

THE NORTH CAROLINA STATE BAR

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JOURNAL



IN THIS ISSUE

Making History and Blazing a Trail *page 6*

Nearing the Finish Line *page 13*

How New Alcohol Laws Changed Asheboro *page 32*



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Contents

FEATURES



- 6 Making History and Blazing a Trail—Justice Robin Hudson, Chief Judge Linda McGee, and Judge Lillian Jordan**



- 10 Life and Death in High Places—A True Story of Family, Scandal, and Homicide**

By Bruce G. Miller and Robin A. Simonton



- 13 Nearing the Finish Line: Final Proposed Changes to CLE Rules**

By Peter Bolac

- 27 “Mister Jimmy” and Kids Making It: The Good that One Lawyer Has Done**

By Auley M. Crouch III

- 32 Dry No Longer—How New Alcohol Laws Changed Asheboro**

By Richard Costanza

- 34 Robert's Rules of Order—An Interview with Author/Attorney Jim Slaughter**

By Alice Neece Mine

- 38 Honoring Past-President James R. Fox with Memorial Gifts to the State Bar Foundation**

By Alice Neece Mine

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Contents

DEPARTMENTS

- 5 President's Message
- 40 Legal Specialization
- 41 Lawyer Assistance Program
- 42 Pathways to Well-being
- 44 Legal Ethics

- 46 The Disciplinary Department
- 48 IOLTA Update
- 50 Proposed Ethics Opinions
- 56 Rule Amendments

BAR UPDATES

- 58 Distinguished Service Award
- 59 Client Security Fund
- 60 Law School Briefs
- 61 In Memoriam
- 62 Upcoming Appointments

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“We” Are All the State Bar

BY MARCIA H. ARMSTRONG

It is with heartfelt sorrow that we begin 2023 with the tragic, senseless, and untimely death of one of our own, Patrick White. Who was Patrick? A loving and devoted husband to Molly and father of Zeke and Phoebe. God bless and comfort them. Patrick was also a lawyer, one of “us,” a member of the North Carolina State Bar. We lost a colleague who lost his life doing what lawyers do—representing his client to ensure justice is served. As we remember Patrick and pray for his family, let us reflect on all our individual roles as members of the State Bar family, the role of the State Bar as an agency, and how we can collectively contribute to better serve our profession and communities.

Lawyers are counselors, advocates, citizens, and people. We dramatically influence the lives of those we encounter regardless of the “hat” we wear at pivotal moments. Lawyers are essential to preserving society. We defend the rule of law and advocate for those seeking justice. Henry L. Stimson, a lawyer, secretary of war, and secretary of state, once said, “I came to realize that without a bar trained in the traditions of courage and loyalty, our constitutional theories of individual liberty would cease to be a living reality.”¹ To fulfill this daunting responsibility requires an understanding of the legal profession’s relationship to our legal system.

The legal profession is largely self-governing with the courts having ultimate authority over our profession. The North Carolina State Bar is the agency tasked with facilitating our self-regulation, and it is governed by The North Carolina State Bar Council. The council is composed of 60 attorneys who are elected as councilors from their judicial dis-

tricts, three laypersons appointed as public members by the governor, and four elected officers. The legislature created the State Bar in Chapter 84 of the General Statutes. N.C.

Gen. Stat. §84-23 provides in part that “the council is vested as an agency of the State, with the authority to regulate professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of

professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes...” These enumerated powers are designed to accomplish the State Bar’s primary goal: to protect the public.

Self-regulation is a privilege earned over many years of service to the public. As noted in the Preamble to the Rules of Professional Conduct, “The legal profession’s relative autonomy carries with it a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.” Implementing its core mission of self-regulation, the State Bar through its Ethics Committee strives to adopt rules of professional conduct that clearly guide lawyers in fulfilling their ethical obligations, thereby protecting the public. The State Bar’s griev-

ance process further protects the public by disciplining lawyers that have not adhered to the rules of professional conduct.

The State Bar must “stay in its lane” of self-regulation. Unlike the North Carolina Bar Association and other voluntary organizations, State Bar dues are mandatory and must be used to promote self-regulation and not to advocate for changes in substantive law or for political causes. If you ever wonder why the State Bar is not taking a position on an issue, it is likely that the issue falls outside the parameters of Chapter 84.

From time to time, issues are brought to the attention of the State Bar that affect lawyers’ competency, mental health, and quality of life. Since these issues impact lawyers’ ability to effectively represent their clients, the State Bar often undertakes a study to raise awareness of the concerns. For example, the State Bar recently published a report and recommendations on proposed changes to secured leave for lawyers. You can find this report on the Bar’s website and the report has been shared with several stakeholders. The Issues Committee is currently studying several issues that directly impact lawyers and the clients they serve, including succession planning for solo practitioners, reviewing the process used to select lawyers for random trust account audits, and exploring whether to create additional deferral programs such as The Trust Accounting Compliance Program (TAC) to more effectively identify and address the root cause of certain rule violations.

What role can lawyers play in maintaining the privilege of self-regulation? We must act in the public interest by volunteering our time and expertise to the collective effort. If we show up to participate in the process, and we act in the public interest, we will retain

CONTINUED ON PAGE 12



Making History and Blazing a Trail—Justice Robin Hudson, Chief Judge Linda McGee, and Judge Lillian Jordan

AN INTERVIEW WITH MARK HENRIQUES

The following is an excerpt of the State Bar's podcast, BarTalk, in which attorney and former State Bar Councilor Mark Henriques interviewed three judicial trailblazers, Justice Robin Hudson, Chief Judge Linda McGee, and Judge Lillian Jordan about their careers.

Mark Henriques

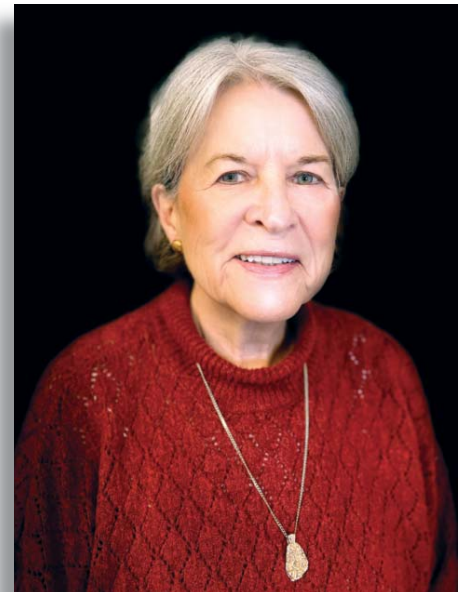
Welcome, everyone to BarTalk. I'm your host, Mark Henriques. This is the State Bar's podcast exploring interesting developments in the legal world. We've got a real treat for you today. We have three legal trailblazers, women at all levels of our court who have had amazing careers as judges and public servants. I'm excited to talk to them about their experiences becoming a judge.

We've got the North Carolina Supreme Court represented by Justice Robin Hudson. She's been a justice for 16 years on the Supreme Court, and her term ends at the end of the year, sadly, so we'll be losing her. But she has been a wonderful justice and public servant. She went to Yale undergrad and then Chapel Hill for law school, where I think a fair number of our listeners also went. Born in Georgia, interestingly, the first woman elected to the appellate court directly without being appointed first. So that's an accomplishment and one in the record books for you, Justice Hudson. And she's written a lot of important decisions on the Supreme

Court and we're looking forward to hearing about that long service.

From the court of appeals we have the longest serving appellate judge in the history of North Carolina, at least according to my research—I think 26 years on the court of appeals, for the last six years as chief judge. So glad to have you here, Judge McGee. She is a double Chapel Hill undergrad and law school graduate from Marion, North Carolina. She has been really involved with advocating on behalf of the judicial system, working with the Bar Association, a lot of stuff through the courts at various levels, in addition to serving as chief judge of the court of appeals. I'm really excited to have you here too, Judge McGee.

And then representing our trial courts we have a Judge Lillian Jordan, a district court judge and longtime emergency district court judge even after her official service was done. Judge Jordan a few years ago won the John B. McMillan Distinguished Service Award, something that the State Bar awards and a lot of our listeners are familiar with, which is quite an honor. I understand she went to Guilford College and then Wake for law school, which is a great combination. In addition to her work with the courts, she's been president of North Carolina Legal Services, on the IOLTA Board, and on the Board of Law Examiners for North Carolina. So a lot of public service in addition to work



Judge Lillian Jordan

as a judge. In doing some reading, I find it interesting when you got the McMillan Award, Judge Jordan, you indicated that you are grateful for your first husband for paying for law school, watching your four boys and also doing the laundry, which is something that not many husbands were doing then. So I think that's an interesting background. And let me start with you, Judge Jordan. I'm curious—and I want to hear from all of you—what made you decide to be a judge, how did

you get interested in the judiciary?

Judge Lillian Jordan

Well, actually, I never thought about being a judge. I practiced family law for about 17 years and my husband died of ALS—he was a lawyer and we were law partners—and it actually became harder instead of easier to go into our office every day. And our judicial district changed and we were going to get a new judge appointed. Some of the lawyers encouraged me to ask for that appointment. And I thought, you know, that's probably what I need to do at this time. So, I did that, and the governor appointed me—Governor Hunt—who, by the way, was in the same law class with my former husband, Tom.

Mark Henriques

How about you, Justice Hudson, what made you decide? Did you always know you wanted to be a judge? What inspired you to take that path?

Justice Robin Hudson

It never occurred to me that I would ever be a judge. In fact, when I went to law school, I'm not sure I had a very clear idea of what lawyers even did. I didn't know any lawyers, there were no lawyers in our family. When I was an undergraduate at Yale, everybody was going to go either to med school, or law school, or graduate school. And I was clearly not going to med school.

Judge Linda McGee



And law school, I had some idea that you could be a lawyer and make a contribution in your community, do some good work, and make a living. And that all appealed to me, even though my picture wasn't all that clear. But it never dawned on me to ever aspire to be a judge. But I sort of backed into a career doing a lot of workers' comp litigation, representing textile workers all over the state in the '70s with breathing problems from inhaling cotton dust. And of course, there were mills all over North Carolina. Then, it was a big, huge industry. And not very many lawyers would take the cases. There were about a dozen of us around the state who would take the cases, and you have to litigate them one at a time. So we had hundreds and hundreds of cases all over the state. We lost the first 30 or so cases that we tried, and we kept looking at the law and looking at our record, and the law sure seemed to cover our clients. And so we appealed, and we ended up winning almost all of the cases in the court of appeals and Supreme Court. This was the first time I argued in the Supreme Court, I think in 1980 or '81, and at some point the clerk of the court of appeals at that time told me that our little law firm of two people had more appeals pending than any other law firm in the state. Because we had to do them one at a time, and this was in the days before word processing, before you could use the transcripts. But the long and short of it is that I got a ton of appellate experience, out of necessity, because we lost. But we ended up winning, and so I got a whole lot of appellate experience. And at some point, I kept doing that throughout the 25 years that I practiced law. There were a couple of openings on the court of appeals, and some of my colleagues said, you know, you have hundreds of appeals under your belt, why not try to get appointed to the court of appeals. So I wrote to Governor Hunt, and he interviewed me, and people wrote nice letters, and I didn't get appointed. But then two years later, one of the judges announced that he was not going to run when his seat was up. One of my friends, who was very politically savvy, had called me after the governor didn't appoint me and said, you know, the governor is not going to appoint you. And I said, what do you mean? I have all this great experience. And he said, well, because you can't do anything for the governor. You've spent all of your



Justice Robin Hudson

career representing people with no money and no connections and no clout. You can't do anything for the governor, so he's not going to appoint you. The governor won't pick you, but the people will, so you should just run. And so I did. I ran for an open seat, and I didn't know until after that election in 2000 that I was the first woman to do that without having been appointed. I probably would have been much more anxious about the outcome if I had known. That's how it happened. It's sort of one of those things I never could have predicted. I served on the court of appeals for six years and loved every minute of it. It was a wonderful, wonderful place to serve. And then there was an open seat on the Supreme Court in 2006 and I ran for that.

