have typically centered on narratives of

participants in more visible forms of public protest.<sup>2</sup>

At the same time, Summey presents an absorbing account of middle-class Black life in Jim Crow and civil rights-era Greensboro while acknowledging the persistent challenges Alexander faced in her personal life, including her abusive first husband and her son's struggles with paranoid schizophrenia. Moreover, this engaging portrait of Judge Alexander arrives at a time when Black women are continuing to make historic gains within the legal profession—notably, the recent confirmation of Justice Ketanji Brown Jackson to the United States Supreme Court—though amidst a renewed backlash against efforts to reckon with ongoing systemic racism.<sup>3</sup> Summey makes the case for the continued relevance of Judge Alexander's life and legacy, showing that she was anything but the “reluctant pioneer” the *Greensboro Daily News* once claimed.<sup>4</sup>

### Jim Crow and the Politics of Respectability

Summey anchors her exploration of Alexander's life and career in Greensboro, where young Elreta Melton and her family settled in 1930. Alexander's upbringing in the Jim Crow South exposed her to “issues that would become recurring themes throughout her life,” such as “respectability politics, performance activism, class, and colorism.”<sup>5</sup> Alexander's father, a graduate of Shaw University, was a Baptist minister and proponent of middle-class Black values focused on “education, proper decorum, and respectability” as a form of resistance to Jim Crow's “rigid system of white-imposed racial etiquette and segregation.”<sup>6</sup> Education was the lynchpin of her parents' philosophy—Alexander's mother was also a teacher—and Greensboro's two historically Black institutions of higher learning played an important role for the Melton family.

While attending A&T, Elreta Melton began dating her future husband, an older student named Girardeau “Tony” Alexander who had grown up in New York. Smart but introverted, Tony also began drinking and acting erratically during his college years, foreshadowing his later alcoholism and abusive behavior. The two were engaged in 1937 after Elreta's graduation and eloped the following year. During college, Elreta also lost her best friend to suicide, an emotionally devastating event that made her determined

to help others.

Elreta Alexander initially hid her marriage from her family, teaching school in several North Carolina towns while Tony attended medical school in Nashville, Tennessee. After accepting a residency at Greensboro's all-Black hospital, Tony assumed a role of patriarchal “husband-as-provider” and demanded that his wife stop teaching, though she continued working part-time at A&T's campus library.<sup>7</sup> In 1943 Alexander volunteered with a local Black Methodist minister's campaign for city council. He lost the election but encouraged Alexander to seek positive change within the community, leading her to attend law school.

### Moving the Bar

Initially, neither her father nor husband were supportive, but Tony finally agreed to pay for Alexander to attend law school in New York City if she would stay with his mother. She assented but chose Columbia because it was the most expensive option.

Alexander began her legal education in the summer of 1943 when law schools struggled with lower enrollment due to World War II. As the first Black woman admitted to Columbia Law, there was added pressure. The law school's dean bluntly informed Alexander that her performance would influence whether more Black women would be admitted, a jarring experience that distracted her from her studies and made her consider returning home.

Summey explains that Alexander persevered, and her time in New York not only prepared her to “operate in a nearly all-white environment,” but also convinced her to “embrace her Blackness...and use her professional standing to advocate for other African Americans.”<sup>8</sup> Constance Baker Motley—later the first Black woman to be appointed as a federal judge—became Alexander's classmate the following year.

Returning to Greensboro after graduation, Alexander discovered that she would have to prove herself “exceptional and meritorious” to sit for the North Carolina bar.<sup>9</sup> With the support of her law school faculty, Alexander earned the opportunity, but an accidental explosion at her home left her injured and delayed her plans. After recuperating, Alexander instead returned to New York to begin her legal career. Arriving back in North Carolina in 1946, Alexander's bar application was denied for lack of residency,

until one of Reverend Melton's female church members who worked as a domestic appealed to her employer, a prominent white businessman with connections.

As Alexander settled into private practice in Greensboro, she “used performance in legal settings as a method to foster social change,” such as sitting in the Black sections of segregated courtrooms to draw attention.<sup>10</sup> Alexander also employed fashion items like strings of pearls, flashy hats, and bold wigs as part of her brand of performative activism. Alexander participated in professional groups for Black women, became a popular speaker, and published a volume of pointedly anti-racist poetry. Yet Alexander also provided legal representation to Ku Klux Klan members (in matters unrelated to their Klan activities) as her own form of civil rights activism—Alexander bragged that she convinced several clients to cut ties with the Klan.

### Approaching the Bench

Alexander's decision to run for district court in 1968 grew out of her representation of four young Black men in a capital rape case in 1964, at the height of Greensboro's civil rights tensions. The men were charged with raping a white woman and assaulting her white male companion one night at a lovers' lane behind an abandoned mansion in High Point, though there was conflicting evidence regarding whether all the men had been involved. Initially retained by the mother of one of the accused men, Alexander ultimately led the defense for all four on a *pro bono* basis—despite the potential risks to herself and her successful legal practice—when the presiding judge denied her client a separate trial.

Summey explains how the case drew on entrenched racist stereotypes of Black men's sexuality dating back to the antebellum South.<sup>11</sup> Recognizing that the men were likely to be found guilty, Alexander focused on achieving due process for her clients, unsuccessfully seeking to introduce evidence that Black men received disproportionately harsher sentences than white men charged with similar crimes.

Alexander also exposed racial biases in Guilford County's jury selection process, including obvious race-based distinctions in the numerical coding used to identify potential jurors, a practice she contended was employed to exclude African Americans from juries. The county changed its jury

selection process following the trial—and further reforms were adopted at the state level—but the jury found Alexander’s clients guilty. However, her efforts spared the men’s lives when the lone Black juror on the otherwise all-white jury recommended mercy.<sup>12</sup>

Shortly before announcing her candidacy for district judge in 1968, Alexander changed her party affiliation from Democratic to Republican, a decision Summey explains made Alexander “a political anomaly” in the Black community following the civil rights reforms of the mid-1960s.<sup>13</sup> Summey contends that Alexander lacked strong party affiliation and saw her change of registration “as a method of achieving political equality.”<sup>14</sup>

As a district judge, Alexander’s Judgment Day Program in juvenile court became the hallmark of her approach. Aimed at young first-time offenders, the program focused on rehabilitative justice through deferred sentencing based on completion of community service, written essays, and other activities. However, others in the legal community criticized the program, questioning the appropriateness of the judicial discretion that Alexander applied. Mental health awareness became another component of Alexander’s jurisprudence, and in her public speaking she increasingly promoted career opportunities for women.

### Outside the Courtroom

Alexander’s 1968 campaign coincided with both the death of her father and her divorce from Tony after decades of abuse and infidelity. Summey explains that while Alexander seriously considered divorcing Tony as early as 1950, she stayed in their marriage because of concerns about maintaining her social respectability and fears that Tony would kill her. Her fears were not unfounded—in 1957 Tony threatened Alexander with a gun at her law office, and several years later he severely beat her in front of their young son.

While Alexander did not conceal Tony’s alcoholism, infidelity, and abuse from her family and close friends, Summey argues that she was able to achieve professional success only by “carefully compartmentalizing her tumultuous personal life and her successful professional life.”<sup>15</sup> Another way Alexander coped with her marital turbulence was by doting on her only child, Girardeau, born in late 1950.

Alexander’s professional success allowed her to spend increasing amounts of time away from Tony. In the late 1950s, Alexander received a three-year fellowship to study international law in Switzerland, though her mother’s declining health prevented her from taking advantage of the opportunity. Alexander later purchased her own home in Greensboro’s affluent (and previously all-white) Starmount Forest neighborhood for stability and safety.

### Facing Limitations

Despite her Ivy League law degree, experience as district court judge, and active campaigning across the state, Judge Alexander lost her 1974 primary bid for state Supreme Court to the white salesman with no legal training. Summey argues that while Alexander was reluctant to publicly attribute the loss to racism or sexism, the outcome underscored “the limitations confronting African American women in the post-civil rights era.”<sup>16</sup>

Alexander’s candidacy apparently caught both the state’s GOP leadership and her Democratic opponent off guard, as well. Sharp speculated that Alexander merely wanted increased name recognition to help secure a federal court nomination, though Summey clarifies that Alexander had filed as a candidate before she had a primary opponent. Nevertheless, Alexander’s loss to a clearly unqualified candidate alarmed Sharp. While she won overwhelmingly in the Supreme Court race, Sharp pushed for the adoption of judicial standards that ultimately led to a constitutional amendment requiring state court judges to be licensed attorneys—an unintended legacy of Alexander’s failed candidacy.<sup>17</sup>

After her primary loss, Alexander continued as a district court judge, achieving reelection several times. When her former husband’s health declined, she coordinated his medical care until his death in late 1976. Her son’s worsening schizophrenia also required her regular attention. After prevailing against a judicial misconduct allegation in 1977, Summey indicates that Alexander appeared “bitter,” likely due to trauma resulting from the “racist overtones” of her series of professional setbacks during the 1970s.<sup>18</sup> Alexander remarried in 1979 and announced her retirement from the bench in 1981, returning to private practice until 1995.

While Alexander had a tremendously successful career, she likely failed to achieve all

that she had hoped. In the 1970s, Alexander was identified as a potential candidate for North Carolina’s Middle District, and she later appeared on a list of possible Fourth Circuit nominees, but Alexander never obtained a federal judgeship. However, to the extent Alexander found her aspirations thwarted by a climate of racism and sexism, she also helped lay the foundation for the historic achievements of later generations of African American women lawyers through her unique brand of activism. Summey’s thoroughly researched and compelling biography brings needed attention to Judge Alexander’s legacy and invites further exploration of the important contributions of Black women in the legal profession. ■

*Matthew Calloway is a principal with Mercer’s Law & Policy Group in Charlotte. He focuses on legal and policy developments affecting employee benefit plans.*

### Endnotes

1. Virginia L. Summey, *The Life of Elreta Melton Alexander: Activism Within the Courts* (Athens: University of Georgia Press, 2022).
2. While Summey takes a broader view of activism, her overall approach aligns with recent historical scholarship that situates Black women’s activism as central to securing greater rights and opportunities not just for themselves, but for American society at large. See, e.g., Martha S. Jones, *Vanguard: How Black Women Broke Barriers, Won the Vote, and Insisted on Equality for All* (New York: Basic Books, 2020).
3. See, e.g., Seung Min Kim and Marianna Sotomayor, *Race hovered over Ketanji Brown Jackson’s confirmation hearing*, Washington Post, March, 24, 2022, [wapo.st/3aTW5mS](https://www.wapo.st/3aTW5mS).
4. Summey, *Life of Elreta Melton Alexander*, at 94.
5. *Id.* at 13.
6. *Id.* at 16.
7. *Id.* at 32.
8. *Id.* at 35, 41.
9. *Id.* at 42.
10. *Id.* at 48–49.
11. *Id.* at 60–61.
12. Summey also notes that “Alexander did attempt to capitalize on the prevailing sexism that made victim blaming common in rape trials,” which speaks to the complex intersectionality of Alexander’s position as a Black woman lawyer. *Id.* at 4–5, 69.
13. *Id.* at 101.
14. *Id.*
15. *Id.* at 91.
16. *Id.* at 119.
17. For a detailed account of Sharp’s life and legal career, see Anna R. Hayes, *Without Precedent: The Life of Susie Marshall Sharp* (Chapel Hill: University of North Carolina Press, 2008).
18. Summey, *Life of Elreta Melton Alexander*, at 139.

# The Need for Arrest Warrant Application Hearings

BY J. TOM MORGAN

I am a professor at Western Carolina University where I teach criminal law, criminal procedure, and ethics to undergraduate students. I am also licensed to practice law in North Carolina and Georgia. As part of my service to the college community, I represent students and faculty *pro*



istockphoto.com/Bill Oxford

*bono* whenever possible. Last semester I represented two faculty members in two very different cases, but both illustrate the need for the North Carolina legislature to adopt a statute creating arrest warrant application hearings in criminal cases.

In the first case, Dr. James\* came to see me regarding a dispute he was having with a fishing guide who was gaining access to the Tuckasegee River by traversing Dr. James' property where he lives with his wife and two-year-old child. I am aware that disputes over access to good fishing spots can result in mortal combat in these parts of North Carolina. After receiving Dr. James' statement of the facts, I advised him that such disputes are best settled outside the criminal justice system. While his allegations may support a criminal warrant or a restraining order, judges prefer that these arguments be settled without court intervention. Furthermore, in college towns there is always tension in the community between the locals and the college faculty and students, particularly when the vast majority of the faculty members are from elsewhere. Everyone should try to get

along and settle any disagreements amicably.

A few weeks after the consultation with Dr. James, he called me and said that he was in the process of being arrested by the local sheriff's deputies for several misdemeanors and asked if I could assist him. After we bonded Dr. James out of the local jail, I was surprised to learn that he was arrested on warrants without any investigation or corroboration by law enforcement. Law enforcement's only involvement in the case was to effectuate the arrest on the warrants signed by the magistrate.

I was also surprised that Dr. James was arrested solely on the scant statement provided by the fishing guide to the magistrate without Dr. James being given the opportunity to present his side of the case before his arrest. It also came as a surprise that the magistrate signing the probable cause warrant was not a lawyer.

A few days after Dr. James' arrest, he and I went to the magistrate court. Dr. James presented a statement detailing probable cause of why the fishing guide should be arrested for various misdemeanors. The magistrate then signed warrants directing the sheriff's deputies to arrest the fishing guide.