Mark Henriques

That's a great. Talk about a trailblazing story. I love that. You know, without the connections—people think judges are all politically connected. You had the experience, but it there was no great political connection.

Justice Robin Hudson

My mother grew up in New Orleans, and one of her favorite sayings was "it goes to show you never can tell." That's sort of the story of my life. But it's been a real honor of my life to be able to serve on the Supreme Court for the last 16 years, and it has gone by so fast, and I'm astonished that I'm only a few weeks away from it being over. I've done

the very best I can, and we've had some really difficult and complicated matters to tackle. And that's what appealed to me about it, was being able to put all that experience to work, and I know that Judge McGee and Judge Jordan have felt the same way—that that's what we do, we're problem solvers. That's the goal, and it's been a real honor to do that.

Mark Henriques

Absolutely. Judge McGee, is my memory right? Were you appointed by Governor Hunt? We've got two Hunt appointees, and one that he refused to appoint but ran and got elected anyway. How did you end up becoming a judge? Tell us the story.

Judge Linda McGee

Well, I'll make it unanimous here. I had no idea about the possibility of being a judge. I didn't even want to go to law school. Way back when I was watching Perry Mason on TV, I thought—the idea of being able to take your knowledge or what you learned, experiences, and win cases for individuals and be an important part of the community—what more could you ask for in your life? And so I wanted to be a lawyer since I was maybe 12 years old or so. And then I practiced law in Boone, at a small town law firm, and loved it. Wonderful partners, as a matter of fact, one of my partners later became president of the North Carolina State Bar, Tony di Santi. And Andrea Capua—she's also a member of the firm—and she's now on the State Bar Council. They were generous enough to me, basically, to support me in the possibility of becoming a judge. But the only reason I even considered it was because I got a telephone call from a woman who was in the General Assembly, and she said that there's an opening of the court of appeals, and would you be interested? Well, I laughed really loud. And then she reminded me—this was back in the mid-'90s—that the NC Association of Women Attorneys had been formed ten or 12 years before that time—and one of the goals was that we thought we needed to have more women on the bench. And she reminded me of that and said, please consider the fact that your first career was as executive director of the NC Academy of Trial Lawyers. So, you got to know lawyers all across the state. And she said, that seems like a natural if you're going to be running statewide. With her encouragement, and

then, quite frankly, with the support of my husband, and, by then we had two sons, and my law partners in Boone, I said, yes, I would like to take that on, and let's see what we can do with it. I had an interview with the governor too, in January, and it was so relaxed. I felt so good about it. I thought, well, this has just been very nice, and I appreciate this, Governor, but I didn't expect anything to come from it, quite frankly. And then it was a month later and I got a call fairly late in the evening. Actually, I got two calls. My youngest son took the first call, and was talking and sounding very happy with the person on the phone. And then he hung up and my husband asked who that was. He said that was somebody telling me they were the governor. So I made a quick telephone call.

But for another woman who was interested in having more women on the bench—and she had run for the state senate, and was in the state senate—I would not have been given that opportunity.

Mark Henriques

We may have listeners that maybe, before this podcast, hadn't really thought about being a judge, or maybe they've toyed with it. Would you recommend it as a career? I know you all were practicing lawyers first, and that's what most of our listeners are doing. What tips would you give them?

Judge Lillian Jordan

Yes, I would recommend that people think about being a judge, and men as well as women, although I'm glad that we have more and more women on the bench. It's an interesting career. And you do get to meet a lot of different people. Actually, it helped, believe it or not, during COVID, when we were isolated and at home, because you're isolated as a judge. You don't go out to lunch with the lawyers, you're in your office or wherever. And so, it's sort of a lonely experience in a way, and I think you have to look at it that way, but it really came in handy when I had to stay home and do nothing. But the other thing is, as an emergency judge, which I was for about 15 or 16 years traveling all over the state and meeting all the different lawyers, that was probably the highlight because sometimes if you spend years and years with the same lawyers in front of you, you learn all their tricks. But it was really good. And different bars

you find have different personalities. Some of them, they're very close with each other and get along great. Some of them, they don't get along all that great. But being an emergency judge really was one of the best things I think I ever did as far as my personal enjoyment, meeting all the people in the courthouses—all the clerks and all of the people as well as the lawyers. And I would highly recommend that anyone who has any interest and is not highly—let's see, what's the word—you have to have a certain demeanor. I think you don't need to be very volatile. If you have that kind of demeanor, I think it's a good thing.

Mark Henriques

That's great. Justice Hudson, a little different experience on the court of appeals and then the Supreme Court, but what would you tell folks maybe considering that as a career change or an option?

Justice Robin Hudson

Well, you know, I never thought about it until I had quite a few years of experience under my belt, and because I always felt like it was important to have trial experience and know my way around the courtroom before I thought about doing that from the other side. And having that experience on the Judicial Review Board was a really wonderful way to learn what that might be like. I'm not sure I ever would have crossed that bridge mentally had that not happened, but it's a really wonderful way to give back through your experience and turn yourself into a problem solver when you're at the appellate level, especially. And if people like to do that—solve puzzles and complicated problems—being an appellate judge is wonderful. It is very solitary, it's very academic. You spend 90% of your time reading and researching and writing. So if you don't really love to do those things, you would hate being an appellate judge. Because there's an awful lot of it. But if you do, and like to put that work into crafting a solution, it's absolutely wonderful. The Supreme Court, especially—and one thing that I hadn't thought about until I got to the Supreme Court—is how much more complicated it is to get something accomplished when you have seven people rather than three. Because on the court of appeals, when you serve on panels of three, you only have to have one other person agree with you in

order to reach a decision. Whereas that's not true on the Supreme Court. You have seven people, so you have to have four, and you have to hang on to them. And Justice Ervin and I used to joke about trying to keep the frogs in the wheelbarrow. And that can be really complicated. That work was the most challenging and difficult work I've ever had done in my entire career. But also, when you feel like you've gotten it right, it's very, very satisfying and fulfilling. And I can't think of a better way to cap off a long career as a litigator than being able to approach it from that end.

Mark Henriques

Obviously, we're getting more women in judicial offices, but you are all at the very cutting edge of that in terms of being there. Was it different, in some ways, being one of only a few women? Were you treated differently? Were there different experiences? I'm interested in sharing any of those maybe more unique challenges that you may have encountered.

Judge Linda McGee

You know, I think we've always been very proud of the fact that the trial court numbers, at least in district court, were growing quickly. And the numbers for the appellate courts grew relatively quickly. After about the mid-90s our numbers started increasing. The one place that we have difficulty with, though, is the Superior Court bench. And a lot of that is based on the fact that they tend to travel quite a bit. And many, many times women are not perhaps at a time in their life that they feel comfortable being able to be away from home on an extended basis, perhaps. And so we've always had difficulty being able to encourage women to do that. I think in large cities, that's not quite true. They're able to be in their area on a more regular basis. But in the eastern and western parts of the state it is just difficult to get women who are in a time in their life that they felt they could be on the bench. In terms of different treatment, I can remember getting more different treatment, probably, in the trial courts than I ever got at the court of appeals, because in the trial courts sometimes it was perhaps the first time they'd seen a woman in their courtroom. And they just sort of made some assumptions—many people, you know, tend to assume certain

things, and they would sort of assume you're either a secretary or you were coming with someone else in the firm, or you were someone from the clerk's office. That took a while, but I suspect maybe all three of us probably got to know the people in the courthouse who really make a difference and that's those in the Clerk's Office, the Register of Deeds Office, and, quite frankly, the judges. And I expect we all had positive treatment from those people. And we understood that they could make or break our success and our trial work, at least. So you get to know those people. I did not have negative responses, fortunately. At the Court of Appeals I was the only woman there at the time, but there had been other women before. And I think it was a matter of people just seeing that you were doing the work—that you were there, that you were paying attention, that you were involved, that you were interested, that you were willing to volunteer for things and be involved. So I don't know that I had experiences that would have been any different from the men that were there.

Justice Robin Hudson

And interestingly, North Carolina historically has sort of an interesting place in the whole picture, which is that when I started practicing law in the 70s, the chief justice in the state Supreme Court was Susie Sharpe, who was the first woman chief justice of the Supreme Court in the country. And Naomi Morris was the chief judge on the court of appeals. So we had women leading both of the appellate courts that long ago. And, although interestingly, neither of them was particularly supportive of us. The steering committee that formed the Association of Women Attorneys in 1977-78—it was actually founded in 78—and we approached various people in the bar leadership for assistance in that endeavor, particularly Chief Justice Sharpe was not particularly supportive, shall we say?

Mark Henriques

Why? I'm curious why, why not?

Justice Robin Hudson

I think her attitude was that she hadn't needed it and so we didn't either.

Judge Linda McGee

She thought, I made it, and everybody

else can make their own life.

Justice Robin Hudson

Although a lot of people don't have the advantages that she did of practicing under the wing of her father, and, you know, having him bring her along that way. But, I think that, at the time, when they were doing that work in the late 70s, there were a number of women practicing law—the numbers were increasing pretty rapidly. But wherever we were—if you were in a legal aid office, or a law firm, or a DA's office or something, you were probably the only woman, or one of only one or two. And so we thought there was a need for a networking opportunity for the women practicing law to be able to get together and share stories and be supportive. And I think it's turned out to be a wonderful organization that does exactly that. It's a very different feel from the other voluntary bar organizations.

Judge Lillian Jordan

I was going to say, there is a connection. We were all on the Board of Directors of the Association of Women Attorneys, and they were both still on the board when I was president. So we have that connection. But, how you were treated, going back to the most outstanding thing that happened, we were in superior court answering calendar one day. I was there and one of my college law school classmates was practicing there, and she stood up to answer the calendar. And the superior court judge said, "Young lady, I do not allow secretaries to answer the calendar in my courtroom." I'll tell you who got so upset about it, it was the male lawyers, they were so upset. Anyway, I won't say anything about the judge.

But that was the most obvious thing, I guess, I ever saw where there was some type of prejudice against women, and that was early on, probably in 1980 or '81. ■

To listen to the rest of this two-part interview, visit the State Bar's SoundCloud page at bit.ly/StateBarBarTalk.

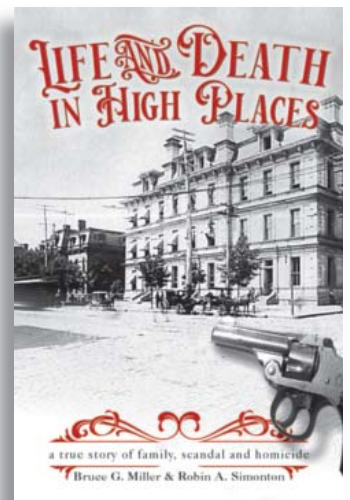
Mark Henriques is a partner with Womble Bond Dickinson, where he has practiced for almost 30 years. He chairs the firm's Editorial Board, and is the host of the firm's podcast, the In-house Roundhouse. Mark handles complex commercial and construction litigation, with a focus on class actions. He served on the State Bar Council for nine years.

Life and Death in High Places

A True Story of Family, Scandal, and Homicide

A BOOK BY BRUCE G. MILLER AND ROBIN A. SIMONTON

The following article contains excerpts from a new book, *Life and Death in High Places*. This segment recounts but one of a series of courtroom hearings resulting from the very public shooting of John Ludlow Skinner by prominent attorney Ernest Haywood in 1903. Charged with first degree murder, Haywood was defended by ten attorneys—some renowned in North Carolina to this day—over a period of eight months, three of them spent in jail until his legal team found a way to free him, described here.



Haywood's eventual trial of several weeks resulted in a verdict as controversial now as it was then. The book provides sketches of the highly-placed families involved, discussion of each of the hearings, the backstory to the shooting, and its consequences.

Death: Ernest Haywood & Ludlow Skinner

At 4:20 pm on Saturday, February 21, 1903, Ernest Haywood shot Ludlow Skinner, leaving him dead or dying across the trolley tracks in front of the US Post Office on Fayetteville Street...As Ludlow Skinner was being taken from the street, Chief Deputy Sheriff Charles Separk, just emerged from the courthouse, saw the flash of the sec-

ond shot and approached Ernest Haywood....

Justitia: Ernest Haywood

The prompt apprehension of Ernest Haywood by Deputy Charles Separk on the afternoon of February 21, 1903, the subsequent charge of murder, and Haywood's imprisonment in the county jail—a process that would continue far into that same evening—were the first steps of a lengthy legal sequence initiated by the events of that day. Many steps of the process would play out in the Wake County courthouse just yards from the site of the alleged crime. Over the main entrance of the courthouse was a large statue of "Justitia," the Roman goddess

who gives us our term for a proper reckoning. She, a brilliant white contrasting with the vivid red building, stood there with her scales in 1903 high above the bustle in Raleigh's streets. Whether she made herself known to those inside the building will be for you, dear reader, to decide...¹

Justitia II: Herndon & Simms

The [earlier] courtroom victory in which Haywood's legal team had won a continuance presented a double-edged sword: Yes, it gave them more time to prepare a case with many moving parts; on the other hand, given a new trial date in July, it condemned their client to additional time in prison, with those extra weeks to be served during the heat of a

Carolina summer. The old Wake County jail, in fact, had been dubbed “the sweat box” in 1883, and though rebuilt, the “new” jail, with iron- and steel-reinforced cells, could hardly be seen as an improvement.² But how to have their client freed before a jury’s verdict of innocent, if there were to be one? Traditionally, under North Carolina law, an individual indicted for a capital crime—i.e., one that might result in the death penalty—was not eligible for bail, under the presumption that “all that a man hath will he give in exchange for his life.” However, two men would provide the defense a way out.

Over a decade before, in October of 1890, a prominent Durham, North Carolina, veterinarian named William Rhodes Herndon had been indicted for the murder of “Sis” Meacham, a “fallen woman” described in the Durham *Globe* as “one of those who creep in the shadows to hide their shame.” Herndon was alleged to have “demanded that she gratify his lust” and, when she refused, “threw her across a trunk and pounded her and beat her until she died.” Indicted for murder by a grand jury, Herndon went into hiding, but within days was captured and sent to jail in Durham.³ Accused of a capital offense and therefore not “bailable,” Herndon applied for a writ of *habeas corpus*, requiring the state justify his imprisonment. His case made it to the North Carolina Supreme Court, with a finding that, on close reexamination, “there was no probable cause for murder,” that “it was a case of manslaughter” and therefore bailable, and in November 1890, Herndon was freed on a \$1,000 bond.⁴ At his later trial in January 1891, with the state offering “no proof that [Herndon] had used such violence” and evidence that Meacham had died of “natural causes” (i.e., from liquor consumption), the judge ordered a verdict of “not guilty.”⁵ Herndon died in 1911 of “apoplexy” (a stroke); his obituary described the deceased as “one of the best known citizens of the city,” a man with “scores of friends”⁶—clearly someone far removed from the shadows surrounding the likes of “Sis” Meacham.

In a legal sense, *State vs. Herndon* was both a subversion of the grand jury and a potential precedent, and no troupe of attorneys as skilled and experienced as the ten defending Ernest Haywood would allow such an opening to go unexploited. It was one of their own, a young lawyer named

Robert Nirwana Simms, who had unwittingly provided a key to unlock Ernest Haywood’s cell door. On the day of the shooting, Simms was on his way to the Raleigh Post Office to mail a letter when he stopped for a chat with Willis Briggs, a member of the respected hardware store family. As they talked outside the main entrance to the post office, Simms noticed two men just feet away near the south entry. “[T]he man on the outside,” he reported, later identified as Ludlow Skinner, struck the other man on the side of the head, knocking him down. “The fallen man, who...he recognized as Mr. Haywood, almost instantly recovered himself and, as he did so, fired.” Skinner hesitated at the curb, briefly facing Mr. Haywood, then started into the street, where he was felled by a second shot.⁷

For Thomas Argo and his fellow defense lawyers, Simms—with his claim that Haywood had been assaulted—must have seemed the perfect witness. A fellow attorney who had graduated from Wake Forest, Simms had served in the North Carolina House in 1901; he was an active member of First Baptist Church, where he had recently organized a Baraca chapter (male Bible class); in April 1903 he had been elected president of the State Sunday School Association; he was a new trustee of Meredith College; and around this time became a Mason.⁸ He had been in an ideal position on the sidewalk that day to observe the shooting incident and in an ideal social and professional position to ensure credibility. Moreover, with a Baptist pastor’s son the victim, the allegations he made regarding Ludlow Skinner’s rough behavior at the steps of the post office were more likely to be seen as unbiased by the public and any jury.

It was surely with such allegations in mind that, on May 12, 1903, Thomas Argo presented a petition to Robert M. Douglas, an associate justice of the North Carolina Supreme Court, claiming that the prisoner, Ernest Haywood, was being held illegally as “he is not guilty of any offense known to the laws of this state and country, nor of any act punishable by the law....” The petition requested a writ of *habeas corpus*, requiring yet another hearing when the keeper of the prisoner (the sheriff) would bring the petitioner physically before a judge. The intended outcome of such a hearing for the defense, of course, would be a favorable judgement by the court (in this case, two justices—Douglas

joined by a fellow jurist) finding Ernest Haywood bailable⁹—exactly what had occurred over a decade earlier in *State v. Herndon*. The petition for a hearing was granted on May 12th (a day, by the way, when not one of the prosecuting team was in Raleigh), and a hearing date set for May 21st.

With most of the prosecutors living in small towns outside the capital, it was not until May 14th that they met in Raleigh and announced that they would put up a “vigorous fight...against the granting of any bail to Mr. Ernest Haywood,” urging that he continue to be held in the Wake County jail on the grand jury charge of first-degree murder.¹⁰ That fight would be delayed a week, and by the time it began, this “bail hearing” would become, in effect, a full trial, a repeat of the previous arraignment/continuance hearing, and a precursor of any formal murder trial yet to come.¹¹ Indeed, the public seemed to sense that this was to be more than a simple question of bail: Observe the crowd at the courthouse on May 28th, as reported in Raleigh’s *Morning Post*:¹²

...[H]alf an hour before the door was opened the steps and halls of the building were packed....When finally the [courtroom] door was opened there was a rush that resembled a spirited football game, and one man is reported to have sustained a very painful injury to his arm. The spectators soon filled every seat, crowded every aisle and every window...and inside the bar so that it was with difficulty that lawyers, stenographers, and newspaper men could attend to the duties which called them there....

Ernest Haywood himself sat in front, surrounded by his brothers; he was said to “show the effects of solitary confinement,” but did not appear nervous. John H. Winder, Ludlow’s brother-in-law then living in Ohio, was also present with the prosecution.

The crowd may have been disappointed on this first day, for only two witnesses were called, both there serving the same purpose. The first, a Bernard Schmitz of Baltimore, was unknown to most of the crowd, but the second—the “star witness”—was the well-known Robert N. Simms. Both men had character witnesses speak for them; for Simms that included US Senator Furnifold Simmons, local publisher and Baptist stalwart Needham Broughton, businessman Thomas Briggs, and banker John Pullen,

who would have a Baptist church in downtown Raleigh named for him. Governor Charles B. Aycock himself would attest to Simms' good character the next day.

Under attorney Pou's questioning, Simms repeated what he had witnessed in front of the post office, noting the "struggle" between Haywood and Skinner, the latter striking the other man; Schmitz told a similar story. The cross examination by the prosecution was less concerned with the alleged struggle, more with Simms' memory and potential conflicts of interest; Ludlow's father, the Reverend Skinner himself, was put on the stand regarding a conversation with Simms. Others would testify in support of Simms' testimony.

Over the next several days the prosecutors, unable to show the slap did not occur, moved "into the street," so to speak, offering testimony on the shooting itself, the objective to suggest a cold-blooded killing even had there been an altercation. Both sides, we must assume, were now using what was essentially a bail hearing to test strategies to be used in a trial that was sure to come, regardless of whether Haywood was released on bail or not.¹³

...And released he was. The verdict of the two judges hearing the case came down at midday on June 3rd. "[W]e are of the opinion," wrote Justice Douglas, "that..., under the rule laid down in *State vs. Herndon*, 107 NC 934, the petitioner is entitled to bail." Bond was set at \$10,000 (the equivalent of \$312,000 in 2022), "with good and sufficient sureties," i.e., guarantees of bond coverage, which came from nine individuals immediately offering to support Ernest Haywood with a total of \$70,000.¹⁴ It should be noted, however, that while now "bailable," Haywood still faced the original murder charge and was required to appear at the next term of superior court (in July) "to answer the indictment now pending against him."

While not fully undermining the grand jury, the unspoken suggestion from this ruling was surely that the state's case might have some fragility to it. From today's perspective, one wonders why the defense did not seek such a *habeas corpus* hearing sooner. Surely these high-powered attorneys were familiar with the *Herndon* case, and Simms' allegations had been known soon after the shooting. Had Robert Simms, a reluctant witness, been more forthcoming about testifying, perhaps Haywood's lawyers would have pur-

sued bail earlier and saved Ernest Haywood 102 days in the lock-up.¹⁵ ■

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Robin Simonton, a graduate of the University of Hawai'i with an MA in historical administration from Eastern Illinois University, has been the executive director of Historic Oakwood Cemetery since 2011. She and Miller have studied and spoken on this case for many years.

Life and Death in High Places can be purchased in person at the Oakwood Cemetery office, at historicoakwoodcemetery.org/shop, and in store and online from Quail Ridge Books in Raleigh.