When both parties appeared in court for the arraignment, I was curious—having been a former prosecutor—how the assistant district attorney would handle this matter. I knew there was nothing in her files other than the party's brief statements supporting their allegations. There were no independent witness statements, no photographs, no police reports, or other supporting documentation that would normally appear in a prosecutor's file. When I approached the assistant district attorney to discuss the matter, she told me that she had already

read the statements and besieged me and the counsel for the fishing guide to try to resolve the matter so that she could dismiss the charges. I was curious as to how many other cases she had involving cross-warrants or other warrants without law enforcement involvement. She said that all the cases on her calendar that morning fit that description, and there were many.

Eventually, Dr. James and the fishing guide, with the assistance of counsel, resolved their disputes and a gentlemen's agreement was reached on how to handle their differences. However, both parties had to endure the embarrassment of their arrests being in the local paper, appearing in court, and retaining counsel. This matter could have been resolved very differently if both sides had been afforded an arrest warrant application hearing as described later in this article.

While Dr. James was enduring his trials and tribulations with the fishing guide, another faculty member came to see me with her own set of problems. Dr. Jane, after receiving her doctorate degree, accepted a position at Western Carolina University to begin her academic career as a professor. After moving to North Carolina, Dr. Jane purchased a home within the city limits of Asheville. This home required some minor repairs, and she engaged the services of a handyman for this purpose.

One day, while he was working in her home, the handyman said that he needed to borrow \$2,900 to purchase equipment to complete a job. He promised to pay Dr. Jane back in full within two weeks. The handyman immediately cashed Dr. Jane's check and she never saw him again. She tried calling him to get payment, and after a few lame excuses, he stopped receiving her calls. A demand letter for payment sent to the address provided to Dr. Jane was returned because the address did not exist. A search on social media and the Better Business Bureau revealed that Dr. Jane was not the only person who had been victimized in this scam.

I conducted research on North Carolina criminal statutes and determined that there was probable cause for a warrant to be issued against the handyman for violation of G.S. 14-100, Obtaining Property under False Pretenses. The relevant section of this statute states,

(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of the future fulfillment or event, obtain or attempt to

obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to initiate or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony.

The seminal case explaining this statute is *State v. Cronin*, 229 N.C. 229 (1980). In that case, the North Carolina Supreme Court reversed a court of appeals decision and reinstated a defendant's conviction for fraudulently securing a loan.

In addition to my own research, I presented the facts as I knew them to be to a local defense attorney and an assistant district attorney who agreed with my analysis of the law. I called the Asheville Police Department to request a meeting with my client and a theft squad detective so that law enforcement could investigate the matter further and secure a warrant against the handyman. The officer who answered the phone asked about the nature of the meeting, and after explaining the facts to her she informed me that this was a civil matter and her department would not get involved. I explained to her that just because there were civil remedies available, it did not preclude a victim from seeking a warrant that was supported by probable cause. I gave her the illustration of a bank being defrauded. The bank could seek a criminal warrant from a magistrate as well as hire counsel to seek restitution. The officer informed me that the laws in North Carolina were different for banks than for individuals. I politely requested that she speak with the detective or supervisor regarding this matter and that I would call her back in a few days. When I returned the call, she told me that she had spoken with her supervisor and that he agreed with her analysis of the case and they would not meet with my client. I was surprised that a law enforcement agency would refuse a meeting with an alleged victim in a felony case.

Because Dr. Jane's case involved a felony, she could not seek a warrant before a magistrate without a police officer's involvement. I therefore wrote the district attorney for Buncombe County, Todd Williams, to request that my client meet with one of his investigators or an assistant district attorney to review her claims of fraud.

As a former district attorney myself, I knew that a district attorney has the discretion as to what cases to take to the grand jury, even when there has been no involvement by law enforcement. During my tenure of three terms as dis-

trict attorney, we took cases, primarily involving political corruption or law enforcement misconduct, to the grand jury after my own office conducted an investigation and without the involvement of a law enforcement agency. There were also rare instances, usually involving alleged sexual offenses, where law enforcement had declined to seek a warrant, but we still presented the case to the grand jury if we believed there was probable cause and a reasonable likelihood of conviction.

Mr. Williams immediately responded to my letter through his chief assistant, Jeremy Ingles. Mr. Ingles told me that he did not disagree with our legal analysis, but that his office could not proceed without a police report. I explained that we had tried to get a police report, but the Asheville Police Department refused to meet with Dr. Jane. I inquired as to whether the District Attorney's Office could conduct their own investigations and he said they did not have the resources at their disposal to conduct in-house investigations. Without having access to a law enforcement investigation, Dr. Jane was without recourse regarding her victimization. I asked Mr. Ingles if law enforcement, without a law school legal education, was the sole gatekeeper to the criminal justice system in Buncombe County, and he reluctantly agreed.

Both of these cases illustrate the need for North Carolina to adopt a statute similar to Georgia law, O.C.G.A. §17-4-40. This statute requires that before a magistrate issues an arrest warrant upon application by someone other than a law enforcement official, a hearing must be conducted to determine probable cause. The respondent must be notified that there is an arrest warrant application against him, and that he has the opportunity for a hearing and to be represented by counsel at that hearing before a warrant is issued. At that hearing, the respondent or his counsel may cross-examine the petitioner and any witnesses as well as present evidence as to why a warrant should not be issued. The court, only after hearing all the evidence presented by both sides, may then issue an arrest warrant. The rules of evidence are the same as those of a preliminary hearing. There are exceptions to the hearing requirement, such as when a magistrate believes that the party seeking a warrant is in immediate danger.

I have represented both petitioners and respondents in warrant application hearings in Georgia. The hearings are often in the evenings and presided over by lawyers who are part-

time magistrates. My favorite magistrate would take the bench and she would make the following proclamation: "It is my job to hear evidence from both sides and determine whether or not there is probable cause to issue an arrest warrant or warrants in the matter before me. After hearing the evidence, I have the choices of not issuing a warrant, issuing a warrant for the petitioner, issuing a warrant for the respondent, or issuing arrest warrants against both the petitioner and respondent. I have found that many disagreements can be resolved outside this courtroom. I am going to take a 30-minute recess before hearing the cases be-

fore me." It is no surprise that most of the disputes were resolved during those 30 minutes, but both sides had the opportunity for their cases to be heard.

North Carolina should adopt a statute for arrest warrant application proceedings that: (1) requires an evidentiary hearing on any warrant application, felony, or misdemeanor where the applicant is someone other than a law enforcement officer, (2) provides that any person who believes they are a victim of a crime has access to the criminal justice system pursuant to this statute, and (3) requires that the magistrate determine whether probable cause exists is a li-

censed member of the NC bar. Unfortunately, Dr. James and Dr. Jane did not have the benefits of an arrest warrant application proceeding and justice was not served in their cases. ■

*J. Tom Morgan is a professor at Western Carolina University where he teaches criminal law, criminal procedure, and ethics to undergraduate students. He is a former district attorney for DeKalb County, Georgia, and is licensed to practice law in North Carolina and Georgia.*

*\*My clients have given me permission to use their cases in this article as long as I do not reveal their identities.*

## In Memoriam

**Sharon Hines Agronsky**  
Asheville, NC

**Claude William Allen Jr.**  
Oxford, NC

**Wade Barber Jr.**  
Chapel Hill, NC

**Richard Andrew Bigger Jr.**  
Charlotte, NC

**Donald Lee Boone**  
High Point, NC

**Clifford Ricky Bowman**  
Dobson, NC

**Richard Lane Brown III**  
Cheraw, SC

**Mary Virginia Cartner**  
Asheville, NC

**Robert Moye Chandler Jr.**  
Rocky Mount, NC

**James Theodore Cheatham III**  
Chapel Hill, NC

**Sammie Chess Jr.**  
High Point, NC

**Margaret Ann Creasy Ciardella**  
Wilmington, NC

**D. Lamar Dowda**  
Greensboro, NC

**Paul B. Eaglin**  
Syracuse, NY

**Wendy Melton Enochs**  
Greensboro, NC

**John Clinton Eudy Jr.**  
Greensboro, NC

**Linda Gwynn Hebel**  
Lenoir, NC

**Haman Wells Holland**  
Wilmington, NC

**Charlotte Shuford Isbill**  
Lowell, NC

**Richard Wilburt Jackson**  
Laurinburg, NC

**Emil Failing Kratt**  
Charlotte, NC

**Victor Mark Lefkowitz**  
Winston-Salem, NC

**Stephen Ray Melvin**  
Fayetteville, NC

**Robert L. Mendenhall**  
Charlotte, NC

**William Clyde Morris III**  
Raleigh, NC

**Jack Morton**  
Rome, GA

**Ocie Fraser Murray Jr.**  
Fayetteville, NC

**David Hayes Permar**  
Raleigh, NC

**William Robert Pope Jr.**  
Nashville, TN

**Robert Glenn Ray**  
Fayetteville, NC

**Glennwood Carroll Raynor**  
Raleigh, NC

**Jerry David Redfern**  
Morehead City, NC

**Robert Dale Rickert**  
Winston-Salem, NC

**Robert Nelson Robinson**  
Charlotte, NC

**Bynum Griffin Rudisill**  
Charlotte, NC

**Frances Fulk Rufty**  
Salisbury, NC

**Gerald S. Schafer**  
Greensboro, NC

**John Edward Skvarla III**  
Pinehurst, NC

**William Elbert Stanley Jr.**  
Greensboro, NC

**Conrad Boyd Sturges Jr.**  
Washington, DC

**James Michael Sullivan**  
Charlotte, NC

**Philip Summa**  
Matthews, NC

**William Hugh Thompson**  
Raleigh, NC

**Philip Reid Tracy Jr.**  
Raleigh, NC

**Robert Candler Vaughn Jr.**  
Winston-Salem, NC

**Samuel Sykes Williams**  
Charlotte, NC

# Still Mindful after All These Years: How Mindfulness Guided 35 Years of Public Interest Advocacy

BY LAURA MAHR

His email got my attention.

Subject line: Thank you.

Opening sentence: Dear Laura, we have not met, and, as I imminently retire after 35 years in the legal profession (most of it working at what is now Legal Aid of North Carolina), I realize I simply wanted to say, “thank you” for your very helpful columns and powerful work on behalf of lawyer wellness.

I was touched that an attorney undertaking retirement took the time to connect.

I read on: “I know your work has made a significant impact on the health of lawyers in North Carolina, and, therefore, on the administration of justice here.”

I treasured this sentence, cherishing the growing number of lawyers connecting the dots between lawyer well-being and the administration of justice.

“Had I not developed mindfulness skills in 1987,” he continued, “I shudder to imagine the ways in which joyfulness and equanimity would have been unacknowledged/obstructed in my heart, and insight much more absent from my cognitions.”

This sentence drew me in, appreciating both the depth and vulnerability in the words. It was the email’s final intriguing sentence, though, that piqued my curiosity and mobilized me to immediately email a response:

“For various reasons I have never felt comfortable stepping forward professionally to share my mindfulness skills in furtherance of lawyer well-being—I am so glad that you have, and have done so effectively and steadfastly! Thank you. Keep on keepin’ on!”

I was curious to learn more about this lawyer for whom mindfulness was an integral, yet private, part of legal practice. I wanted to meet Roger Cook. So I replied to his



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email with sincere appreciation for his service at Legal Aid, and an invitation to “go public” with his mindfulness journey by way of an interview for this column. To my delight, Roger said yes. When we spoke, we connected around legal services lawyering (I am also a former legal services attorney), music (for which we both share a passion), and mindfulness (about which you can read below).

**LM:** Roger, how has mindfulness informed your legal practice?

**RC:** As lawyers, we make a living off our thoughts. The estimate is that we have something like 24,000 thoughts on average every day—that’s a lot! If I listen to all the thoughts that come into my head, I will get confused...and make some real mistakes. Mindfulness allows me to interpose an initial step before I take an action or reach a conclusion. That step is, simply, to notice the thought—for just a split second—so that I then have the power of choice. By this I mean having the power to decide whether that thought is appropriate in shaping my

action or decision-making.

A classic example would be a brewing argument with opposing counsel, such as when I feel unjustly attacked and I want to respond in kind. I have found that’s a recipe for continued—and almost certainly useless—conflict. If I attack back, I may have momentary relief for my injured pride, but generally receive a critical reply, which does little to help my client’s case.

Mindfulness teaches me to pause—ever so briefly—before I respond so that I can consider what actually was said, what the real intention of the speaker was, and what my intention is for our communication. Mindfulness slows me down so that my mind and heart can “vote” on what to do. Then I can choose how to best respond. If I don’t pause and choose, my response may not reflect my true intention or my best analysis of what is called for.

**LM:** How has developing your awareness been helpful to you professionally?

**RC:** In law practice, developing deeper

inner awareness has been very useful. I think of mindfulness as a tool to increase my professional competence and satisfaction. I have to be “mindful”—mainly of my own thoughts and feelings—as I serve my clients as effectively as I can. I must be aware of my thoughts and feelings before I act on them. Sounds easy? Well, it has not always been easy for me, neither in life nor in work.

**LM:** Have you employed your mindfulness practices to help you navigate the complex emotions that arise in representing clients?

**RC:** Definitely. Much of my 30 year career at Legal Aid of North Carolina involved representing residential tenants facing eviction from their homes. Early on, my conviction of the rightness of my cause led me to sometimes overlook the persuasive power of counterarguments of the opposing party—a dangerous mistake in litigation. Over time, I learned how to use mindfulness to notice my internal emotional environment, which optimized my performance at trial and in negotiations. I found I was more successful if I got distance from my heightened emotional state and got into a “present in this moment” space.

In a “present moment” headspace, I was able to separate from my anger or frustration. When that happened, instead of charging forward with anger, I might ask myself, “Why is this happening to this tenant now?” or, “What is the landlord’s interest in removing them from their home?” I can then be curious about solving the dispute without a solution fueled by anger, and without animosity toward opposing counsel. In this way, while simultaneously preparing for litigation, I can also brainstorm different solutions to my client’s problem—achieved through negotiation, not litigation. If I approach resolution to my client’s case only in the spirit of a “fighter,” it may or may not work out. If, however, I notice my own emotional impulse to “fight” through litigation, but not allow it to distract me from negotiating, the chances of achieving a sound, negotiated resolution increase. In the end, a mindfulness practice and a mindful approach helped me obtain the best result for my client.

**LM:** As a former legal services lawyer, I’m curious how mindfulness helped you navigate some of the frustrations that arise when representing indigent clients.

**RC:** Mindfulness helped me handle some of the emotional stress that Legal Aid lawyer-

ing induced. Sometimes there was no clear or practicable remedy for a wrong experienced by one of my clients. In those situations, I could become frustrated or even angry with what I viewed as the failure of our legal system to adequately respect the rights and needs of my clients—people with limited means. Yet I could not disown the system—I myself was part of it.

Mindfulness helped me to simultaneously feel anger at the lack of a solution, and to continue my pursuit of the mission of equal justice under law. I could become aware of my anger and disappointment without letting it unduly color my judgment going forward or dilute my zeal to continue to help. I learned to hold awareness of my emotions without any judgment as to the usefulness or appropriateness of that emotion. Only then could I make a choice to hold close that anger or to let it go. Handling strong emotions in this way helped me to do the best job I could for my clients.

Also, I found that the routine nature of my work sometimes, inadvertently, subtly narrowed my views of what could be accomplished for my clients. For example, if a certain claim or defense in a landlord-tenant matter failed on *occasion*, I might infer that those claims or defenses would *never work*. Mindfulness—the non-judgmental awareness of that thought—allowed me to step away from that conclusion and consider that those failed attempts were not accurate predictors of the likelihood of future success. That expanded view helped me be a stronger advocate for my clients.

**LM:** I’m curious about which of your mindfulness practices you found most helpful for lawyering.

**RC:** The mindfulness practice that greatly helped is a ten-minute breath awareness meditation in which I pay attention to the rising and falling of my abdomen—inhaling then exhaling. To help maintain my focus, I say in my mind “rising” for the inhalation, and “falling” for the exhalation. In those ten minutes, nothing else matters other than keeping track of those breaths. But guess what happens? I begin to notice that my mind fills with thoughts that are “unwilled” (“whoops, I need to finish drafting that complaint by noon tomorrow,” etc.). Eventually I start to see that my mind is like a TV announcer gone crazy, who won’t shut up. Sometimes what he has to say is useful, but other times it’s just noise. Developing the

ability to “hear” the announcer, but not necessarily adopt everything that it is saying, has been liberating, and made me a more effective advocate for my clients.

**LM:** How has mindfulness helped you on a personal level?

**RC:** Mindfulness helped me achieve better work-life balance. The troubling human struggles I watched play out during my workday often stayed present in my mind and heart after work. At times I found it difficult to enjoy and relax during personal time. By developing mindfulness skills, I was able to create some distance from those reactions and emotions I carried with me at the end of my workday so that I could be much more present for my non-work life. I used mindfulness to help me realize that I was still thinking about work and the hardships of my clients. Holding that awareness helped me let go of those inner distractions by realizing that there was no longer anything I could do to change what had occurred. While I had the memories and reactions fresh in my mind, getting distance from them using mindfulness gave me the ability to notice them, but not “adopt” them, helping me to better enjoy down time.

Additionally, for those like me with ADHD (attention deficit hyperactivity disorder), mindfulness can be uniquely useful. As a younger lawyer, for example, I sometimes reached conclusions a bit too quickly, on not enough evidence (facts) or, sometimes, research (legal conclusions). I could also go to the opposite extreme, by overanalyzing a factual ambiguity or legal problem. Developing a mindful approach gave me greater insight into my being “off the mark.” I was able to see the analytical process my mind was engaged in, recognize that it was slightly “skewed,” and then self-correct.

Also, mindfulness has helped me be a better bass player. Let me tell you, when a band leader calls a tune I don’t know, it’s all about being present with my moment-to-moment auditory experience of what is happening around me, every second until the second chorus.

**LM:** Thank you again for your decades of experience serving clients at Legal Aid. I’m curious how you imagine your mindfulness practice coming into play in your retirement.

**RC:** Breaking 35 years of routine will require some non-judgmental awareness, I am sure. I look forward to devoting more of

CONTINUED ON PAGE 40

# Grievance Committee and DHC Actions

NOTE: More than 30,500 people are licensed to practice law in North Carolina. Some share the same or similar names. All discipline reports may be checked on the State Bar's website at [ncbar.gov/dhcorders](http://ncbar.gov/dhcorders).

## Disbarments

**R. Cherry Stokes** of Greenville was convicted of eight felony counts of serious injury by vehicle. He was operating his vehicle while under the influence of an impairing substance in violation of N.C. Gen. Stat. § 20-138.1. His affidavit of surrender was accepted by the Disciplinary Hearing Commission (DHC) and he was disbarred effective October 31, 2022. Stokes had been disbarred in 1987 for sale and delivery of cocaine and was reinstated in 1993.

**Peter Anderson** of Charlotte submitted an affidavit of surrender and was disbarred by the council at its July meeting. Anderson acknowledged that he misappropriated \$54,024.67 of a fee to which his law firm was entitled.

## Suspensions & Stayed Suspensions

**Perry Mastromichalis** of Raleigh forged a signature on an application for insurance and submitted an affidavit containing false and/or misleading information to the Grievance Committee. The DHC suspended him for four years. Mastromichalis will be eligible to seek a stay after two years active suspension upon demonstrating compliance with enumerated conditions.

For three years, **Jim Melo** of Raleigh withheld funds from his employees' paychecks for federal taxes but instead used the funds for his own purposes. The DHC suspended Melo for five years. Melo will be eligible to seek a stay after 18 months active suspension upon demonstrating compliance with enumerated conditions.

## Reprimands

**Steven Gourley** of Smithfield was reprimanded by the Grievance Committee for engaging in conduct prejudicial to the

administration of justice by failing to disclose a conflict of interest to his superiors when he was an assistant district attorney.

**David D. Moore** of Sylva was reprimanded by the Grievance Committee. Moore quoted a clearly excessive fee despite having a flat fee arrangement with his client. The client hired new counsel and requested her file. In exchange for her file, Moore provided a release and indemnification form for the client to sign, which purported to release "any and all claims whatsoever which may arise" from his representation. He did not advise his client in writing of the desirability of seeking, nor provide his client a reasonable opportunity to seek, the advice of independent legal counsel. Moore also did not adequately supervise a nonlawyer assistant.

**Deborah L. Newton** of Raleigh was reprimanded by the Grievance Committee for engaging in conduct prejudicial to the administration of justice and for collecting clearly excessive fees. Newton failed to keep contemporaneous client-specific timesheets in multiple indigent criminal defense cases and thus submitted fee applications containing inaccurate and excessive billing entries.

## Completed Petitions for Reinstatement/Stay – Contested

**Kenneth F. Irek** of North Hills, California, was disbarred by the DHC in 1993 for misappropriating entrusted funds. The DHC denied his 2022 Rule 60 motion seeking to vacate the disbarment order. His appeal is pending.

## Notice of Intent to Seek Reinstatement

### In the Matter of Demetrius G. Rainer

Notice is hereby given that Demetrius G. Rainer of Charlotte, NC, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Rainer was disbarred in 2009 pursuant to a Consent Order of Disbarment filed on March 5, 2009.

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC 27611-5908, before November 1, 2022. ■

## Well-being (cont.)

my time to music performance, to native plant gardening, and to volunteering in my community.

**LM:** Roger, thank you for stepping forward and sharing your insights about mindfulness in the law and in life. What a joy to meet you. Good luck with your transition... keep on keepin' on!

**RC:** Laura: I feel deeply honored that you asked me to help you in your mission of helping lawyers function in a more sound and holistic way. It has been a privilege to get to know you in this process. Knowing you are engaged in this deeply important work strengthens my hope for an increasingly healthier and more balanced profession. ■

*Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being consulting, training, and resilience coaching for attorneys and law offices nationwide. Through the lens of neurobiology, Laura helps build strong leaders, happy lawyers, and effective teams. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a teacher and student of mindfulness and yoga, and five years studying neurobiology and neuropsychology with clinical pioneers. She can be reached through [consciouslegalminds.com](http://consciouslegalminds.com)*

*Roger Cook is a graduate of Haverford College and Duke University School of Law. While a native of Raleigh, he has resided since 2014 in Wilmington. He retired in June 2022 from his work as a supervising attorney at Legal Aid of North Carolina.*

# Kimberly R. Coward, Board Certified Specialist in Residential Real Property Law

BY SHEILA SAUCIER, CERTIFICATION COORDINATOR, BOARD OF LEGAL SPECIALIZATION

I recently had an opportunity to speak with Kimberly R. Coward, a board certified specialist in residential real property law since 2006, who practices at Coward Hicks & Siler, PA in Cashiers. Kim is an active member of both the North Carolina State Bar and the North Carolina Bar Association. For more than a decade, Kim has supported specialty certification in North Carolina through her dedication to the North Carolina State Bar Board of Legal Specialization. Kim recently completed her term as chair of the Board of Legal Specialization, and she previously served as a member and chair of the Real Property Law Specialty Committee. In further service to the State Bar, Kim was an advisory member to the Ethics Committee from 2014 to 2020.

**Q: Can you tell us a little bit about yourself and your background?**

I am a transplant from the great state of Iowa (that is a test for all readers...do you know where Iowa is??) who moved to Chapel Hill for law school in 1988, met my husband Bill Coward there, and have practiced law in Cashiers, NC, since 1988 when I was 25. It has been a joy to have the same job for so many years, which really helps in the specialization department. I have two married children, two grandkidlets, and have all kinds of things I enjoy doing. Not too impressive, but the fun and challenge of a busy real estate practice has been my full-

time career and passion for 34 years.

**Q: You recently finished your term as chair and member of the Board of Legal Specialization. What will you miss most about serving on the board?**

Everything about it. The people, the State Bar staff, the thought-provoking issues, and the professionalism of all involved. This is a group that takes great pride (yet remains very humble) in serving the public by providing a means by which worthy lawyers become certified specialists. It has been one of the highlights of my law career.

**Q: What was the most challenging and/or rewarding part of serving on the Board**

**of Legal Specialization?**

COVID, because we ended up not meeting in person, which was so important. The most rewarding part was working on new specializations as well as the annual meetings where discussions between the board and the committee chairs helped create and improve the entire specialization process.

**Q: What was your focus or initiative during your term as chair of the board?**

My unfulfilled focus is to take the program on the road, and I'd still like to participate in it. With COVID travel restrictions, we didn't get to have smaller meetings in the "outposts" of the state. I believe that there are many lawyers who qualify that are either unaware of the program or not familiar with the process. I am hopeful to drag [State Bar specialization staff members] Lanice,

Denise, and Brian to the netherworlds of this large state to share the joy of specialization with many who otherwise would not be exposed to it in person.

**Q: What is your next big professional goal?**

I'm old. Survival until retirement perhaps? Actually, I'm not sure. I fully enjoyed work with the State Bar staff and membership and am hopeful that I can be helpful in some way in the future.

**Q: Name the top three benefits you've experienced as a result of becoming a specialist.**

1. I am more confident in my work. Studying does help! It keeps us on our toes. That is one of the beauties of our program.

2. Sharing the love of the law with other specialists. It is fun to be around others who dive in and conquer the test and take pride in doing so.

3. A sense of accomplishment in taking a test and passing it. Seriously. It was not the easiest thing to do.

**Q: If you were stranded on a desert island, what would be your three must have items?**

A Bible, a dog, and sunscreen.

**Q: What is the single best piece of advice you ever received?**

Be quick to listen, slow to speak, and slow to become angry... (James 1:19). That really helps in the practice of law as well as in life.

**Q: How do you like to spend your free time?**

Training my German shepherd dogs, golfing or exercising in any way, cooking, shopping, drinking fine wine, and otherwise DOING something. I am unable to sit still for any amount of time.

**Q: What one word best describes you?**

Real. What you see is what you get. ■

*For more information on board certification for lawyers, visit us online at [nclawspecialists.gov](http://nclawspecialists.gov).*



# Three Ps of Legal Practice: Perfectionism, Procrastination, and Paralysis

BY ROBYNN MORAITE S

I was talking to a friend from law school about a big project she had undertaken and recently completed. As she described the multi-year project that she worked on in fits and starts, she repeatedly used the word “slacker” when referring to herself and some of the paralysis she experienced while working (unpaid, in her spare time) on this mammoth and ultimately award-winning project. This woman is anything but a slacker. Regular readers of this column should have alarm bells going off that here we have a real-world example of an overly-zealous inner critic.

I have never met a true slacker. I guess we don’t run in similar circles. I’m sure they exist. But I’m going to hazard a guess that true slackers don’t become lawyers. Let’s take as a baseline premise that no one reading this article is a slacker. Even, or especially, those who regularly struggle with procrastination and paralysis are not slackers. Something else is going on.

Let’s first make clear that when discussing procrastination, I am not referring to the inertia and apathy that are part and parcel to depression. When depressed, we are so completely sapped of energy, that absolutely everything feels like it takes too much energy. The normal daily tasks of living become overwhelming and feel impossible. Important behind the scenes and administrative tasks (like billing clients or filing fee apps) fall by the wayside as we use what little energy we have to show up in court or otherwise maintain the last vestiges of a business-as-usual-everything-is-just-fine appearance. That’s not what we’re talking about here. We’re talking about projects and tasks that continue to get pushed aside when we are otherwise happy, content, functioning normally, and fully engaged with our lives.