Endnotes

1. *Ludlow Skinner Killed by Ernest Haywood*, (Raleigh) *Farmer and Mechanic* (February 24, 1903), p. 5, one of many accounts in local newspapers of the shooting and apprehension of the shooter. For broad coverage, see also *Statement by Counsel for Ernest Haywood*, (Raleigh) *Morning Post* (February 24, 1903), p. 3; *Skinner Struck Him...* (Raleigh) *News and Observer* (February 24, 1903), p. 1.
2. *Observations*, N&O (July 11, 1883), p. 4.
3. *Rhodes Herndon Indicted for Murder*, Oxford, NC Public Ledger (October 21, 1890), p. 41; Durham Globe reprint in *Wilmington Morning Star* (October 25, 1890), p. 3; *Winston-Salem Progressive Farmer* (October 28, 1890), p. 3.
4. *State v. Herndon*, 107 (N.C. 1890) 12 S.E. 268 (Decided Sep 1, 1890); see opinion by Clark, J.
5. *Notes About Town*, N&O (November 22, 1890), p. 4. *Herndon Is Free*, Concord, NC Standard (November 27, 1890), p. 4.
6. *W.R. Herndon Dies Suddenly*, Durham Recorder (February 10, 1911), p. 5; death certificate.
7. *Statement by Counsel for Ernest Haywood*, *Morning Post* (February 24, 1903), p. 3.
8. *Robert Simms Dies on Sunday*, N&O (October 7, 1963), p. 1.
9. A good summary of the process in general and its application in this case is *Ernest Haywood Invokes Writ of Habeas Corpus*, N&O (May 13, 1903), p. 1. The long version of the case for Ernest Haywood is *Evidence and Law Discussed by Counsel*, *Morning Post* (June 7, 1903), pp. 10-11.
10. *It Will Be Resisted*, N&O (May 15, 1903), p. 5.
11. *The Haywood Habeas Corpus Hearing*, *Morning Post* (May 17, 1903), p. 5; *Verbatim Reports*, N&O (May 26, 1903), p. 4.
12. *Intense Interest in the Haywood Trial*, *Morning Post*

(May 29, 1903), p. 1.

13. *The Decision at Noon Today*, N&O (June 3, 1903), p. 1 (closing arguments).
14. *Ernest Haywood Is Out of Jail*, N&O (June 4, 1903), p. 1.
15. *Ablest Counsel to Prosecute*, N&O (February 25, 1903), p. 1. This piece notes early self-defense prospect, but also the need for corroboration of Simms' statement and the problem of conflicting witnesses; this, along with Simms reluctance to come forward, may explain the delay in using the *Herndon* case.

President's Message (cont.)

this important privilege and role in society. If we don't, we risk losing the ability to self-regulate, which could have a ripple effect far beyond the members of our profession.

There are various ways to get involved beyond being a councilor, which is certainly a vital role. For example, every quarter the State Bar publishes for comment proposed ethics opinions and rule amendments. The purpose is to get input from the Bar to ensure that the proposed opinions make sense and correctly address the situation. Please review and comment on the proposed opinions, whether you agree or disagree with the opinion. If you disagree, the Ethics Committee wants your opinion on how to make it better. These opinions and rule amendments help shape the future of our profession in the public interest, and your input will only improve the end product. There are also numerous committees, boards, and commissions tasked with regulating and improving the legal profession. Please consider joining the effort.

Practicing law is hard, demanding, and stressful at times, but this honorable profession gives all of us the opportunity to speak for those who would otherwise not be heard and to positively impact our communities. Let's rise to the occasion and get involved in elevating our profession and protecting the citizens of our great state that we serve. Self-regulation is a privilege we must preserve for the greater good of society. ■

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Endnote

1. Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War*, Harper & Brothers, 1948, pages xxi-xxii.

Nearing the Finish Line: Final Proposed Changes to CLE Rules

BY PETER BOLAC

Executive Summary

At its January 2023 meeting, the State Bar Council voted to republish the CLE Board's proposed changes to its rules for what is hoped to be the final time before the rules are considered for approval at the council's April meeting. The proposed rules were published multiple times throughout 2022, with each publication resulting in various revisions and adjustments to the final product. Following this article is the full set of proposed changes to the CLE rules which, if adopted by the council and approved by the Supreme Court, would become effective beginning March 1, 2024. Also included is a reference guide to the changes for each rule. Here is an executive summary of the most significant changes:

Significant Changes

Two-year Reporting Period – The CLE Board proposes a two-year reporting period beginning March 1 in which lawyers must complete 24 hours of CLE (including 4 ethics, 1 technology training, and 1 professional well-being [formerly mental health/substance abuse]). While the original proposal was for a three-year reporting period, this change was made in response to comments and concerns from lawyers, sponsors, and stakeholders. The CLE Board believes that a two-year reporting period provides lawyers with the benefits of additional flexibility while also preventing the potentially long period of inactivity that goes against the purpose of mandatory CLE: maintaining continued competency.

12 hours of Carry-over – The CLE Board initially proposed eliminating carry-over credit. This proposal, understandably,

garnered the most negative response from lawyers. As such, this change evolved over the past year and is now back to 12 hours. Under the final proposal, lawyers will be able to carry over up to 12 hours from one reporting period to the next. However, the hours will only carry over as total hours regardless of their type, as the CLE Board believes it's important for lawyers to complete ethics, technology, and professional well-being hours each reporting period.

Elimination of Annual Report Requirement – The requirement to file an annual report would be eliminated. Lawyers will be able to track and adjust their hours in the online portal, and the CLE Department will send out periodic email reminders to lawyers about deadlines, but the board believes that there is no longer a need for lawyers to submit a form that simply confirms the information that we already have. If a lawyer is compliant with the requirements, that's sufficient. This efficiency prevents otherwise compliant lawyers from getting charged a late fee just because they failed to click a few buttons. In exchange for the elimination of the annual report requirement, the proposed rules increase the fees for failing to timely complete hours and speeds up the enforcement timeline for potential administrative suspensions for non-compliance.

Changing the Fee Structure – The proposed rules change the fee structure of the CLE program from credit-hour attendance fees (currently \$3.50 per hour) that are paid by lawyers or sponsors after a course is reported, to a combination of course application fees paid by sponsors and an annual CLE attendance fee paid by lawyers. Lawyers will pay the annual attendance fee, and claim



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any exemption for which the lawyer is eligible, during the membership dues renewal process. Course application fees will be paid up front by program sponsors based on a fee schedule that will be adopted by the council (and reviewed annually). Free programs will likely not be charged an application fee.

Staggered Start – If the rules are effective March 1, 2024, lawyers will be divided into reporting periods based on year of admittance to the bar (even/odd). One group will have a one-time, one-year (12 hour) reporting period for 2024, while the other group will go right to a two-year reporting period. This will create staggered reporting periods in which roughly half of the membership comes due each year.

The CLE Board believes these changes advance the following goals which it established at the beginning of the rules review process: 1) increasing flexibility and eliminating unnecessary burdens for lawyers, 2) increasing the administrative efficiency of the CLE program, and 3) maintaining high levels of competency in the legal profession.

We appreciate your attention, participation, and patience throughout this process and hope you will support the final proposal.

Contact Us

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. Comments may also be sent to ethicscomments@ncbar.gov, or to your local State Bar Councilor.

Proposed Amendments to the Rules Governing the Administration of the Continuing Legal Education Program

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

Rule .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 ~~b~~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 situations, role playing, mock trials, round-table discussions, or debates.~~

(14) “Professional responsibility” shall

Proposed Amendments to the Rules Governing the CLE Program (Quick Reference Guide)

*Note: rules marked with an * denote major substantive changes*

Rule .1501 Scope, Purpose, and Definitions*

- Replaced the word “attorneys” with the word “lawyers” (done throughout the rules)
- Removed the word “Revised” from “Rules of Professional Conduct” (throughout)
- Deleted language regarding law practice assistance program (the program no longer exists)
 - Defined “Ethics” programs (.1501(c)(8))
 - Deleted exceptions from definition of “In-house continuing legal education” (moved to .1523(d))
 - Deleted language in definition of “newly admitted active member” (.1501(c)(11))
 - Deleted definition of “Participatory CLE”
 - Deleted mental health/substance abuse language from definition of “Professional Responsibility” programs
 - New definition of Professional Well-being program (.1501(c)(18))
 - Deleted definition of “Registered Sponsor” (new definition and rule regarding registered sponsors to be proposed in 2023)
 - Added language to Technology Training definition (.1501(c)(19))
 - Deleted the definition of “Year”
 - Added new “Social Responsibility” program (.1501(c)(20))

Rules .1502 - .1511

- Non-substantive stylistic changes
- Removed language pertaining to creation of the CLE Board
- Deleted language relating to law practice assistance program

Rule .1512 Source of Funds*

- Revised the rule to add the Annual

CLE Attendance Fee, program application fees, and fee review

- Deleted attendance fee language and record adjustment language

Rules .1513 - .1516

- Conforming stylistic changes
- Deleted language relating to law practice assistance program
- Conform annual meeting and quorum requirements to current practice

Rule .1517 Exemptions

- Exemptions to be claimed during the annual membership renewal process, and are valid for one year
- Clarified non-resident exemption
- Deleted permanent disability exemption
- Added exemption language for New Admittee Program (moved from a different rule)

Rule .1518 CLE Requirements*

- Reporting period is two years, beginning on March 1st and ending at the end of February
- Reporting period for new admittees begins on March 1st of the year of admission
- Language regarding reporting period for reinstated lawyers

Hours Requirement

- 24 hours over two years:
 - 4 ethics
 - 1 technology training
 - 1 professional well-being (formerly mental health/substance abuse)

Carry-over credit

- Up to 12 hours per reporting period
- Carried over as total hours (does not satisfy ethics, technology, or PWB requirements)

- Deleted PNA language (moved to stand-alone rule)

Rule .1519 Accreditation Standards

- Deleted requirements for printed materials
- Conforming changes
- Stylistic changes

Rule .1520 Requirements for Program

Approval*

- New process for program approval (incorporates existing rule)
- Added program application fees and deadlines language
- Fee schedule to be adopted by the board and approved by the council
- On-demand programs valid for three years
- Free programs pay a reduced application fee (likely to be free)
- Online and on-demand programs must have approved monitoring/verification process
- Failure to timely report attendance results in late fee and suspension of approval of new programs

.1521 Noncompliance*

- No grace period
- Late compliance fee for failure to complete hours by end of reporting period
- Suspension for failure to comply
- Non-compliance fee
- Process for handling non-compliant lawyers, including suspension and appeals process

.1522 Reinstatement

- Deleted section

Rules .1523 - .1524

- Re-organized, no substantive changes

Rule .1525 PNA Program

- Language added from other rules, no substantive changes

.1526 Procedures to Effectuate Rule Changes

- Gives the board flexibility to
 - Create staggered reporting periods
 - Provide for a smooth transition to new rules
 - Maintain historically consistent funding to EAJC and CJCP
- Confirms that carry-over credit earned under existing rules will carry over as total hours

**All other rules and regulations have been deleted, including the Annual Report Requirement.*

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(e)(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.

(17) “Rules” shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina. (Section .1500 of this subchapter).

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

(19) “Professional well-being” (PWB) is a program focused on the relationship between stressors inherent in the profession, competence, 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.

(20) “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.

(21) “Year” shall mean calendar year.

(22) “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.

Rule .1502, Jurisdiction: Authority

The Council of the North Carolina State Bar hereby establishes the Board of Continuing Legal Education (bBoard) as a standing committee of the eCouncil, which bBoard 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.

Rule .1503, Operational Responsibility

The responsibility for operating the continuing legal education program and the law practice assistance program shall rest with the bBoard, subject to the statutes governing the practice of law, the authority of the eCouncil, and the rules of governance of the bBoard.

Rule .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.

Rule .1505, Lay Participation

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

Rule .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.

Rule .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.

Rule .1508, Staggered Terms

It is intended that mMembers 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.

Rule .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.

Rule .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.

Rule .1511, Appointment of Vice-Chairperson

The vice-chairperson of the bBoard shall

be appointed from time to time as necessary by the ~~e~~Council. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the ~~b~~Board. The vice-chairperson shall preside at and represent the ~~b~~Board 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 ~~b~~Board.

Rule .1512, Source of Funds

(a) Funding for the program carried out by the ~~b~~Board 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 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.~~

Rule .1513, Fiscal Responsibility

All funds of the ~~b~~Board 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 ~~b~~Board such that such funds and expenditures therefrom can be readily identified. The accounts of the ~~b~~Board 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 ~~b~~Board shall be handled, invested, and reinvested in accordance with investment policies adopted by the ~~e~~Council 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 ~~b~~Board shall be made by or under the direction of the ~~s~~Secretary-treasurer of the North Carolina State Bar pursuant to authority of the ~~e~~Council. The members of the ~~b~~Board shall serve on a voluntary basis without compensation, but may be reimbursed for the reasonable expenses incurred in attending meetings of the ~~b~~Board 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 ~~e~~Council, 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 ~~e~~Council on lawyer competency programs approved by the ~~e~~Council.

Rule .1514, Meetings

The Board shall meet at least annually. ~~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 ~~b~~Board by resolution may set regular meeting dates and places. Special meetings of the ~~b~~Board may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the ~~b~~Board. 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 ~~b~~Board for conducting its official business shall be a majority of the members serving at a particular time.

Rule .1515, Annual Report

The ~~b~~Board shall prepare at least annually a report of its activities and shall present the same to the ~~e~~Council ~~one month~~ prior to its annual meeting.

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

(a) The ~~b~~Board 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 ~~e~~Council;
- (3) to establish an office or offices and to employ such persons as the ~~b~~Board deems necessary for the proper administration of these rules, and to delegate to them appropriate authority, subject to the review of the ~~e~~Council;
- (4) to report annually on the activities and operations of the ~~b~~Board to the ~~e~~Council 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 ~~e~~Council for approval and to ensure that expenses of the ~~b~~Board do not exceed the annual budget approved by the ~~e~~Council;
- ~~(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 ~~b~~Board shall be organized as follows:

- (1) Quorum. ~~Five members~~ A majority of members serving shall constitute a quorum of the ~~b~~Board.
- (2) ~~The Executive Committee.~~ The Board may establish an executive committee. The executive committee of the ~~b~~Board shall be comprised of the chairperson, ~~a 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 ~~b~~Board that may arise between meetings of the full ~~b~~Board. In such matters it shall have complete authority to act for the ~~b~~Board.
- (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.~~

Rule .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 in during 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~~ 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. The board may exempt an active member from the continuing legal education requirements if, for at least six consecutive months immediately prior to requesting an exemption, (i) the member resides outside of North Carolina, (ii) the member does not practice in North Carolina, and (iii) the member does not represent North Carolina clients on matters governed by North Carolina law.

(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 professional accrediting agency.

(f) Special Circumstances Exemptions. The ~~b~~Board 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 ~~b~~Board 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 ~~b~~Board 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. Members of the North Carolina Board of Law Examiners 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.~~

(k) 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 ~~b~~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.

Rule .1518, Continuing Legal Education Requirements

(a) Reporting period. Except as provided in Paragraphs (1) and (2) below, the reporting period for the continuing legal education requirements shall be two 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.

(~~a~~) ~~Annual Hours Requirement.~~ Each active member subject to these rules shall complete ~~12~~ 24 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 ~~12~~ 24 hours:

(1) at least ~~2~~ 4 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)(17) 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 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.~~

(b) Carryover Credit. Members may carry over up to 12 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.

(e) 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 education requirements set forth in pParagraph

(a) 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 Pre-recorded 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 pre-recorded 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.

Rule .1519, Accreditation Standards

The bBoard 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 program 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 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 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.

Rule .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 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 an approved method for reliably and actively verifying attendance and reporting the number of credit hours earned by each participant. Applications for any online or on-demand program must include a description of the sponsor's attendance verification procedure.

(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 provide 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 submitting 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.~~

Rule .15213, 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. Sixty 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 within 45-days after service of the order 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, or (ii) the member shows in writing that he or she has complied with meets the requirements within the 30 days 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.

(ee) 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 45-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.~~

(def) 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 bBoard shall consider the matter at its next regularly scheduled meeting. 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 calendar days of the date of the letter notifying the~~

~~member of the decision of the committee.~~ The ~~bBoard~~ 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 ~~bBoard~~ shall determine whether the member has shown good cause as to why the member should not be suspended. ~~If the bBoard 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.

(g) Reinstatement. Suspended members must petition for reinstatement to active status pursuant to Rule .0904(b)-(h) of this subchapter.

Rule .15242, Reinstatement Reserved

(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 ~~sSecretary 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 sSecretary 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 (e) below. Such member shall not be required to file a formal reinstatement petition, or pay a \$250 reinstatement fee.~~

(ab) Procedure for Reinstatement that 30 Days After Service of the Order of Suspension;

The procedure for reinstatement after service of the order of suspension shall be as set forth in Rule .0904(c) and (b) (h) 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.

(de) Reinstatement Fee;

In lieu of the \$125.00 reinstatement fee required by Rule .0904(c)(4)(A), the petition Reinstatements petitions pursuant to Paragraphs (a) and (b) above shall be accompanied by a reinstatement fee payable to the bBoard, 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, Tthe 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 provided in Section .1000 of this subchapter.

Rule .1602 1523, Course 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 substan-

tive 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(e)(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
- (23) 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.

Rule .1605 1524 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 per 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.

Rule .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.

Rule .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.

(b) 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. ■

“Mister Jimmy” and Kids Making It: The Good that One Lawyer Has Done

BY AULEY (LEE) M. CROUCH III

It was in 1989 on a trip with his wife and infant son from Louisiana to North Carolina to visit his parents that James W. Pierce Jr. (Jimmy) had an epiphany.

In his words, the birth of their son had “rocked my world.” Deep in the wee hours of the night, somewhere in Georgia as Phyllis and Ben slept, he kept

himself awake by asking, “What could I do in life if I could do anything?”

Jimmy had a successful law practice in Baton Rouge. Although woodworking was a hobby and his passion, he knew he couldn’t make a living doing that. But what if he could somehow, some way, teach woodworking to kids so that they too could learn the joy and pride that comes from making things with wood, much as he had? Over the next five years, in the quiet moments, that thought kept returning to him.

Jimmy is a native of North Carolina. He

graduated from Swansboro High School in 1971, where he was president of the Student Body. At UNC-Chapel Hill he majored in English and worked for a short time as a researcher at North Carolina State University. He initially considered becoming a paralegal, but couldn’t afford the \$1,000 to register, so he decided to apply to law school instead. When his girlfriend decided to pursue her doctorate in Louisiana, Jimmy applied to law school at LSU and was

accepted. Upon graduating from law school, he initially worked as a staff lawyer for the Sea Grant Program at LSU, and then taught classes at the law school before opening his law practice with a focus on personal injury cases.

Jimmy’s law practice grew, and he enjoyed the practice and the relationships he built with his clients and his colleagues. But the question he had asked himself on the trip to North Carolina in 1989 still had to



Kids Making It's Founder, Jimmy Pierce, instructing students in their after-school program.

be answered.

In 1994, a request from a friend turned his thoughts into action. The friend in Baton Rouge was a member of the Casey Family Foundation, an organization devoted to helping foster children. He asked Jimmy whether he would teach a 16-year-old foster child to build wood duck boxes. Jimmy's friend had a hunting camp, and he agreed to buy all the boxes that the teen built. Jimmy had a basic woodworking shop in a building in his backyard. He agreed to work with the teen every Friday afternoon. Over time the young man built a variety of items in addition to the wood duck boxes. Jimmy derived a great deal of satisfaction from teaching and working with the young man, and from this relationship the idea of what was to become Kids Making It was born.

In 1995 Jimmy was encouraged to hold a one-week woodworking summer camp for five to six inner city kids in Baton Rouge. His shop was located in an old gas station. He provided the tools and wood for their projects. It was during the summer camp that the kids began calling him "Mister Jimmy," a name that has stuck with him in all of his work with kids. When the summer camp projects included building soap box derby cars, the kids wanted to test them on hills in Baton Rouge. This activity generated TV and newspaper coverage. The success of the summer camp prompted his legal assistant to suggest that a certificate be designed and presented to each kid who completed summer camp. The program needed a name for the certificates, and Jimmy's legal assistant suggested "Kids Making It."

Even though Jimmy continued to enjoy his growing law practice, the rewards of working with kids and a desire to return to North Carolina were greater. He and his wife decided that Wilmington was where they would make their home. Jimmy sold his interest in the firm to his partner and moved his wife and young son to Wilmington in August 1996.

"Mister Jimmy" began his first woodworking project with kids in Wilmington in conjunction with the Wilmington Housing Authority (WHA). WHA provided him a small building in Jervay public housing where he started a summer camp. The camp was limited by the number of kids that could be served, but the excitement in the community quickly spread. On more than one occasion a kid would jump up, grab the

grid covering the opened window, and plead with Jimmy to let him come in and build something. Almost all of this initial work with kids was funded by Jimmy.

Knowing that he couldn't expand his efforts without external funding, Jimmy read about the Governor's Crime Commission and its grants for community-based programs to combat juvenile delinquency. He prepared a proposal in cooperation with the WHA to work with kids in public housing. His proposal was accepted in 2000 and an initial two-year grant of \$35,000 per year was awarded. Approximately 100 kids were served that first year. Constructing "go karts" was the most popular woodworking project. The program operated three days a week, and a new class of kids started every six weeks. That initial "Kids Making It" (KMI) program in Wilmington was conducted at all the public housing sites including Creekwood, one of Wilmington's toughest neighborhoods.

As the program grew, Jimmy knew he would need help, so he hired a teen who had participated in the program the year before, Tyrell "Pop" Brockington. Pop was Jimmy's right-hand man, helping the kids learn woodworking and how to build their projects. On average, a class of eight kids from public housing worked with hand tools and cordless drills for six weeks.

As the number of kids grew, so did Kids Making It, evolving into an entrepreneurial woodworking program for teens, where they could sell their products in the KMI gift shop, earning 100% of the profits from the sales. Having graduated from hand saws to power tools, teens learned to make elegant wood ballpoint pens and other products such as cutting boards, boxes, bird feeders, and Christmas ornaments.

Brockington set an example for participants in the program by staying in school and graduating from Hoggard High School. He worked with KMI until 2014 when he went to work for a custom cabinet company. Pop continued to work with custom cabinet companies for seven years and is now employed by a company located in Pender County that specializes in "scenic carpentry," including such items as desks for television sports broadcasters.

From his work at KMI, Brockington says he "learned patience in working with kids," and from adults he "learned how to deal

with conflicts between people." During his time with Mister Jimmy, Pop says he also learned various skills needed in the business world, "such as being reliable."

In 2017 the popular PBS show *This Old House* introduced a summer apprenticeship program called Generation Next. The purpose of the apprenticeship program, according to Kevin O'Connor, host of the show, was to attract young people to the employment opportunities in the construction trades. Only three apprenticeships were offered in a national competition. Austin Wilson, a participant in KMI's after school program and student at New Hanover High School, applied. He included a short video about himself and his interest in construction that he developed as a participant in KMI. With Jimmy's guidance in preparing Austin's application, he was accepted as a Generation Next apprentice. Austin had never flown, nor had he lived away from home. But the day after Austin graduated from New Hanover High School, he flew to Boston accompanied by Jimmy and KMI Program Director Andy Crowther to meet O'Conner and other members of the *This Old House* crew. O'Conner describes Austin's participation in the program as "outstanding and transformational. The crew fell in love with Austin. He was exceptional."