Procrastination can be caused by all kinds of things. Maybe the task we need to complete

is quite unpleasant. So, we put it off, not wanting to deal with it. Maybe we agreed to do something, not necessarily unpleasant, but that when the time comes to deliver, we realize we really don’t want to do it. What both of these examples have in common is what psychologists Timothy Pychyl and Fuschia Sirois discovered—namely that procrastination isn’t about avoiding work; it’s about avoiding negative emotions. Feelings like anxiety, angst, confusion, or boredom can trigger procrastination.

The reasons for procrastination can be as individual as the readers of this column. But the focus of this column is going to be on a phenomenon that we see regularly for many lawyers and judges. When we resist starting and completing tasks, the culprit behind our inertia is usually perfectionism, and the negative feelings associated with it, showing up in some form.

Perfectionism has many faces. It is not just the uber-controlling, detail-oriented person who has difficulty delegating tasks because everything must be “just so.” I certainly have been guilty of that. But that kind of perfectionism is not what usually stymies us. When we start to procrastinate and avoid digging into something we know needs our attention, perfectionism may be taking another, subtler form.

Sometimes we worry about disappointing a person on the receiving end of the project. Going further, maybe we have been on the receiving end of criticism and dread another encounter. Maybe we are anxious that the finished product won’t be as good as it needs to be, so we feel nervous about getting started at all. There can be a host of underlying fears: fear of doing it wrong, fear of getting fired, fear of losing a client, fear of disappointing someone, fear of criticism, fear of being revealed as the fraud we secretly believe we



are... The list can go on. Any inner critic alarm bells going off?

Maybe it’s a large-scale, multi-phase project, and we know how to do some of the tasks but have no idea how to accomplish others, so we don’t even accomplish what we can. I’m thinking here of a logistically-challenging gardening project in my own steep-sloped backyard that I have been actively putting off for at least six months. Google and YouTube installation videos help to some degree. Unfortunately, they don’t quell the nagging anxiety that I’m going to do something wrong or miss some inherently important step leading me to have to redo everything, expensively and exhaustingly. I become so overwhelmed by the magnitude of my vision for the whole project, I fail to do the simple preliminary steps that move the ball forward. Steps that, when taken individually, are totally manageable.

This is perfectionism at work. Perfectionism is often what leads to procrastination, and in worst-case scenarios, outright paralysis. None of us cares to examine our inner critic or address our perfectionism until we hit the paralysis phase. That gets our attention: when we think we’re slackers or others accuse us of such. If you can address the perfectionism, you’ll likely avoid the chain

reaction that follows it. But we often have to start in the paralysis phase and work our way back up the chain.

There are coaches and psychologists who specialize in this kind of work. There are proven strategies that help us move past the procrastination blocks created by perfectionism.

**Do one small thing.** The next time you find yourself resisting getting started on something, take one action, no matter how small. By starting with small steps, you most likely will avoid the overwhelm that can come from thinking about the project in total. In fact, try this as a strategy: have the first small step be listing all the small steps needed to complete the project, then start with those, assuming they can be completed in no particular order. If your project consists of big tasks/major steps, try to break those down into smaller steps and list those, then pick one to start. Accomplishing small steps is motivating. Small steps may remind you that you can actually walk.

**Count everything you do toward your goal, not just the major steps.** If you have a brief to write, your first step might be sitting down at the computer. This may sound stupid or obvious, but you can't start the brief until you're physically in front of your computer. Procrastination will keep you from this simple move, finding every excuse possible to avoid it. If we don't start taking small steps, we may become paralyzed with dread, leaving us even less time to accomplish a given task. This is a good place to practice self-compassion.<sup>1</sup> When you sit down at your computer, even though your inner critic thinks this suggestion is ridiculous, give yourself a little pat on the back mentally and tell yourself you are starting with small steps.

**Keep going.** Once you have conquered the first baby step, push yourself to the next. In our example above, your next small step might be creating a file for your brief and naming it. Don't stop—keep the momentum going. Look at your list of small steps. Pick the smallest and do it now. Then check it off the list. Pick another small step and do it. Just do them, even if you have to do them badly at first. Don't think about the end result or who will be reading it (for now... you will get a chance to revise and polish later).

**Find a way to measure and track your progress.** Let's use an example of someone who wants to downsize. They currently live in a 2500 sq ft house plus a two-car garage (used

for additional storage space, not for cars). It's overwhelming. So, using the small steps approach, they might take it one closet at a time, one dresser/bookshelf/cabinet at a time, or maybe just one drawer/shelf at a time. Creating one small pile for the trash, one small pile to donate, and one even smaller pile to save, makes it "quantifiable" or measurable.

**Acknowledge the point of diminishing returns.** This helps put in perspective our bang-to-buck ratio of energy expenditure to product/results output. Simply put, if you are doing your very best then you are already operating at optimal/peak efficiency. You can't get any better (more efficient) because you are working at 100% efficiency already. If you work more, you're only going to get a diminished return on that energy investment. There is a resistant part of our minds that still thinks we can somehow do it better. But doing so always involves more time/energy, without any significant change in results for the task (no bang for even more buck). Whereas, if we spend more time and energy on the task, other things begin to suffer both personally and professionally.

I vividly recall a scene in *Better Call Saul* where Kim, a lawyer, is obsessively fixated on whether to use a semicolon or not. When I first watched it, I laughed out loud and thought, they must have a real lawyer consulting on this show. I had hoped to find a video clip to link here, but instead found references to "Kim Wexler, the grammar-obsessed lady lawyer," and a subreddit discussion thread.<sup>2</sup> It is so funny to see nonlawyers theorize about the meaning of that scene as something to do with her character arc and/or a major plot development. Nah. One writer more astutely observes, "Pretty sure it was nothing more than her wanting it to be perfect to the point of obsessive." Another, "As a lawyer, the scene rung extremely true." And, "It's just obsessiveness brought on by the high expectations she knows [her law firm] has.... It's perfectionism turned to anxiety." It is a distilled illustration of the point of diminishing returns, and the obsessive, anxiety-laden mindset that can begin to take hold and catch us unaware.

**Focus on the process rather than the goal.** Another process-oriented strategy is to focus more on the process of reaching your goal rather than focusing on just the goal itself. This may seem redundant to the earlier suggestions of breaking something into smaller steps and measuring progress. The key difference is the

focus. It is not so much about smaller goals and checking things off a list. See if you can put your whole attention and focus on the process itself. And hopefully you can find ways to enjoy that process while you are at it.

Let's say you are training for your first 5K. There is a huge difference between checking off so many training runs versus meeting with friends to do those training runs and grabbing lunch afterwards. Lawyers are allowed to enjoy our jobs, after all. We need to find ways to enjoy the process. This suggestion is especially important in certain law practices where the end goal can be years in the making.

**Be prepared for (and deal with) emotional discomfort.** As Adam Grant notes in this *NY Times* article,<sup>3</sup> "If you want to procrastinate less, you don't have to increase your work ethic or improve your time management. You can instead focus on changing your habits around emotion management." A first step is simply acknowledging to ourselves what is happening inside of us emotionally. Approach yourself with non-judgmental curiosity. A second step is seeking out a therapist or trusted friend to talk about it. It does not have to be a hand-wringing session of deep conversation. Think more along the lines of, "So, get this...." While writing this article, I called my sister, and we had a good laugh (her especially) over me dishing out all this great advice that I needed to heed for my backyard gardening project. There is so much value in being able to laugh at ourselves and not take ourselves so seriously, at least not all the time.

Part of the journey toward recovering from perfectionism is assimilating what is good enough and dealing with the internal emotional discomfort that arises. Because it will arise. That ol' inner critic ain't going gentle into that good night. The inner critic is a tricky thing, kind of like Whack-a-Mole. Oddly, it is avoidance of discomfort fueled by the inner

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# The Letter of the Law for Law Firm Letterhead

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

“You only have one chance to make a first impression.” A lawyer’s letterhead is a first impression to many, and a lawyer quite reasonably may want to take the extra time to craft a letterhead that communicates not only the quality of services offered, but also the confidence the letter’s recipient may place in the law firm. Because a lawyer’s letterhead is a communication concerning the lawyer’s services, the letterhead must comply with the advertising rules set out in the Rules of Professional Conduct. Previously, Rule 7.5 was specifically dedicated to law firm names and letterheads. The most basic principle pertaining to letterhead remains that it must comply with Rule 7.1—law firm letterhead may not contain material that is false or misleading. For that reason, the new amendments to the Rules of Professional Conduct eliminate Rule 7.5 as a standalone rule and include its content in the comments to Rule 7.1.

A surprising number of ethics opinions have been written interpreting the prohibition on misleading material in law firm letterhead. Most of these opinions consider “who” may be listed on law firm letterhead. The Rules of Professional Conduct do not require that all members of a law firm be listed on the letterhead. The ethical concerns are generally related to individuals who may not be listed or may only be listed with qualifications.

## Nonlawyer Employees

The Rules of Professional Conduct do not prohibit the listing of nonlawyers on law firm letterhead so long as they are identified as nonlawyers (or “muggles,” for all of our *Harry Potter* fans out there). As stated in RPC 126, it is “necessary that any communication of a lawyer or law firm be presented in a manner which is not false, deceptive, or misleading....To ensure that the public is not led to believe that a nonlawyer is eligible to practice law, the nonlawyer’s limited capaci-

ty should be clearly set forth on the letterhead.” Therefore, the following letterhead listings are appropriate: Joe Smith (Paralegal); Jane Doe (Law Clerk); Mary Brown (Legal Assistant). Disbarred lawyers who have subsequently been hired by a law firm may be listed on law firm letterhead with a similar designation. RPC 126. A nonlawyer employee’s title or special qualifications may be denoted if they are not misleading and if there is a clear indication of nonlawyer status. For example, a firm’s office manager, information technology supervisor, or human resources manager may be listed as such on firm letterhead.

## Recent Law School Graduates

Law firms often hire law school graduates before they have taken the bar exam or before they have received their bar exam results. Law school graduates awaiting bar exam results may be listed on firm letterhead so long as the public is not misled about whether they are entitled to practice law. Law firms should include appropriate parentheticals such as: (Eligible for July 2021 NC bar exam); (Sitting for July 2021 NC bar exam); (July 2021 NC bar exam results pending). See Rule 7.1.

## Lawyers Previously Employed by the Law Firm

Whether a lawyer previously employed by a law firm may continue to be listed on the firm letterhead will generally depend on whether the lawyer died, retired, moved to another firm, became a public service lawyer, or went into another profession entirely. A law firm may continue to list the names of deceased and retired law firm members on its letterhead. “Subsequent communications listing the former member’s name on law firm letterhead, however, should clarify that the former member is deceased or retired so as not to mislead the public.” 2006 FEO 20.

The name of a lawyer who has left a law firm to practice law with another firm cannot be listed on firm letterhead because it would be misleading in violation of Rule 7.1. See 2006 FEO 20. Similarly, the name of a lawyer holding a public office may not be listed on firm letterhead during any substantial period in which the lawyer is not actively and regularly practicing with the firm. Therefore, the name of a lawyer who has left a firm to start a judgeship may not be listed on the law firm’s letterhead. Another issue arises if the judge returns to work at the law firm after the termination of the judgeship. What is the proper way to list a former judicial official on law firm letterhead? Although there is, at present, no North Carolina opinion on point, according to ABA Formal Ethics Opinion 95-391, a former judge who returns to the practice of law may not continue to use the title judge in any communications related to the practice of law. The opinion provides:

We believe that the use of the title “Judge” in legal communications and pleadings, as well as on a law office nameplate or letterhead, is misleading insofar as it is likely to create an unjustified expectation about the results a lawyer can achieve and to exaggerate the influence the lawyer may be able to wield. In fact, there appears to be no reason for such use of the title other than to create such an expectation or to gain an unfair advantage over an opponent. Moreover, the use of judicial honorifics to refer to a lawyer may in fact give his client an unfair advantage over his opponents, particularly in the courtroom before a jury.

*Id.*

The prohibition on the use of the title applies whether the title is modified by “former” or “retired.” However, a lawyer who previously served in a judgeship may make accurate statements about his prior judicial

experience in biographical information. *See* Arizona Advisory Opinion 2016-2; Florida Bar Standing Committee on Advertising A-09-1; Maryland Advisory Opinion Request 2003-26; South Carolina Advisory Opinion 21-1997.

### **Lawyers Not Licensed in North Carolina**

Generally, only active members of the North Carolina State Bar may practice law in North Carolina. Accordingly, lawyers licensed in other jurisdictions, but not North Carolina, are generally prohibited from practicing law in North Carolina. *See* N.C. Gen. Stat. § 84-2.1 and § 84-4. However, North Carolina law firms may employ lawyers who are licensed to practice in a jurisdiction other than North Carolina when the lawyer's practice is permitted by an exception set out in Rule 5.5 (for example, federal practice). A lawyer who is licensed in a jurisdiction other than North Carolina can have his or her name included in the firm letterhead, provided all communications by such lawyer indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina. *See* Rule 7.1, cmt. [6]. For example, if John Smith is licensed only in South Carolina, his name may appear on the letterhead of a North Carolina law firm as follows: John Smith\* (\*Licensed in SC, not licensed in NC) or (\*Licensed only in SC).

### **Of Counsel**

Lawyers who act or serve "of counsel" to a law firm may be included on law firm letterhead so long as the lawyer is licensed in North Carolina and the professional relationship is close, regular, and personal. *See* RPC 34; RPC 85. As stated in RPC 85:

[R]elationships that involve only one case or matter, that involve only occasional collaborative efforts among otherwise unrelated lawyers or firms, or that primarily involve only the forwarding of legal business would not satisfy the requirements for the use of the "of counsel" appellation. The critical consideration is the nature of the relationship and the adherence to the rules applicable to conflicts of interest and confidential information. In no event may "of counsel" be used unless the usage is consistent with the rules pertaining to false and misleading communications...or firm names and letterheads....