The bonds between Austin and the crew of the show "were unbreakable," according to O'Conner. (See, tribute to Austin Wilson at thisoldhouse.com/more/austin.) Austin's success also created a lasting relationship among Jimmy, Kids Making It, and the crew of *This Old House*. "The relationship forged between KMI and the *This Old House* crew was so strong that Kevin O'Connor agreed to be the keynote speaker at the 2018 KMI fundraising luncheon, and Norm Abram, the master carpenter of the show, was the luncheon speaker in 2019.

As KMI grew, so did its need for space to work as well as a storefront to display and sell its products. Even though the country was coming out of the worst recession since the Depression, KMI located a building on Castle Street that had been through a foreclosure. With the substantial help of First Bank as a lender and supporter, and support from two local foundations, KMI was able to purchase the building and adjoining property. With the work of staff and volunteers, the building was remodeled and

upgraded for workshop and office space and an area for a retail/gift shop where products made by the kids could be sold.

The move of KMI's facilities to its current location on Castle Street in Wilmington allowed Jimmy and the staff to further develop the apprenticeship program for kids who have graduated from the after-school program, but have been unable to find employment. The apprenticeship program has allowed KMI to increase the number of kids it can serve. Apprentices in the program are trained to use the CNC router and the laser engraver—digital fabrication machines. With these machines, the apprentices are employed to make products such as plaques, cutting boards, and awards for organizations and individuals.

Several years ago, Jimmy and Crowther saw an opportunity to meet a need in the area to train young people for employment in the construction trades. There were space limitations in the existing facilities on Castle Street, but KMI owned the vacant lot next door. With the support of the KMI Board of Directors, Jimmy and his team embarked on a fundraising campaign to raise sufficient funds to build an annex in which graduates of KMI could be trained in construction trades such as carpentry, plumbing, and electrical work. The annex was also designed to provide meeting space and offices, which would allow the office space in the original building to be used for the core programs of introduction to woodworking for kids 7-12 and the afterschool program for kids 13-18.

Jimmy's passion for KMI and its participants was infectious. He used every event at which he was a guest speaker to meet potential financial supporters and talk about the need for and potential of a skilled trades program. The support and generosity of the community was overwhelming. One Wilmington philanthropic group spearheaded a fundraising drive. KMI received over \$600,000 in funds and in-kind contributions for the construction of the annex. Initially, plans were for the building to be constructed of cinder blocks, but a friend of Jimmy's strongly suggested that the annex of a woodworking program should be made of wood and post and beam (timber frame) construction. Such construction affords maximum interior space. It was possible to change plans as suggested because of the generous donations by two businesses. Pem Jenkins and his company, Turnbull Lumber,



Kids Making It's After-School Entrepreneurial Woodworking Program in action.

supplied approximately 14,000 board feet of cypress. Sharon and Ken Vilcins of Atlantic Barn and Timber, a local company specializing in timber frame construction nationally, devoted more than a week to erect the massive beams and columns at no cost. Construction was completed in 2020, but use of the annex was delayed because of the pandemic. A qualified instructor for the skilled trades program was hired earlier this year, and the initial students have begun learning carpentry skills as they construct stud walls in mock-up rooms. The first participants in the program are graduates of KMI. The skilled trades program provides opportunities for participants to use skills and "life lessons" learned from their Kids Making It experiences with the goal of becoming qualified for good paying jobs in the construction industry. The skilled trades program at KMI is doing what the Generation Next apprenticeships seek to do.

In addition to the programs at KMI's facilities on Castle Street, KMI staff travel to domestic violence shelters throughout southeastern North Carolina to teach "therapeutic woodworking" to adults and children. Participants receive pre-cut materials and the necessary hand tools to construct "feelings boxes," which can be locked. After assembly, the owners of the boxes can place notes about their feelings in their boxes for possible use later in therapy and counseling. Jimmy learned of a child rape victim who had refused to talk with her therapist until

she began removing the notes from her feelings box. Those notes helped her open up and receive the help she needed.

Over the years of its existence, the non-profit has received numerous awards and recognition. Among them are the North Carolina Governor's Crime Commission Award of Excellence; designation as an Outstanding Afterschool Program by the North Carolina Center for Afterschool Programs; UNCW Albert Schweitzer Award; nomination by the Office of Juvenile Justice and Delinquency Prevention staff for the OJJDP Organization of the Year Award; winner of the UNCW Cameron School of Business & Wilmington Business Journal Coastal Entrepreneur Award, Top Entrepreneur of the Decade, Non-Profit Category; and more.

A visitor to KMI can readily feel the energy and enthusiasm generated by the kids, volunteers, and staff as they work together to make products of wood. The volunteers and staff provide a safe environment in which kids work with and are mentored by the same people during their participation in the program. Over the years, the kids of KMI have remained in school so that the dropout rate for kids in the program has been less than one percent.

After many years of devoting his life to KMI, Jimmy recently decided that he was ready to retire and turn the reins over to a new leader. Thus, in early 2022, Kevin Blackburn, KMI's Associate Director, took

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over as executive director.

Blackburn says that he had known Jimmy Pierce for a number of years in the non-profit community and admired his authenticity and Jimmy's ability to build relationships. He shares Jimmy's enthusiasm about all that Kids Making It is doing to instill self-worth and self-confidence in kids. He believes that by making a product that can be sold in the KMI gift shop and enjoying the profit from the sale given to the kid who made it, KMI is giving each kid a "taste of the real world."

With the support of volunteers and staff, KMI is, on average, able to serve 600 kids per year across all its programs: afterschool entrepreneurial woodworking, introduction to woodworking, apprenticeship, skilled

trades, and therapeutic woodworking.

Toward the end of Jimmy's tenure he and his team envisioned the expansion of KMI into Pender County. Blackburn has seen that vision through. In collaboration with their community partner, Communities in Schools, Blackburn says that KMI has supplied three lathes to the Burgaw Middle School and the staff and volunteers necessary to work with five kids from 4-6 PM on Mondays for six week sessions. Kevin adheres to Jimmy's principle of starting small and growing deliberately. His plan is to continue working with Burgaw and Pender County representatives to locate a suitable facility in downtown Burgaw to expand the woodworking program, eventually reaching older kids who can work with

power tools—in short, to continue the mission of Kids Making It of "Building Success One Kid at a Time" by striving "to help our youth stay in school, stay out of trouble, and transition successfully into the workforce or college."

Jimmy's retirement began in February 2022 at the age of 68. He looks forward to spending more time with his wife, Phyllis, their children, and grandchildren. In addition, Jimmy enjoys his woodworking shop located in his backyard, surfing, fishing, running (he has completed several marathons and recently ran a half-marathon), and traveling. Although he has not practiced nor does he intend to practice law, he maintains his license as a member of the North Carolina State Bar.

Jimmy Pierce acknowledges that Kids Making It has afforded him the opportunity to fulfill his epiphany of doing what he wanted to do. What he has done to build a wonderfully successful program for kids, most of whom have been "at risk," has made it possible for them to have much brighter futures. It is appropriate to say of Jimmy Pierce what is inscribed on plaques found in our national parks that are dedicated to Stephen T. Mather, the first director of the National Park Service: "There will never come an end to the good that he has done." ■

Lee Crouch has had the good fortune for many years to serve on the board of Kids Making It, including as chair, and to participate in the growth of the organization and its facilities. After 45 years in the practice of law, he retired in December 2021. He continues to serve on the board of directors of Kids Making It.

Kids Making It's main woodshop and gift shop (left) and their two-story skilled trades building (right). Gift shop hours are Monday-Friday, 10 AM - 6 PM, and Saturday 10 AM - 4 PM.



NORTH CAROLINA **PRO BONO** RESOURCE CENTER

PRO BONO REPORTING DEADLINE FOR ATTORNEYS & PARALEGALS: MARCH 31, 2023

WHAT SHOULD I REPORT?

The North Carolina Pro Bono Reporting Form collects information about all the activities encouraged in NC Rule of Professional Conduct 6.1: pro bono legal service; legal service at a substantially reduced fee; activity that improves the law, the legal system, or the legal profession; non-legal community service; and financial support of legal service providers.

HOW DO I REPORT?

Visit ncprobono.org/report and provide information about the activities included in NC Rule of Professional Conduct 6.1. You will need to report the total number of pro bono legal service hours you provided in 2022 - this is the only activity from Rule 6.1 that leads to recognition through the North Carolina Pro Bono Honor Society. Questions about other activities from Rule 6.1 are voluntary and only required general information about participation.

WHY SHOULD I REPORT?

There are four major reasons to report your pro bono legal service: (1) it's a way to showcase pro bono volunteerism in NC - we want to share the good work being done by the legal profession in our state; (2) it's an opportunity to encourage your peers to grow their pro bono involvement by sharing about your own engagement; (3) it's a mechanism to identify areas to grow pro bono efforts in North Carolina and (4) it's an opportunity for recognition. Attorneys licensed in NC who report at least 50 hours of pro bono legal service in a year will be inducted into that year's cohort of the NC Pro Bono Honor Society and receive a certificate from the Supreme Court of North Carolina recognizing their achievement. Paralegals who report at least 50 hours of pro bono legal service in a year will be inducted into that year's cohort of the NC Paralegal Pro Bono Honor Society and receive a certificate from the NC Pro Bono Resource Center.

WHO SHOULD REPORT?

Attorneys and paralegals who performed pro bono work in North Carolina in 2022 should report. Paralegal certification is not required to be qualified to report. Learn more at ncprobono.org/report.

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Dry No Longer—How New Alcohol Laws Changed Asheboro

BY RICHARD COSTANZA

Asheboro, North Carolina, has quite a bit to offer for the unexpected visitor. Nestled around the Triad-region, the Uwharrie National Forrest, and the Pinehurst-Southern Pines resort area, Asheboro is an undiscovered rural



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jewel in central North Carolina. In the words of my children, downtown Asheboro gives off “Mayberry” vibes. Folks typically visit Asheboro during trips to the North Carolina Zoo or to one of the local potteries (which are outstanding, by the way). If travelers stop at one of Asheboro’s fine-dining establishments for a meal—and, more importantly, an adult beverage—they owe a debt of gratitude to attorney and involved citizen Brooke Schmidly.

For decades, Asheboro remained the largest dry municipality in this state.¹ This was the will of the majority of local voters, as expressed during elections held in 1965, 1977, and 1985, during which alcohol legalization measures were rejected.² Enter Brooke Schmidly (and her late father and former law partner, Steven Schmidly), who formed the advocacy group Citizens for the Future of Asheboro. This organization successfully rallied Asheboro voters to support

the legalization of alcohol sales in one of the most conservative—and, dare I say, evangelically-motivated—cities in this state.³

Ms. Schmidly and her fellow advocates worked tirelessly to convince Asheboro voters to support the legalization measure. While this may sound anachronistic to some of our younger (or more urban) readers, this was a hotly contested issue in rural North Carolina in the not-too-distant past. Ultimately, on July 29, 2008, the sale of alco-

hol was legalized in Asheboro, with 58% of the voters supporting legalization.⁴ As one may imagine, the election results led to a transformation of Asheboro’s restaurant scene and a revitalization of its downtown. What follows is a conversation with Ms. Schmidly regarding some of her observations about the campaign and its impact.

Q: Tell our readers about yourself.

I am a lawyer, primarily working as a family financial mediator in Randolph and sur-

rounding counties. I previously served as a district court judge in Randolph County and spent over a decade in private practice in there. I attended UNC-Chapel Hill where I was an air force ROTC cadet. I was commissioned as a second lieutenant when I graduated. The air force delayed my active-duty service commitment to allow me to attend law school. I graduated from the University of Houston Law Center and then went on active duty as a judge advocate. I spent six years on active duty and am still a reservist. I am currently assigned as the staff judge advocate, headquarters, 22nd Air Force, Dobbins ARB, Georgia. I live in Randolph County and have two kids.

Q: What led you to the practice of law?

I grew up in Forsyth County, but my father moved to Randolph when I was in middle school to join a small law practice. I spent summers answering the phone in his office, making copies, and watching him in court. I loved it. But, I also wanted to be in the air force. Once I learned about JAGs, that was it!

Q: Your practice is located in Asheboro, which was one of the last mid-sized cities in North Carolina to allow the sale of alcohol. Tell us about your hometown.

Asheboro is now a really cool place to live with a thriving downtown and arts scene. But that was not at all true before the vote allowing the legal sale of alcohol in Asheboro.

Of course, everyone knows Asheboro for the wonderful NC Zoo, and most people just come for a day trip here. But, there are now so many other things to do that people are starting to come and stay for a weekend. We have a local brewery, great downtown restaurants, and a professional theater group that puts on amazing productions (sometimes in the brewery). It's cool. This year the Asheboro City Council approved a downtown social district to allow people to walk around downtown Thursdays thru Saturdays during certain times with their drinks. There are times when I walk downtown and feel like I barely recognize it because it is packed with people out and about enjoying themselves.

Q: Where could people go if they wanted to purchase alcohol? Did shot-houses or bootleg joints exist?

Until the legal sale was authorized, people had to go to Randleman, a small town in Randolph County that allowed off premises sales and had an ABC store. It's about a 15-

20 minute drive from Asheboro. There were also a couple of private country clubs that people could join. There were "bootleggers" including people who would sell beer by the can, often to underage people. There were tons of funny stories about people moving here or visiting here and not knowing it was a "dry" county. We had a Rock Ola Café that had a bar and had beer on the menu. Sometimes people leaving the zoo would go and order a beer only to be told "you can't get that here." So many stories like that.

Q: Did Asheboro have much of a dining scene before the purchase of alcohol was legalized?

Not much. There were a couple of good restaurants, one in particular that had a permit that allowed patrons to bring in their own bottle of wine. But the dining scene was pretty scarce. And there was really no other place for people to hang out together. Before the vote, the FOR group and the AGAINST group both got space downtown for their operations. After 5pm, downtown was a ghost town. The only cars on the street were those parked outside of each headquarters. Now, downtown is bustling, with restaurants, a wine bar, a brewery, and an old timey whiskey bar. New places open all the time. It could not be more different than it was when I came back in 2007. One of our longest enduring and most popular restaurants downtown is The Flying Pig, opened by locals who had always said they would open a restaurant when Asheboro allowed alcohol sales, which they all said would happen "when pigs fly."

Q: Tell us about the campaign to authorize the sale of alcohol in Asheboro.

There was a large group of community leaders in 2008 that felt like we needed to get this done. We all joined together to form The Committee for the Future of Asheboro. Approximately 40 business and community leaders joined together to say publicly that our town needed to legalize the sale of alcohol. We thought (correctly) that a committee of well known, respected people all joining together would cut down some of the intimidation tactics that had been used against people trying to get legalized sales in the past. While there were passionate disagreements between the two groups (FOR and AGAINST), and tough campaigning—like a crane with a huge banner saying VOTE AGAINST and a truck going through town saying VOTE FOR—the leaders of both

groups kept in mind that we were all a community. I know the FOR side pushed back when we were encouraged to go for the jugular. I think the leaders of the AGAINST committee did too.

Q: Who were the opponents of legalization?

It seemed many (though certainly not all) of the more conservative leaning churches were against legalizing the sale of alcohol, and some of their leaders led the AGAINST side. I know many of them had seen the damage that alcohol did to people's lives and genuinely hoped to help people avoid that. We just had a fundamental disagreement on whether keeping the sale of alcohol illegal here was effective in that regard, and on the benefits that would come to the city overall.

Q: Describe the organizing from both the pro- and anti-legalization sides.

As I said, we spent a lot of time forming our committee of leaders who would speak out. My dad was sort of the organizer and spokesperson, and I was the workhorse along with him. We first had to ask the city council to allow the referendum. And once it did, we worked to raise money, reach out to voters, and show our vision for what Asheboro could become if sales were legalized.

Q: How close was the vote?

Roughly 60% of voters voted in favor of on-premises sales and an ABC store.

Q: Was there anything special about the date when the alcohol sales were legalized?

Election day was my dad's 59th birthday. We had stocked our headquarters with huge amounts of food and drinks, and had a huge crowd of people there to await the returns. The celebration after the results came out was like nothing I had ever seen. Literally, within an hour of the election returns, everything was gone. There wasn't even a drop of water left. People were dancing on the sidewalk outside the headquarters. It was so great.

Q: Who had the honor of purchasing the first lawfully sold bottle of booze in Asheboro?

Exactly a week after the vote, the Rock Ola had its permit. People descended and it was the next great party in Asheboro. I remember how we all looked around at each other in amazement that we were buying beer in Asheboro! We got the ABC store open within a couple months of the vote. My dad had the honor of buying the first

CONTINUED ON PAGE 45

Robert's Rules of Order

An Interview with Author/Attorney Jim Slaughter

BY ALICE NEECE MINE

Jim Slaughter is a partner at Law Firm Carolinas which has six offices in the Carolinas. He is a certified professional parliamentarian, professional registered parliamentarian, and past-president of two national associations of lawyers—the American College of Parliamentary Lawyers and the College of Community Association Lawyers. Jim has written four books on meeting procedure, including two published last summer, Robert's Rules of Order Fast-Track: The Brief and Easy Guide to Parliamentary Procedure for the Modern Meeting and Notes and Comments on Robert's Rules, Fifth Edition. For more information, visit the blogs and meeting resources at jimslaughter.com and lawfirmcarolinas.com.

We sat down to talk about the importance of lawyers knowing about proper meeting procedure, whether for clients or personal use.

Q: Why should lawyers know about running meetings and parliamentary procedure?

More than any other profession, lawyers tend to deal with meetings issues all the time, whether professionally or personally. Our firm, for instance, has one of the largest HOA/condo practices in the Carolinas, and state statutes require that association board and membership meetings follow the latest *Robert's Rules of Order*. Governmental bodies often have similar statutes. And the bylaws of many nonprofit associations, churches, and unions require that certain procedures or a specific parliamentary book be followed, which is a contractual requirement. So, lawyers should know the basics of meeting procedure to keep their clients out of trouble. On a personal level, attorneys serve all the time on boards and as officers of different associations, charities, and nonprofits, so every lawyer should know enough about meeting procedure to work within or run a good meeting.

Q: Is the parliamentary manual *Robert's Rules of Order* still relevant in 2022?

The idea that *Robert's* is an old book is a misconception. The first *Robert's Rules of Order* was published in 1876, which Henry M. Robert intended as a "very brief pocket manual, so cheap that every member of a church or society could own a copy." But the book has expanded since then. A new edition of *Robert's* comes out about every ten years and takes into account changed meeting practices and new technology, such as electronic meetings and devices. The newest *Robert's* is the 12th Edition from 2020 that is 714 pages.

It must be noted that there are parliamentary books other than *Robert's*. For some groups, *Robert's* doesn't matter because it isn't their book. For instance, most groups of physicians and dentists use some version of *The Standard Code of Parliamentary Procedure*, first written by Alice Sturgis. Legislative bodies often follow *Mason's Manual* or even *Jefferson's Manual*. There's more to parliamentary procedure than *Robert's Rules of Order*.

Q: What's changed in *Robert's* in recent years? Why is it important to understand parliamentary procedure "for the modern meeting" as it notes on the cover of your book?

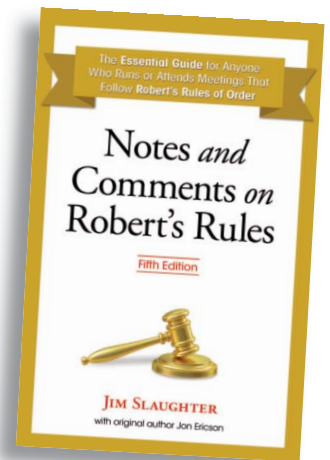
The changes in each edition tend to be minor, but occasionally a motion will change or be renamed. For instance, in the 2011 *Robert's* "Point of Information" became "Request for Information" to better reflect that the motion is used to ask for information and not provide it. In some ways, each new edition tends to reflect the world in which we live. For instance, the new 12th Edition from 2020 added material on electronic meetings (though no one could have known just how important that would become so quickly) as well as on misbehavior by members or by presiding officers. In the Preface to the 12th Edition's notes

there are about nine "notable" and 13 "important" revisions, leaving about 67 "minor" changes. For those who want to know more, many of the changes are listed on our firm's website or covered in *Notes and Comments on Robert's Rules*.

Q: What do you think about Zoom meetings?

Virtual meetings through Zoom or other online platforms have their benefits, including saving travel time and allowing members to participate who might not otherwise. Electronic meetings certainly aren't going away—for-profit and nonprofit boards have long been able to meet telephonically or virtually, and a law adopted this summer (HB 320, "Modernize Remote Business Access") allows members to meet remotely and vote electronically in for-profit and nonprofit corporations as well as insurance companies. If of interest, we have several blogs on the new law at our firm website.

That said, as any lawyer who has lived through a virtual meeting or hearing knows, such meetings have a different "feel." That's certainly the case for virtual meetings that debate and vote on motions. As technology improves and we become more familiar with online deliberations, such distinctions may lessen. For now, however, the following differences should be considered for any virtual



meeting:

- Assume there will be technology issues, whether big or small.

- There is a different dynamic, as electronic meetings tend to feel like hundreds of individuals sitting somewhere else doing their own thing.

- There can be less transparency because unlike an in-person meeting, no one really knows who's "next in line" to speak, and if a member is unruly, the temptation is there to mute or disconnect them.

- There is generally less individual engagement, likely due to what we do while on virtual meetings—other work, surf the Internet, make a sandwich, or other activities.

- Virtual meetings bring out the worst in some people and result in more negative discussion than would happen in person.

- Voting dynamics can be altered when someone is voting alone from home.

- It's harder to "work things out" online, which means that proposals more often fail.

- It's difficult to build a sense of community within the organization, which matters, as there is more to meetings than simply voting on business items.

Q: Is there anything different about how parliamentary procedure is applied in that context?

To function, almost any virtual meeting will need its own rules of procedure that are different than in-person meetings, touching on such issues as:

- How members access and participate in the meeting, including the platform to be used by members for speaking and, if different, voting.

- The specific items of business to be considered.

- Clear steps for a member to get recognized to speak or make a motion, including whether motions are simply stated audibly or must be submitted electronically in writing.

- That members must remain muted when not speaking, and if they are speaking, should reduce background noise or distractions as much as possible.

- Individual speaking limits, which will likely be shorter than at in-person meetings. (Normal debate limits in conventions of five or ten minutes per member with up to two times to speak tend to be far longer than members will tolerate online.)

- Total debate limits on individual items, such as per proposal or resolution.

- That motions requiring a second are

already deemed seconded. (Waiting in virtual meetings for a member to be recognized, unmute, solve technology problems, and identify themselves just to say "second" takes up valuable time in large virtual meetings.)