A law firm may have an out-of-state lawyer as "of counsel" if the requirements for lawyers not licensed in North Carolina set out above are met and the professional relationship meets the requirements of an "of counsel" relationship. Again, the law firm must clearly indicate on all communications the jurisdictions in which the out-of-state of counsel lawyer is licensed and indicate that the lawyer is not licensed in North Carolina.

### **Inactive, Suspended, or Disbarred Lawyers**

Lawyers without an active law license may not be identified in letterhead as practicing lawyers. This prohibition applies to any lawyer whose license is inactive with the State Bar. Inactive statuses include voluntary inactive, disability inactive, administrative suspension, disciplinary suspension, and disbarment. Within a reasonable period of time, the name of a lawyer whose license is inactive must be removed from the firm letterhead or supplemented with additional information to clarify the inactive lawyer's limited capabilities. RPC 126, 2018 FEO 3.

### **Partner**

Referring to a lawyer as a "partner" on law firm letterhead "cannot be a sham." 2015 FEO 9. To avoid misrepresentation, "a law firm may designate a lawyer as a partner, regardless of whether the lawyer satisfies the legal definition of that term, if the lawyer was promoted to the position by formal action or vote of firm management or pursuant to the firm's governing documents. Further, to prevent the public from being misled as to the lawyer's achievements, the promotion must be based upon criteria that indicates that the lawyer is worthy of the promotion." *Id.*

### **Specialist**

Lawyers may not include the designation "specialist" on law firm letterhead (or any other communication or advertising material) unless (1) the lawyer is certified as a specialist in the field of practice by: (a) the North Carolina State Bar; (b) an organization that is accredited by the North Carolina State Bar; or (c) an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and (2) the name of the certifying organization is clearly identified in the communication. Rule 7.2(c).

### **Other Professions**

In general, a lawyer may state on letterhead that the lawyer is also qualified in a different professional field and may list any earned degree designation that is not false or misleading. CPR 307 (lawyer who is also a real estate broker may so indicate on his letterhead); 2000 FEO 9 (lawyer's business cards may state that he is also CPA).

### **Firm Location**

Other than the individuals listed on the firm's letterhead, another area of possible misrepresentation pertains to the listed address or telephone number. Lawyer advertisements must include the name and contact information of at least one lawyer or law firm responsible for its content. Rule 7.2(d). Lawyers generally may not use addresses of locations where they do not have a physical office. "It is a misleading communication for a law firm to infer that it has an office, or a lawyer located in a community when, in fact, there is no law office or lawyer for the firm present in the community." RPC 217. In RPC 217, the Ethics Committee concluded that listing what appears to be a local telephone number in an advertisement in a particular community, without including an explanation that the number is not a local telephone number and that there is no law office in that community, is misleading as to the actual location of the law firm.

Similarly, in 2012 FEO 6, the Ethics Committee concluded that it would be misleading for a law firm to list a leased time-shared office address on letterhead or in advertising to infer that the law firm has an office or a lawyer located in a community when the law firm's only connection with the community is the lease arrangement that allows a lawyer to use meeting rooms in that community on an "as needed" basis. The opinion provides, however, that it is not misleading for a law firm to list a time-shared leased office address on letterhead or in advertising so long as the communication contains an explanation that accurately reflects the law firm's presence at the address (i.e., "by appointment only").

### **Use of Law Firm Letterhead**

Finally, it goes without saying (but we said it in 2011 FEO 9) that a lawyer may not allow a person who is not employed by

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# IOLTA Grant Application for 2023 Funding Available Now

Due to limited resources and insufficient funding, only a fraction of North Carolinians has access to the critical legal services they need to thrive. As reported in North Carolina's 2021 Legal Needs Assessment, *In Pursuit of Justice*, there is just one legal aid attorney for every 8,000 eligible North Carolinians, leaving far too many people in our communities without essential legal advice or representation in court. Without equal access to justice, many are left to navigate a challenging legal system on their own, unaware of their rights and without support. This puts their rights and basic needs in jeopardy.

As the philanthropic arm of the North Carolina State Bar, we at North Carolina Interest on Lawyers' Trust Accounts (NC IOLTA) provide access to justice by funding high-quality legal assistance. In 1984, when NC IOLTA was approved by the North Carolina Supreme Court, North Carolina became the 15th state to adopt IOLTA. Programs now exist in every state, the District of Columbia, Puerto Rico, and the

Virgin Islands, as well as across the Canadian provinces. This response to increase funding for legal aid through IOLTA came from the legal profession, acknowledging the need for legal services and the power to change people's lives. Studies show that even a small amount of legal assistance can dramatically improve outcomes for individuals and families.

NC IOLTA's impact is possible through partnership. We work directly with lawyers and financial institutions across our state to set up interest bearing accounts to hold client funds as required under the Rules of Professional Conduct. Funds generated are used to award grants to organizations that help provide legal aid to individuals, families, and children. Since 1984 we have awarded more than \$105 million to support access to legal aid for important civil matters, and protecting the basic human rights of our neighbors, such as access to housing and shelter, family safety, and healthcare.

Last year, with the funds provided by

IOLTA accounts from across the state, organizations that received funding from NC IOLTA closed more than 31,000 cases for North Carolina clients in all 100 counties. With IOLTA's support, legal aid programs championed clients as they moved from a place of frustration and uncertainty, to one of stability and support.

- Legal Aid of North Carolina assisted a Duplin County woman in a multi-year effort to prove ownership of her home, which she inherited from a family member who died without a will, ultimately allowing her to access the financial assistance she needed to make repairs to the home after suffering extensive damage in Hurricane Florence. She now has a safe and stable place to live.

- Disability Rights North Carolina assisted an elementary school student in a rural county in obtaining appropriate services from her school, including psychological and behavioral assessments and support. With the help of skilled advocates, she was able to stay in the classroom and make significant

• **Don't forget to update your IOLTA status!** You may have recently received an email from NC IOLTA letting you know that there is a conflict between your mandatory IOLTA certification and the IOLTA status we have on record for you. If you did, please submit your updated IOLTA status information (i.e. information about your current employment) via the NC State Bar membership portal so that we can properly associate you with a firm in our system. As a reminder, separate from the mandatory annual certification, *all attorneys should inform NC IOLTA any time your IOLTA status changes*, that is, if you change employment or open or close a trust account.

- **IOLTA revenue.** Revenue from participant income in 2022 has averaged about

\$420,000 monthly in 2022, a decrease of 4% compared to 2021. We anticipate increases in the coming months with the recent adjustment in the Federal Funds Target Rate (FFTR) and positive adjustments being made by many financial institutions in their interest rates.

- **State funds.** NC IOLTA administers state funding on behalf of the NC State Bar. Under the Domestic Violence Victim Assistance Act, a portion of fees assessed in civil and criminal court actions support legal assistance for domestic violence victims provided by Legal Aid of North Carolina and Pisgah Legal Services. From July 2021 through June 2022, NC IOLTA administered \$811,042 in domestic violence state funds. This is an increase over the 2020-21

state year, but remains lower than pre-pandemic levels. NC IOLTA also administered an additional \$100,000 in state funding in 2021-22 directed to Pisgah Legal Services for their veteran's legal services program.

- **Working groups.** This summer, NC IOLTA convened four working groups coming together over a series of meetings to develop recommendations for how the community can improve access and address some of the identified areas of need as laid out in the Legal Needs Assessment. The working groups include (1) family law; (2) services to immigrant populations; (3) communications and outreach; and (4) coordinated intake. The working groups will finalize proposed recommendations later in the summer.

academic and behavioral progress last year.

- The North Carolina Equal Access to Justice Commission assisted a client in restoring his driver's license, which required clearing up a child support issue, paying off old court fines, and completing a required substance abuse assessment and treatment. Through partnership with an attorney, the client restored his license and avoided losing his job.

Lawyers like you make this possible.

By working toward equitable access to civil legal aid, we are creating a North Carolina where all individuals can fairly navigate the system to have their basic needs met and their rights protected.

This year, the board finalized revisions to NC IOLTA's grant programs, criteria, and policies in preparation for the 2023 grant application cycle. Now, information, which had previously been found in several places, is centrally located and available on our website. Policies and criteria were tweaked to reflect the most significant gaps identified in the Legal Needs Assessment, as well as other opportunities for supporting organizations providing civil legal aid and other critical programs improving the administration of justice.

The 2023 NC IOLTA grant application is now available. The timeline below details the application, review, and award process.

- Grant information and application for 2023 grants released on August 1, 2022.
- NC IOLTA staff will be available to answer questions of applicants in August and September and will host an online information session on August 17.
- Grant applications are due on September 23.
- Staff and board review applications during the months of October and November.
- The NC IOLTA Board of Trustees meets in early December to determine grant awards.
- Grant decisions will be communicated by December 9.
- Funding begins in January 2023.

If you are involved with an organization or effort in your community that provides civil legal services to low-income individuals or works to improve the administration of justice on behalf of North Carolinians, we encourage you to share this application information with them. Questions can be directed to Program Manager Dan Labarca at [dlabarca@ncbar.gov](mailto:dlabarca@ncbar.gov) or Executive Director Mary Irvine at [mirvine@ncbar.gov](mailto:mirvine@ncbar.gov). ■

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## Legal Ethics (cont.)

or affiliated with the lawyer's firm to use firm letterhead. "If a person who is not employed or formally affiliated with the firm sends a letter on firm letterhead, it creates the false impression that the person has the authority to act on behalf of the law firm and is being supervised by a firm lawyer." 2011 FEO 9. If a lawyer learns that someone who is not employed or affiliated with the firm is using firm letterhead to write to third parties, the lawyer must take steps to stop the misuse of the letterhead.

First impressions are often the most last-

ing ones. As a first impression, lawyers will necessarily want their letterhead to be impressive and informative. Given the importance of letterhead to a law firm's reputation and the many nuances of the prohibition in Rule 7.1 against the use of false or misleading information, take the extra time to craft a letterhead that justifiably extols the virtues of (and people affiliated with) your firm without inadvertently violating the Rules of Professional Conduct. And remember, these Rules of Professional Conduct are not limited to letterhead. They apply to all public communications, including websites and social media. ■

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## LAP (cont.)

critic that drives our perfectionism in the first place. Yet the very same inner critic voice or feeling can stop us dead in our tracks and prevent us from doing the very task it is haranguing us to do. Good times.

So, what constitutes *good enough*? As counter-intuitive as this may seem, many lawyers have to unlearn giving everything our best 110%. Think of an anvil and how much energy it takes to lift one. Now imagine using that same amount of energy to lift a piece of paper. Unnecessary. Very low bang-to-buck ratio. Imagine doing everything with that level of intensity. That's the energetic equivalent of the perfectionist giving everything 110%. Instead, most of us need to learn how to give everything our best 80%. Ironically, research shows perfectionism actually produces poorer work product. Why? Criticism that serves no constructive purpose, whether from our boss or our own inner critic, slows us down and interferes with our thinking process. We have some great examples of this in our latest *Mindful Moment* podcast and article.<sup>4</sup> Research shows that the number one barrier to self-compassion is fear of being complacent and losing your edge. And all the research shows that's not true. It's just the opposite.<sup>5</sup>

The perfectionism-procrastination-paralysis dance is a common plight for the lawyers and judges we work with, so fear not if something rang true for you in this article. You are not alone. Hopefully, some of the strategies

offered up will move the ball for you, or at least give you a framework for making sense of what is happening. If you'd like to explore resources for help with procrastination or perfectionism (or both), feel free to give us a call.

There is a real distinction between doing your best and trying to be perfect. High achievement and perfectionism may sometimes be correlated, but they are two different things. There are plenty of high achievers who are not perfectionists and who do not try to be perfect. And all perfectionism is not created equal. Tune in next quarter when we delve a little deeper into perfectionism on steroids: maladaptive perfectionism. ■

*Robynn Moraites is the director of the North Carolina Lawyer Assistance Program, a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. For more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.*

## Endnotes

1. Our latest *Mindful Moment* podcast episode and article with Laura Mahr, about self-compassion, is available at [bit.ly/3veZu6K](http://bit.ly/3veZu6K).
2. [bit.ly/3bbaACR](http://bit.ly/3bbaACR).
3. [nyti.ms/3PYlavX](https://nyti.ms/3PYlavX).
4. [bit.ly/3veZu6K](http://bit.ly/3veZu6K).
5. Another great NY Times article discussing research: [nyti.ms/3OzesuY](https://nyti.ms/3OzesuY).

# Council Adopts Opinions on Limited Representation in a Criminal Matter and Inclusion on List of Recommended Lawyers

## Council Actions

At its meeting on July 22, 2022, the State Bar Council adopted the ethics opinions summarized below:

### 2022 Formal Ethics Opinion 2

#### *Limited Representation in a Criminal Matter*

Opinion rules that a privately retained lawyer may provide limited representation to a criminal defendant who has been appointed counsel if the limitation is reasonable under the circumstances.

### 2022 Formal Ethics Opinion 3

#### *Inclusion on Allied Professional's List of Recommended Lawyers*

Opinion rules that a lawyer may be included in an allied professional's list of recommended lawyers provided the professional does not disseminate the lawyer's name and information in a manner that is prohibited by the Rules of Professional Conduct.

In addition to adopting the opinions described above, and following favorable votes from both the Ethics Committee and the Executive Committee, the council adopted and approved for transmission to the Supreme Court the proposed amendments to Rule 1.19 addressing prohibited sexual conduct with a client that were published during the last quarter. The council also published a proposed technical correction to the comment to Rule 4.1 and proposed amendments to Rule 1.15 including new definitions of ledgers used to maintain a lawyer's trust account.

## Ethics Committee Actions

At its meeting on July 21, 2022, the Ethics Committee considered a total of seven ethics inquiries, including the opinions and rule amendments referenced above. Two inquiries were sent to a subcommittee for

further study, including the recently published Proposed 2022 FEO 4, Billing Considerations for Overlapping Legal Services, and a new inquiry addressing a lawyer's professional responsibility when selling a law practice and handling aged client files. The committee also approved the publication of one new proposed opinion, which appears below.

### Proposed 2022 Formal Ethics Opinion 5

#### *Client Paying Public Adjuster/Witness a Contingency Fee July 22, 2022*

*Proposed opinion rules that a lawyer may call as an expert witness a public adjuster who will collect a statutorily authorized contingency fee paid by the client.*

#### **Inquiry:**

A homeowner experiences hail damage to his real property. The homeowner enters into a contract with a public insurance adjuster licensed by the North Carolina Department of Insurance whereby the adjuster will be paid a percentage of insurance proceeds the homeowner receives. The homeowner subsequently hires Lawyer for the trial of the matter. Assuming the court would qualify the public adjuster as an expert for homeowner's case, may Lawyer call the adjuster as an expert witness at trial?

#### **Opinion:**

Yes. While the Rules of Professional Conduct generally prohibit a lawyer from paying an expert witness a contingency fee, the contract entered into by the client and the public insurance adjuster is not governed by the Rules of Professional Conduct.

Rule 3.4(b) provides in pertinent part, "[a] lawyer shall not offer an inducement to a wit-

## Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment—including comments in support of or against the proposed opinion—or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov) no later than September 30, 2022.

## Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

ness that is prohibited by law." Comment [3] to Rule 3.4 states, "[w]ith regard to paragraph

CONTINUED ON PAGE 54

# Amendments Approved by the Supreme Court

On June 15, 2022, the North Carolina Supreme Court approved the following amendments. (For the complete text of the rule amendments, see the Fall 2021 edition of the *Journal* or visit the State Bar website: [www.ncbar.gov](http://www.ncbar.gov).)

## Amendments to the Criminal Law Specialty Rules

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty

The amendments to the criminal law spe-

cialty rules recognize separate subspecialties in federal criminal law, state criminal law, and juvenile delinquency law. Previously, the rules recognized a combined federal/state criminal law specialty, a state criminal law subspecialty, and a juvenile delinquency law subspecialty. Specialists currently certified in the federal/state criminal law specialty will remain so until their next recertification when they will have to qualify for recertification in federal criminal law, state criminal law, or both subspecialties.

## Highlights

- Additional amendments to the proposed administrative overhaul of the CLE rules and regulations are published for comment on page 14 of this *Journal*.
- The council approved amendments to Rule of Professional Conduct 1.19, *Sexual Relations with Clients Prohibited*, that will be sent to the Supreme Court for final approval. The amendments specify that the prohibitions in the rule also apply to sexually explicit communications.

# Amendments Pending Supreme Court Approval

At its meetings on April 22, 2022, and July 22, 2022, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for its approval. (For the complete text of the rule amendments, see the Spring 2022 and Summer 2022 editions of the *Journal* or visit the State Bar website.)

Additional proposed amendments pending before the North Carolina Supreme Court can be found in the Winter 2020 and Summer 2021 editions of the *Journal*.

## Proposed Amendments to Rulemaking Procedures

27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures.

The proposed amendment increases the timeframe within which a rule or rule amendment adopted by the council must be transmitted to the Supreme Court for its review.

## Proposed Amendment to the Rule on Petitions for Inactive Status

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

The proposed amendments will give the secretary of the State Bar the discretion to transfer an active member to inactive status upon the completion of a petition to transfer to inactive status in the same manner that the secretary has the discretion to reinstate inactive members.

## Proposed Amendments to the Rules Governing the Paralegal Certification Program

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals

The proposed amendments revise administrative requirements for the Board of Paralegal Certification and permit a member of the board who is a certified paralegal to serve as chair.

## Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to Alice Neece Mine, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

## The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined; deletions are interlined.**

## Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rule 1.6, Confidentiality of Information

The proposed amendment adds a sentence to the comment to Rule 1.6 clarifying that information acquired during a professional relationship with a client does not encompass information acquired through legal research.

27 N.C.A.C. 2, Rule 1.9, Duties to Former Clients

The proposed amendments clarify when a lawyer who has formerly represented a client may use or reveal information relating to the former representation.

27 N.C.A.C. 2, Rule 1.19, Sexual Relations with Clients Prohibited

The proposed amendments specify that the prohibitions in the rule apply to sexual conduct including sexually explicit communications with a client or others involved in a legal matter.

## Published on Behalf of the Board of Law Examiners: Proposed Amendments to the Board of Law Examiners' Rules Governing Admission to the Practice of Law

Section .0500, Requirements for Applicants

The proposed amendments eliminate the North Carolina state-specific component requirement for general and Uniform Bar Examination transfer applicants.

# Proposed Amendments

At its meeting on July 22, 2022, the council voted to publish for comment the following proposed rule amendments:

## Proposed Amendments to the Discipline and Disability Rules

27 N.C.A.C. 1B, Section .0100, Discipline and Disability Rules

The proposed amendments establish the procedures for a review of public discipline issued to a respondent by the Grievance Committee.

On July 8, 2022, amendments to N.C. Gen. Stat. §§ 84-28 establishing a grievance review panel went into effect. The legislation instructed the State Bar to adopt temporary rules to implement the statutory amendments. Accordingly, on July 22, 2022, the State Bar Council adopted temporary amendments to 27 N.C. Admin. Code 1B § .0113(m) immediately implementing the statutory amendments. However, the proposed amendments to Rule .0113, like other proposed substantive amendments, must be published for comment before final adoption by the council and submission to the North Carolina Supreme Court for approval.

Other proposed amendments address what the State Bar must do when a criminal conviction relevant to a disciplinary matter has been expunged, overturned, or otherwise eliminated.

## Rule .0113, Proceedings Before the Grievance Committee

(a) ...

...  
(m) There shall be a grievance review panel of the Grievance Committee. For each review conducted, the chair shall appoint a panel consisting of the chair, two vice-chairs, and two other members of the Grievance Committee, including one public member. The panel shall not include any member who serves on the subcommittee that was assigned to address the underlying grievance file. The chair shall serve as the chair of the panel.

(1) The panel shall have the following powers and duties:

(A) Upon a timely-filed written request by a grievance respondent, to review an order of public discipline issued to the respondent by the Grievance Committee.

(i) A written request for review must be filed with the secretary of the State Bar within 15 days of service of the public discipline upon the respondent.

(ii) The written request shall contain the grounds upon which the respondent believes review is warranted and may include supporting documentary evidence that has not previously been submitted to the Grievance Committee.

(iii) The respondent shall have the right to be represented by legal counsel. The respondent or the respondent's legal counsel and legal counsel for the State Bar shall have the right to appear and to present

oral arguments to the panel. The panel's review shall be conducted upon the written record and oral arguments. Neither the respondent nor the State Bar may present live testimony or compel the production of books, papers, and other writings and documents in connection with a request for review. The panel may, in its discretion, question the respondent, legal counsel for the respondent, and legal counsel for the State Bar.

(iv) The panel shall consider the request for review, any documentation submitted in support of the request for review, and all materials that were before the Grievance Committee when it made its decision. The respondent shall be entitled to receive all material considered by the panel other than attorney-client privileged communications of the Office of Counsel and work product of the Office of Counsel. The panel shall determine whether the public discipline issued by the Grievance Committee is appropriate in light of all material considered by the panel.

(a) After considering the request for review, oral arguments, and the documentary record, the panel may, by majority vote, either concur in the public discipline issued by the Grievance Committee or remand the grievance file to the

Grievance Committee with its recommendation for a different disposition.

(b) The panel shall prepare a memorandum communicating its determination to the respondent and to the Office of Counsel. The memorandum will not constitute an order and will not contain findings of fact, conclusions of law, or the rationale for the panel's determination.

(c) The Grievance Committee shall act upon a remand at its next regularly scheduled meeting.

(d) Upon remand, the Grievance Committee may affirm its original public discipline issued or may reach a different disposition of the grievance file.

(e) The decision of the Grievance Committee upon remand is final, and its decision is not subject to further consideration by the Grievance Committee.

(f) Within 15 days after service upon the respondent of (i) the panel's memorandum concurring in the original public discipline issued by the Grievance Committee, or (ii) the Grievance Committee's final decision upon remand after review, the respondent may refuse the public discipline imposed by the Grievance Committee and request a hearing before the commission. Such refusal and request shall be in writing, addressed to the Grievance Committee, and served upon the secretary of the State Bar by certified mail, return receipt requested.

(v) Second or subsequent requests for review of Grievance Committee action in the same file will not be considered.

(vi) A request for review is in addition to and not in derogation of all procedural and substantive rights contained in the Discipline and Disability Rules of the State Bar.

(2) All proceedings and deliberations of the panel shall be conducted in a manner and at a time and location to be determined by the chair of the Grievance Committee. Reviews may be conducted by videoconference in the discretion of the chair.



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(3) All proceedings of the panel are closed to the public. Neither the respondent nor legal counsel for the respondent and the State Bar shall be privy to deliberations of the panel. All documents, papers, letters, recordings, electronic records, or other documentary materials, regardless of physical form or characteristic, in the possession of the panel are confidential and are not public records within the meaning of Chapter 132 of the General Statutes.

(m) Disciplinary Hearing Commission Complaints - Formal complaints will be issued in the name of the North Carolina State Bar as plaintiff and signed by the chairperson of the Grievance Committee. Amendments to complaints may be signed by the counsel alone, with the approval of the chairperson of the Grievance Committee.

.0119, Effect of a Finding of Guilt in any Criminal Case

(a) Conclusive Evidence of Guilt - A certified copy of the conviction of an attorney a member for any crime or a certified copy of a judgment entered against an attorney where a member in which a plea of guilty, *nolo contendere*, or no contest has been

accepted by a court will be conclusive evidence of guilt of that crime in any disciplinary proceeding instituted against a member. For purposes of any disciplinary proceeding against a member, such conviction or judgment shall conclusively establishes all elements of the criminal offense and shall conclusively establishes all facts set out in the document charging the member with the criminal offense.

...

(c) When Conviction is Expunged, Overturned, or Otherwise Eliminated -

(1) Any request for relief as a result of an expunction of any kind shall be made under the provisions of this rule, including but not limited to expunctions of convictions, expunctions from dismissals of charges or findings of not guilty, and expunctions related to prayer for judgment continued and conditional discharges.

(2) Definitions.

(A) "Expunged action" refers to the thing expunged, which may include but is not limited to a conviction, a judgment entered against a member in which the member is adjudged guilty of a criminal offense, a judgment entered

against a member in which a plea of guilty, *nolo contendere*, or no contest was accepted by the court, a charge dismissed or otherwise resolved pursuant to a prayer for judgment disposition, or a charge dismissed pursuant to a conditional discharge disposition.

(B) An order of discipline or other disciplinary action issued by the Grievance Committee or the commission ("the discipline") is based solely upon a conviction or other expunged action when there is no evidence in the record before the body that issued the discipline other than documentation of the conviction or expunged action.

(C) Any admissions of the member contained in a consent order of discipline entered by the commission and signed by the member or an affidavit surrendering the member's law license constitute evidence in the record other than documentation of the conviction or expunged action.

(3) Discipline Based Solely Upon Conviction or Expunged Action.

(A) If discipline was imposed upon a member based solely upon a conviction or expunged action and the conviction or expunged action is reversed, vacated, expunged, or otherwise eliminated, the discipline shall be vacated.

(B) The State Bar may initiate another disciplinary proceeding against the member alleging rule violations and seeking imposition of discipline based upon the facts or events underlying the conviction or expunged action.

(4) Discipline Based in Part Upon Conviction or Expunged Action. If discipline was imposed upon a member based in part upon a conviction or expunged action and the conviction or expunged action is reversed, vacated, expunged, or otherwise eliminated, the member may petition the body that issued the discipline for one of the following forms of relief:

(A) Redaction. All references to the conviction, charges, and/or expunged action redacted from the original discipline.

(B) Substituted Discipline. All references to the conviction, charges, and/or expunged action omitted in a substituted discipline identical in all other respects to the original discipline.

Substituted discipline will be entered *nunc pro tunc* to the date of entry of the original discipline and will have the same effective date as the original discipline. Substituted discipline will reflect the filing date on which the substituted discipline is entered.

(C) Modified Discipline. When the original discipline was not a consent order of discipline entered by the commission and signed by the member, the member may seek an order replacing the original discipline with modified discipline imposing a different disposition and omitting all references to the conviction, charges, and/or expunged action. Modified discipline will be entered *nunc pro tunc* to the date of entry of the original discipline and will have the same effective date as the original discipline. Modified discipline will reflect the filing date on which the modified discipline is entered.

(5) Procedures.

(A) A member may petition the body that issued the original discipline for relief under this section. The petition must be served simultaneously upon the counsel. If the action that eliminated the conviction is sealed or otherwise not public record, the member may file the petition under seal without seeking leave to do so. The petition shall be accompanied by documentation of the action that eliminated the conviction or expunged action, and shall specify which form of relief the member seeks. If the member seeks relief under section (c)(4)(A) or (c)(4)(B) above, the petition shall include proposed redacted or substituted discipline.

(B) The State Bar shall have thirty days from receipt of the petition to file a written response, which must be served simultaneously upon the member. If the petition was filed under seal, the response shall be filed under seal. If the member seeks relief under section (c)(4)(A) or (c)(4)(B) above, the response (i) shall indicate whether the State Bar consents to the redacted or substituted discipline proposed by the member or (ii) shall include redacted or substituted discipline proposed by the State Bar.

(C) When the original discipline was

issued by the Grievance Committee, the counsel shall forward to the Grievance Committee within forty days of the date of service of the petition upon the counsel (i) the member's petition for relief and accompanying supporting documentation, (ii) the State Bar's response, and (iii) the evidence considered by the Grievance Committee when it issued the original discipline.

(D) When the original discipline was issued by the commission after a hearing, the member shall obtain a transcript of the hearing at the member's sole expense. The member shall provide official copies of the transcript to the commission and to the counsel within ninety days of the date of the petition. For good cause shown, the commission may enlarge the time for provision of the transcript. If the member does not timely provide official copies of the transcript to the commission and to the counsel, the member will be ineligible for the relief described in section (c)(4)(C).

(E) Consideration and Action.

(i) Grievance Committee - The Grievance Committee will not consider new evidence. The committee will take action on the petition at its next available quarterly meeting occurring at least two weeks after the materials required by section (c)(5)(C) above were forwarded to the committee. The Grievance Committee will consider the matter, determine whether the discipline was based in whole or in part upon the conviction or expunged action, and take action as set forth in sections (c)(3) and (c)(4) above.

(ii) Commission - The commission will not consider new evidence. Upon receipt of the petition and response, the chairperson of the commission will appoint a hearing panel. If the original discipline was issued after a hearing, within thirty days of appointment of the hearing panel the clerk will ensure the hearing panel has the exhibits that were entered into evidence and a list of witnesses who testified at the original hearing. In a case to which (c)(5)(D) applies, the hearing panel will not consider the petition until

the member has provided the transcript to the hearing panel and to the counsel or until the time has run for the transcript to be provided. The hearing panel will consider the matter, determine whether the discipline was based in whole or in part upon the conviction or expunged action, and will take action as set forth in sections (c)(3) and (c)(4) above. The hearing panel will enter an order containing findings of fact and conclusions of law and ordering the action to be taken. The order will be entered under seal if the petition seeking relief was filed under seal.

(F) Expunged Action Referenced in Public Commission Records. Upon relief granted by the commission as set forth above, the commission shall also redact from all public commission records any reference to the expunged action.

#### **Proposed Amendments to the Rules for Administrative Reinstatement**

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

The proposed amendments permit a member of the federal judiciary who is an inactive member of the State Bar to use each year (or portion thereof) of service as a federal judge to offset each year of inactive status for the purpose of determining whether the member must sit for and pass the bar exam to be reinstated to active status.

#### **.0902, Reinstatement from Inactive Status**

(a) Eligibility to Apply for Reinstatement ...

(c) Requirements for Reinstatement  
(1) Completion of Petition.

The member must provide the information requested on a petition form prescribed by the council and must sign the petition under oath.

...

(5) Bar Exam and MPRE Requirement If Inactive Seven or More Years.

(A) ...

(B) A member may offset the inactive status period for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A) as follows:

(1) ...

...

(3) Federal Court Judicial Service. Each calendar year in which an inactive member served in the federal judiciary, whether for the entire calendar year or some portion thereof, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). Such service shall also satisfy the CLE requirements set forth in paragraph (c)(4) for each year, or portion thereof, that the member served as a federal judge.

(6) Payment of Fees, Assessments and Costs.

...

(d) Service of Reinstatement Petition

...

#### **Proposed Amendment to the Policies and Rules Concerning Prepaid Legal Services Plans**

27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans

The proposed amendment changes the definition of prepaid legal services plans to prohibit plans from operating simultaneously as an intermediary organization (formerly known as a lawyer referral service).

#### **Rule .0301, Rules Concerning Prepaid Legal Services Plans**

The following words and phrases when used in this subchapter shall have the meanings given to them in this rule:

(a) ...

(c) Prepaid Legal Services Plan or Plan – any arrangement by which a person or entity, not authorized to engage in the practice of law, in exchange for any valuable consideration, offers to arrange the provision of specified legal services that are paid for in advance of any immediate need for the specified legal services (“covered services”). ~~In addition to covered services, a plan may arrange the provision of specified legal services at fees that are less than what a non-member of the plan would normally pay.~~

The North Carolina legal services arranged by a plan must be provided by a North Carolina licensed attorney who is not an employee, director, or owner of the plan. A plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.

#### **Proposed Amendments to the Rules of Professional Conduct**

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 1.15, Safekeeping Property

The following proposed amendments add definitions to Rule 1.15-1 for four different types of ledgers, and reorder the subparagraphs in Rules 1.15-2 and 1.15-3 to make the progression of requirements more logical. Internal cross references in Rule 1.15-3 that are changed because of the reordering are not shown below.

#### **Rule 1.15-1, Definitions**

For purposes of this Rule 1.15, the following definitions apply:

(a) “Administrative ledger” denotes a written or computerized register, maintained for lawyer or firm funds deposited into a general or dedicated trust account or fiduciary account pursuant to Rule 1.15-2(g)(1) that lists, in chronological order, every deposit into and each disbursement from the trust account or fiduciary account of such funds, and shows the current balance of funds after each such transaction.

~~(a)~~ (b) “Bank” ...

~~(b)~~ (c) “Client” ...

(d) “Client ledger” denotes a written or computerized register, maintained for each client (person or entity) whose funds are deposited into a trust account that lists, in chronological order, every deposit into and each disbursement from the trust account for the client, and shows the current balance of funds after each such transaction.

~~(e)~~ (e) “Dedicated trust account” ...

~~(f)~~ (f) “Demand deposit” ...

~~(g)~~ (g) “Electronic transfer” ...

~~(h)~~ (h) “Entrusted property” ...

~~(i)~~ (i) “Fiduciary account” ...

~~(j)~~ (j) “Fiduciary funds” ...

~~(k)~~ (k) “Funds” ...

(l) “General ledger” denotes a written or computerized register, maintained for each general and dedicated trust account and each fiduciary account, that lists in chronological order every deposit into and each disbursement from the account, and shows the current balance of funds after each such transaction.

~~(m)~~ (m) “General trust account” ...

~~(n)~~ (n) “Item” ...

~~(o)~~ (o) “Legal services” ...

~~(p)~~ (p) “Professional fiduciary services”...

(q) “Subsidiary ledger” denotes a client

## ledger or administrative ledger.

(~~nr~~) "Trust account" ...

(~~es~~) "Trust funds" ...

### Rule 1.15-2, General Rules

(a) ...

(e) Location of Accounts ...

(~~f~~) Bank Directive ...

(~~fg~~) Funds in Accounts ...

(~~gh~~) Mixed Funds Deposited Intact ...

(~~hi~~) Items Payable to Lawyer ...

(~~ij~~) No Bearer Items ...

(~~jk~~) Debit Cards Prohibited ...

(~~kl~~) No Benefit to Lawyer or Third Party ...

...

(~~l~~)

(m) Notification of Receipt ...

...

(p) Duty to Report Misappropriation. A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the Trust Account Compliance Counsel (TACC) in the North Carolina State Bar Office of Counsel. Discovery of intentional theft or fraud must be reported to the TACC immediately. When an accounting or bank error results in an unintentional and inadvertent use of one client's trust funds to pay the obligations of another client, the event must be reported unless the misapplication is discovered and rectified on or before the next quarterly reconciliation required by Rule 1.15-3(d)(2)(~~4~~). This rule requires disclosure of information otherwise protected by Rule 1.6 if necessary to report the misappropriation or misapplication.

...

### Rule 1.15-3, Records and Accountings

(a) Check Format ...

(d) Reconciliations of General Trust Accounts ...

(~~21~~) ...

(~~22~~) ...

(~~te~~) Reviews ...

(~~ef~~) Accountings for Trust Funds ...

(~~fg~~) Accountings for Fiduciary Property ...

(~~gh~~) Minimum Record Keeping Period ...

(~~ji~~) Retention of Records in Electronic Format ...

(~~hj~~) Audit by State Bar ...

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 4.1, Truthfulness in Statements to Others

A technical correction to Rule 4.1, comment [2], will replace a reference to "tortious misrepresentation" with "tortious misrepresentation."

### Rule 4.1, Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Comment

...

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances...Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation. ■

## Proposed Opinions (cont.)

(b), it is not improper to pay a witness's expenses, including lost income, or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that *it is improper to pay an expert witness a contingent fee.*" Except as allowed by law, lawyers cannot pay a witness a contingency fee.

Other states have opined that it is against public policy for anyone to pay a public adjuster a contingency fee. See *Taylor v. Cottrel Inc.*, 795 F.3d 813, 816 (8th Cir. 2015); *Accrued Financial Services Inc. v. Prime Retail Inc.*, 298 F.3d 291, 300 (4th Cir. 2002); *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 73 (2d Cir. 1990); *Stranger v. Raymond*, No. 08-2170 (C.D. Cal. May 9, 2011); *J&J Snack Foods Corp. v. Earthgrains Co.*, 220 F. Supp. 2d 358, 367 n.8 (D.N.J. 2002); *Farmer v. Ramsey*, 159 F.Supp.2d 873, 883 (D. Md. 2001); *Buckley Powder Co. v. State*, 20 P.3d 547, 559 (Colo. App. 2002). However, in North Carolina, it is not against public policy to pay a public adjuster a contingency fee. In 2009, the North Carolina General Assembly amended Chapter 38 of the General Statutes to include Article 33A, which governs the qualifications and procedures for, *inter alia*, public insurance adjusters. The statute specifically provides:

In the event of a catastrophic incident, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value before settlement of a claim.

N.C. Gen. Stat. § 58-33A-60(d).

The statute is silent on whether the public adjuster may testify as an expert witness. However, because the statute permits the client to pay the public adjuster a contingency fee based upon the outcome of the underlying case, Lawyer is not "offer[ing] an inducement to a witness that is prohibited by law." Rule 3.4(b). ■

## Diversity, Equity & Inclusion Statement

Lawyers swear an oath to defend the United States and North Carolina Constitutions. These constitutions decree all persons are created equal and endowed with certain inalienable rights and guarantee all persons equal protection of the laws. The North Carolina Constitution also specifically prohibits discrimination by the State against any person because of race, color, religion, or national origin. The North Carolina State Bar considers diversity and inclusion essential elements of promoting equity and preventing discrimination. Diversity encompasses characteristics that make each of us unique. Equity promotes fairness by aiming to ensure fair treatment, access, opportunity, resources, and advancement for everyone to succeed. Inclusion fosters a collaborative and respectful environment where diversity of thought, perspective, and experience is valued and encouraged. The North Carolina State Bar therefore recognizes diversity, equity, and inclusion as core values and is committed to being intentional about incorporating diversity, equity, and inclusion into its operations and mission.

## Smith Nominated as Vice-President



Eden attorney Matthew W. Smith has been selected by the State Bar's Nominating Committee to stand for election to the office of vice-president of the North Carolina State Bar. The election will take place in October at the State Bar's annual meeting. At that time, Smithfield Attorney Marcia H. Armstrong will assume the office of president, and Charlotte attorney

A. Todd Brown will also stand for election to president-elect.

Smith earned his bachelor's degree from Campbell University, and his law degree from Campbell University's Norman Adrian Wiggins School of Law.

Smith has been a member of the North Carolina State Bar Council since 2014, during which time he served as vice-chair and chair of the Grievance Committee, and vice-chair and chair of the Authorized Practice Committee.

An associate and partner with Maddrey Etringer Smith Hollowell & Toney, LLP, in

Eden since 1998, Smith focuses his practice on real estate, estates, guardianships, as well as other areas of law typically covered by a small-town practice.

Smith is a member of the Board of Directors for the Boys & Girls Club of Eden. He has also served as a member and chair of the Eden Planning and Zoning Board from 2009-2022.

For 23 years, Smith has been married to his wife, Michelle. They have two sons: Harrison, 19, and Hunter, 16. He enjoys the mountains and all things Chicago Cubs. ■

## Fifty-Year Lawyers Honored

Members of the North Carolina State Bar who are celebrating the 50th anniversary of their admission to practice in 2021 were honored during the State Bar Council's April 2022 quarterly meeting at the 50-Year Lawyers Luncheon. One of the honorees, Richard L. Doughton, addressed the attendees, and each honoree was presented a certificate by the president of the State Bar, Darrin Jordan, in recognition of his or her service. After the ceremonies were concluded, the honorees in attendance sat for the photographs below and on the next page.



*Front row (left to right)* G. Edgar Parker, William "Billy" Trott, Gene Matthews, Fred Fincher Jarrell, John Silverstein, Donald Grimes, N. Shelton Jones, Allen Tew, Donald Lawrence *Back row (left to right)* A. P. "Sandy" Sands III, Honorable Joseph John Sr., Cecil Jenkins Jr., Jerry Leonard, Edwin "Eddie" Speas Jr., Reich Welborn, Charles McCotter Jr., Frank Longest Jr., Robert Myrick, Chapin Pierre "Pete" Oldham



*First row (left to right):* Douglas “Doug” Johnston, Patricia King, Gregg Hansen, John Michael Crowell, Judge Lindsay Davis Jr., Judge Richard Doughton, William “Willie” Hobson, Judge Sarah Bailey, Samuel Currin III, Walter Patterson II *Second row (left to right)* Eugene Bedford Cannon, David Harlow, Robert Farris Jr., O. Richard Wright Jr., Clarence David Williams Jr., W. Thad Adams III, Stephen Hart, Samuel Ewell Jr., Philip Cheatwood, Fred Baggett *Third row (left to right)* Paul Messick Jr., Gardner Altman Jr., Louis Kleiman, Rudolph “Rudy” Ashton III, George Evans, Jr. Ann Reed Dunn, Ernie Simons Jr.

## Client Security Fund Reimburses Victims

At its May 13, 2022, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$215,501.36 to eight applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$28,200 to a former client of David G. Belser of Saluda. The client retained Belser to appeal his conviction on several criminal charges. Belser became disabled and was transferred to disability inactive status. The board concluded that Belser did not appeal the conviction, did not communicate with his client about his inability to provide the legal services, and did not provide any meaningful legal services for the fee paid.

2. An award of \$12,378.28 to a former client of Peter F. Chastain of Greensboro. Chastain handled the closing of the client's property in 2009 and mailed the closing proceeds to the client. The client was hospitalized for several weeks with months of rehabilitation and misplaced the check. The client recently found the check but was unable to cash it, in part because the sales proceeds had been misappropriated by Chastain. Chastain was disbarred on January 6, 2017.

3. An award of \$12,067 to a former client of Stanford K. Clontz of Asheville. Clontz took over a client's case from another attorney to handle a Medicaid lien. The previous lawyer had set aside funds from the settlement proceeds to pay any medical liens. The board concluded that Clontz made disbursements from the funds but not for the benefit of the client or to satisfy any liens and that, due to misappropriation by Clontz, his trust account balance is insufficient to pay all client obligations.

4. An award of \$7,500 to a former client of Kimberly L. Farias, formerly of Morehead City and now living in Italy. The client retained Farias to handle a modification of child custody and child support agreement. Farias charged and was paid a “non-refundable” retainer, which is not permitted in North Carolina. The board concluded that Farias did not provide any meaningful legal services for the fee paid before she left the country.

5. An award of \$100,000 to a former client of Patrick M. Megaro of Oviedo, Florida, who practiced law in both Florida and North Carolina. The Disciplinary Hearing Commission concluded that Megaro lied to this client and his client's half-brother, who were wrongly convicted of and spent three decades in prison for

a rape and murder they did not commit; terminated the services of *pro bono* attorneys; and deceived the brothers, who Megaro knew to be mentally deficient, into signing an engagement agreement with him that provided him unreasonable and excessive compensation. The board concluded that the *pro bono* attorneys had already completed all the work and submitted the paperwork necessary to obtain executive pardons for the brothers, so there was nothing left for Megaro to do when he collected the fee from proceeds of an award received by the client from the Industrial Commission, and that Megaro provided no meaningful legal services to the client for the fee obtained. Megaro's license was suspended on May 27, 2021.

6. An award of \$40,000 to a former client of K. Brandon Remington of Charlotte. The client paid Remington a flat fee to appeal the indefinite suspension of her nursing license with the North Carolina Board of Nursing. Remington missed the appeal deadline, denying the client the opportunity to contest her suspension. Remington continued to reassure the client that the decision could be overturned

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## Law School Briefs

### Campbell University School of Law

Campbell Law School has partnered with Wake County and a number of its cities and towns on new non-discrimination ordinances, which are intended to protect residents from discrimination and demonstrate that equality, fairness, and inclusion are core values in their communities. The law school's *pro bono* Restorative Justice Clinic director and students help the county mediate any complaints brought as a result of the ordinances. Complaints about discrimination in public spaces and employment can be made online at [wakegov.com/wake-county-non-discrimination-ordinance-complaint-process](http://wakegov.com/wake-county-non-discrimination-ordinance-complaint-process).

The Raleigh City Council is also partnering with Campbell Law School to serve low-income residents who are facing eviction and homelessness. The City of Raleigh Housing Justice Project with Campbell Law School is a legal clinic, which provides advice and counsel as well as legal representation to eligible Raleigh residents in eviction proceedings. Dean J. Rich Leonard said the \$300,000 in funding over three years will expand the work of the Blanchard Community Law Clinic to include housing issues, especially eviction defense.

### Duke University School of Law

Duke Law School received a \$5.46 million gift from Rick Horvitz '78 and Erica Hartman-Horvitz to permanently endow its Program in Public Law, which works to promote understanding of public institutions, the Constitutional framework in which they function, and the principles and laws that apply to the work of public officials. It will be renamed the Richard A. Horvitz Program in Constitutional and Public Law.

Professor Laurence R. Helfer was elected to serve on the United Nations Human Rights Committee for the 2023-2026 term. Helfer, an expert in international law and institutions, international adjudication and dispute settlement, human rights, and international intellectual property law and policy, was nominated and supported by the Department of State as the US candidate for a seat on the in-

ternational monitoring body.

US District Court Judge Paul W. Grimm of the District of Maryland has been named director of Duke Law's Bolch Judicial Institute, effective January 1, 2023. Grimm, a 2016 graduate of the Master of Judicial Studies program, will succeed David F. Levi, who is retiring. Levi also served as dean of the law school from 2007 to 2018.

New faculty members include Timothy Meyer, formerly a professor at Vanderbilt Law School and director of its International Legal Studies program; Jonathan Seymour, a bankruptcy scholar who studies how the culture and practices of bankruptcy courts affect consumer and commercial reorganizations; Shu-Yi Oei, who teaches and writes in tax policy and economic regulation and moved from Boston College Law School; and Allison Korn, who directed the Food Law and Policy Clinic at UCLA School of Law and joins the clinical faculty as director of Duke Law's Health Justice Clinic. Jedediah Britton-Purdy, a leading scholar of environmental, property, and constitutional law who previously spent 15 years at Duke Law, rejoined the faculty from Columbia Law School.

### Elon University School of Law

Elon Law earned an "A" and is North Carolina's highest-ranked law school in *PreLaw Magazine's* 2022 feature of "Best Schools for Practical Training." The annual rankings, published by one of the nation's most widely read publications covering legal education, formulated its rankings based on several data points including the number of clinics, externships, *pro bono* hours, simulation courses, and moot trial participation reported by law schools.

Two attorneys motivated to help law students achieve their professional goals are the newest additions to Elon University School of Law's Office of Career & Student Development. Krista Contino Saumby and Alicia Mills started their roles in June as associate director of career development and assistant director of career development, respectively. The pair will work with Elon Law students to prepare for success in the legal profession

while building relationships with firms, judicial chambers, and agencies to help meet employment needs.

Margaret Dudley, supervising attorney for Elon Law's Emergency Legal Services Program inside the Family Justice Centers of Guilford and Alamance Counties, was one of four lawyer leaders recognized as an NC Legal Legend of Color by the North Carolina Bar Association's Minorities in the Profession Committee. Elon Law Graduate Gwendolyn Lewis L'13, a leader on the committee's Legal Legends of Color Award Subcommittee, presented Dudley with the award in June during the NCBA's annual meeting in Winston-Salem. Dudley was joined in the Class of 2022 honorees by Judge Ola M. Lewis (posthumously), attorney Arlinda Locklear, and attorney Georgia Lewis.

### University of North Carolina School of Law

The Prosecutors and Politics Project has released a national study on campaign contributions in prosecutor elections. The National Study of Contributions in Prosecutor Elections is not only the first national study, but also the first systematic study of campaign contributions in prosecutor elections. Contribution data includes data from jurisdictions that elected local prosecutors during the years 2012-2017. The project compiled fragmented data into a single nationwide database that will allow sustained study about who contributes to prosecutor campaigns and the amount of contributions.

Law school students Sawyer Davis 3L, Amber Knepper 2L, and Halie Mariano 2L—overseen by Professor Deborah Weissman, who chairs North Carolina's Domestic Violence Commission—developed a memorandum that sets forth the legal obligations in providing access to services and accommodations for deaf/deafblind/hard of hearing (DDBHH) domestic violence survivors from agencies serving both survivors and offenders. The memorandum was approved by the state

CONTINUED ON PAGE 58

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## Client Security Fund (cont.)

and filed futile documents trying to correct his mistake. The board concluded that Remington did not provide any meaningful legal services to the client for the fee paid.

7. An award of \$12,356.08 to a former client of Neil W. Scarborough of Wanchese. The client and her husband retained Scarborough to handle a land dispute involving septic drainage. Scarborough neglected and drew out the matter for years, telling the client and her husband that he needed additional time for research. The case was never resolved. The board concluded that Scarborough provided no meaningful legal services for the fee paid.

8. An award of \$3,000 to a former client of Edward D. Seltzer of Charlotte. The client retained Seltzer to see if anything could be done

to reduce his brother's active prison sentence. There is no evidence that Seltzer provided any meaningful legal services for the fee paid. Seltzer died on June 30, 2021. The board previously reimbursed three other Seltzer clients a total of \$57,500.

### Funds Recovered

It is standard practice to send a demand letter to each current or former attorney whose misconduct results in any payment from the fund, seeking full reimbursement or a Confession of Judgment and agreement to a reasonable payment schedule. If the attorney fails or refuses to do either, counsel to the fund files a lawsuit seeking double damages pursuant to N.C. Gen. Stat. §84-13, unless the investigative file clearly establishes that it would be useless to do so. Through these efforts, the fund was able to recover a total of \$2,088.63 this past quarter. ■

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## Law School Briefs (cont.)

commission and is now posted on the Department of Administration's website at [ncadmin.nc.gov/media/13433](http://ncadmin.nc.gov/media/13433). The memorandum is also referenced in training webinars for more than 100 programs.

The Administrative Conference of the United States (ACUS) has adopted automated legal guidance recommendations from Professor Leigh Osofsky. The recommendations are based on a study of the US federal government agencies' use of automated tools—such as chatbots, virtual assistants, and artificial intelligence. The 20 policy recommendations are categorized into different topics regarding the use of automated legal guidance by US federal agencies, including design and management, accessibility, transparency, and reliance. ■

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# Upcoming Appointments

Anyone interested in being appointed to serve on any of the State Bar's boards, commissions, or committees should email [lheidbrink@ncbar.gov](mailto:lheidbrink@ncbar.gov) to express that interest (being sure to attach a current resume), by October 7, 2022. The council will make the following appointments at its meeting in October:

**Board of Continuing Legal Education** (three appointments; three-year terms)—There are three appointments to be made. Rebecca Eggers-Gryder, Elizabeth Keever, and Marissa S. Campbell are not eligible for reappointment.

The Board of Continuing Legal Education (CLE) is a nine-member board composed of North Carolina licensed attorneys. The board establishes policy related to the execution of CLE program's mission and is responsible for oversight of the operation of the program. The board meets four times a year.

**Board of Law Examiners** (five appointments; three-year terms)—There are five appointments to be made. Shelly Blake Curran, Judge Sherri W. Elliot, Michael J. Greene, and D. Clark Smith are all eligible for reappointment. Kimberly A. Herrick is not eligible for reappointment.

The board examines applicants and estab-

lishes rules and regulations for admission to the North Carolina State Bar. The board's objective is to ensure that all persons seeking admission to practice law in North Carolina possess the requisite competency and qualifications of character and fitness. Board members review bar examination questions, conduct character and fitness and comity hearings, supervise the bar examinations, and grade the examinations. A board member donates an average of 35-45 days to service each year.

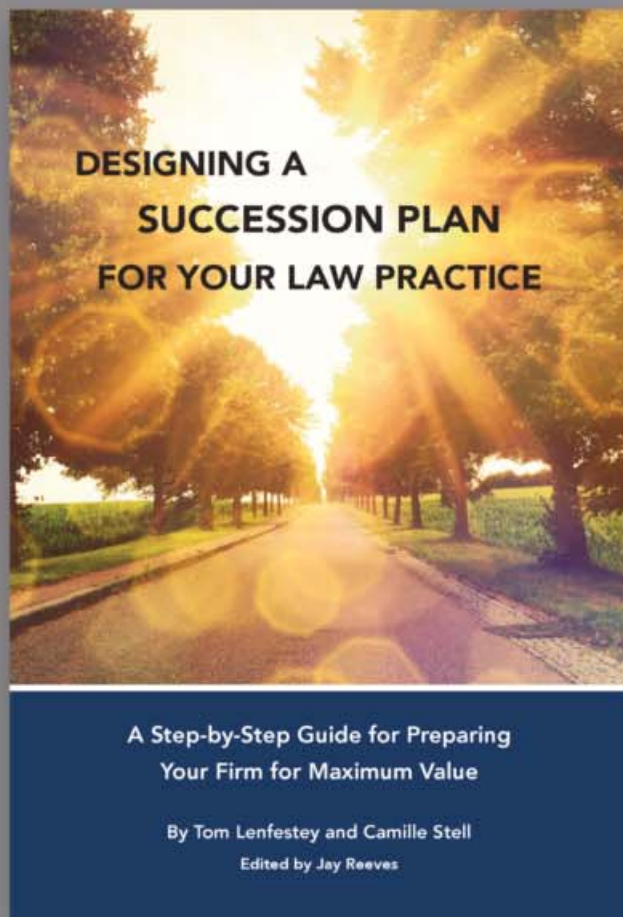
**Board of Paralegal Certification** (three appointments; three-year terms)—There are three appointments to be made. Warren Hodges (lawyer member), Bryan C. Scott (lawyer member), and Yolanda Smith (paralegal member) are not eligible for reappointment. The rules governing the Board of Paralegal Certification require a paralegal member who is appointed for an initial term to be selected by the council from two nominees determined by a vote of all active certified paralegals in an election conducted by the board.

The Board of Paralegal Certification is a nine-member board composed of five North Carolina licensed attorneys (one of whom must be a paralegal educator) and four North

Carolina certified paralegals. The board establishes policy related to the execution of the paralegal certification program and is responsible for the oversight of the operation of the program. The paralegal certification program assists in the delivery of competent representation to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer. The board meets approximately four times a year.

**Client Security Fund Board of Trustees** (one appointment; five-year terms)—There is one appointment to be made. John M. Burns (public member) is not eligible for reappointment.

The Client Security Fund was established by the North Carolina Supreme Court in 1984 to reimburse clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina. The fund is administered by a board of trustees composed of four North Carolina lawyers and one public member. The board meets approximately four times a year. ■



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### Upcoming Appointments to Commissions and Boards

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— Joan H. Feldman, Editor/Publisher, Attorney at Work

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