- That certain motions will not be recognized or not in order, depending on the specific meeting. For instance, in a telephone-only meeting where motions cannot be seen by members, on-the-fly amendments from members might be unworkable. Other motions, such as to demand a rising vote, make little sense in a virtual setting.

- That an individual connectivity issue is not a basis for retaking a vote or a Point of Order, in that one person having a Wi-Fi problem cannot be the basis for repeating everything.

Q: Any advice for governing a hybrid meeting (electronic and in-person at the same time)? Should you just say "no"?

As discussed in *Notes and Comments*, the phrase "hybrid meeting" is not described in *Robert's* and has no exact definition. Sometimes the term means an electronic meeting with separate physical gatherings of members that together count as a single meeting. Usually, though, the term means a meeting where some members are present in-person and others electronically. Such meetings have been held by small boards (some directors in person and some by telephone) for years without much issue. The difficulty comes with larger meetings, such as a "hybrid convention" with thousands of delegates. While it might seem that such an arrangement would be easier to arrange than an all in-person or all virtual gathering, that is not the case. Hybrid meeting arrangements and rules tend to be far more complicated. After all, how do you make certain that members participating virtually are treated equally with regard to debating, making motions, and voting as those in the room? Almost certainly a system will be needed in which everyone votes electronically, even those physically present at the meeting.

Q: What is one thing about parliamentary procedure that people always get wrong?

Most people think there's one set of rules that must be followed by all meetings. That's not the case. Rules aren't one-size-fits-all. Problems tend to occur when large meetings behave too informally or when small meetings behave too formally. As a result, *Robert's* and other parliamentary books provide that small board meetings and large membership meet-

ings are conducted differently. Big meetings must be fairly formal to be fair, but that same formality can hinder business in a smaller body. As a result, *Robert's* recommends less formal rules for committees and smaller boards. Unfortunately, these "informal rules" are near the back of *Robert's*, and no one seems to read that far. *Robert's* provides that committees of any size and boards where there are not more than about a dozen members present can follow more relaxed procedures, such as seconds to motions are not required, there are no limits on debate, and the chair usually can debate and vote on all issues.

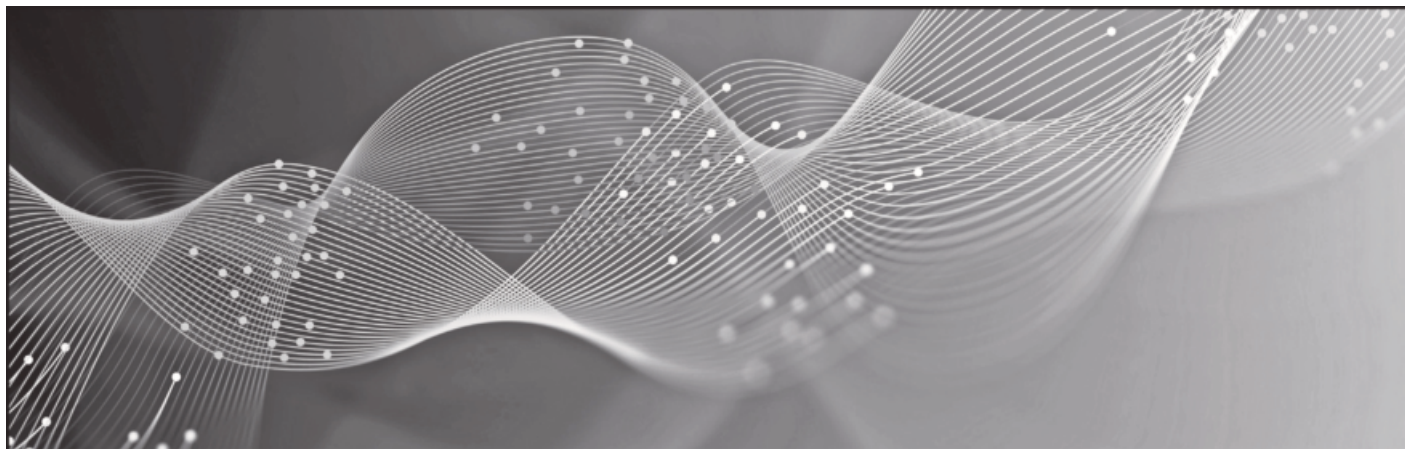
A similar misconception is that *Robert's* (or other parliamentary authority) is the final say on meeting rules. *Robert's* is not the top of the food chain. If there are state statutes that apply to a particular organization, those would override the parliamentary manual. If the bylaws prescribe certain procedures, those too should be followed. Organizations can also adopt special rules that take priority over *Robert's*, sometimes called board policy or convention rules. *Robert's* is simply the default when there is not a higher rule to the contrary. The takeaway is that organizations get to choose the rules by which they will be governed. Rules should be like clothes—they should fit the organization they are meant to serve.

Q: What's your best tip for keeping meetings short and to the point?

A good agenda, which is worth its weight in gold. I have an entire chapter in both books on the order of business and agendas, which I know sounds riveting. Seriously, though, a good agenda will make any meeting run better and save time. First, preparing the agenda forces those in charge of the meeting to determine what will likely come up at the meeting, including any committee reports. The presiding officer and committee chairs can then determine before the meeting whether reports are for information only or will require action through a motion (and, if necessary, determine the wording of the motion). Whether an agenda is for general guidance, or adopted, or timed (there are different types of agendas), members knowing if there are two or ten items for discussion and decision will help focus discussion.

Q: Why two books on procedure? What's the difference?

My two newest books complement each other, but have different purposes and different audiences. *Robert's Rules of Order Fast Track* is focused on the essentials of meeting proce-



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ture and what you need to know to participate in or run a meeting if you only have a few days to get ready. For those who wish to know more, the *Fifth Edition of Notes and Comments* goes into greater detail and uses a question-and-answer format to cover the most misused and asked-about provisions in *Robert's*, especially those that apply to larger meetings, compares *Robert's* with other commonly used parliamentary manuals, and gives page and paragraph references to the latest *Robert's*.

In case it is of help, here are the back descriptions of each book:

Robert's Rules of Order Fast Track

GET PARLIAMENTARY CONFIDENCE, FAST!

Tired of meetings that ramble or run on too long? Hate being confused by the rules? Sick of parliamentary know-it-alls getting their way? You need confidence in parliamentary procedure, and you need it fast!

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ventions. Easy, accessible, and to the point, *Robert's Rules of Order Fast Track: The Brief and Easy Guide to Parliamentary Procedure for the Modern Meeting* gives everything readers need to conduct shorter, fairer, more orderly meetings.

This updated volume includes:

- The fundamentals of parliamentary procedure, with tips on knowing which rules to use for your meetings.
- Simple suggestions for making, seconding, and debating motions.
- A primer on voting, from knowing when it's required, to breaking ties, to handling absentee and proxy votes.
- Straightforward strategies for setting and sticking to an agenda.
- How to efficiently record your meeting's minutes.
- Tips for handling disruptive members and tyrannical chairs.
- Extensive discussion of electronic meetings and tips for running better virtual meetings.

Notes and Comments on Robert's Rules, Fifth Edition

IN THIS AUTHORITATIVE GUIDE,

YOU'LL FIND:

- Questions-and-answers covering the most misused and asked-about provisions of *Robert's*, including those that apply to larger membership meetings.
- Updated page and paragraph references to the latest *Robert's*.
- Extensive discussion of electronic/virtual/hybrid meetings.
- Practical advice from decades of professional experience working with meetings ranging from small community association boards to conventions with 10,000 delegates.
- Discussions of why certain provisions are included in *Robert's*.
- A comparison of *Robert's* with other commonly used parliamentary manuals
- Extensive notes exploring parliamentary differences and history, for those who want to know more.
- Simplified charts of parliamentary motions for quick reference. ■

Notes and Comments on Robert's Rules has received the Phifer Award from the Commission on American Parliamentary Practice, an affiliate of the National Communication Association.



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Honoring Past-President James R. Fox with Memorial Gifts to the State Bar Foundation

BY ALICE NEECE MINE

At the meeting of the State Bar Council on Friday, October 8, 2021, Kevin G. Williams, the councilor from 31st Judicial District Bar, asked the council to adopt a Resolution of Appreciation and Remembrance for James R. Fox, former State Bar president, who had recently died. During his address to the council, Kevin presented a check for over \$5,000 to the State Bar Foundation. The check represented memorial gifts from Jim's law firm colleagues and friends, both lawyers and non-lawyers.

When Jim died in August 2021, his loss was felt keenly by the numerous lawyers he had mentored during his 50 years of private practice. Kevin was one of those lawyers. His admiration for Jim was such that he wanted to find a way to honor Jim as a lawyer first,

but also as a State Bar councilor and past-president, and as a person who, quite literally, loved the law. Kevin called the State Bar to ask what would be an appropriate memorial gift that would do all of these things. A gift to the North Carolina State Bar Foundation was

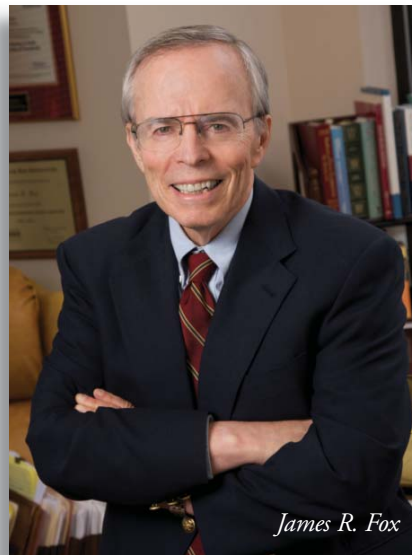
recommended.

The North Carolina State Bar Foundation was formed in 2011 as an independent 501(c)(3) to raise private funds to support the construction of the State Bar's new headquarters in downtown Raleigh. Although the immediate goal was to raise funds to offset construction costs, the long-term purpose of

the foundation was to provide financial support for the State Bar in its mission to regulate the practice of law in the public interest and for the maintenance of the new headquarters building where that important work would be done. The foundation's Board of Trustees continues to manage the assets of the foundation for these purposes. A gift to the foundation in memory of or in honor of a fellow lawyer supports an

essential value of the profession: self-regulation as the key to an independent legal profession that can protect the fundamental rights of all citizens. Clearly, a gift to the foundation would honor Jim Fox, the quintessential lawyer.

In his presentation to the council on October 8, 2021, Kevin recounted his experience being mentored by Jim. He noted,



James R. Fox

Resolution of Appreciation and of Remembrance for James R. Fox

WHEREAS, the North Carolina State Bar Council desires to honor and remember James R. Fox, past-president of the North Carolina State Bar, who passed away on August 29, 2021; and

WHEREAS, Mr. Fox was sworn in as president of the North Carolina State Bar on October 21, 2011, after serving as vice-president and president-elect, each for one-year terms, and as the councilor for the 31st Judicial District for three consecutive three-year terms commencing in January 2002, during which time he served on and chaired many State Bar committees; and

WHEREAS, President Fox was a leader of the State Bar of extraordinary honor, decency, and commitment to the mission of the State Bar to regulate the legal profession in the best interests of the members of the public; and

WHEREAS, President Fox sought to live his professional life in accordance with the profession's core values of independence, integrity, the duty to act in the best interests of the client, and confidentiality; and he did so by dedicating himself to service to the profession and to the mentoring of young lawyers and new members of the State Bar Council, serving as a model of professionalism and service to innumerable members of the Bar; and

WHEREAS, as observed at the end of his term, President Fox faithfully and diligently discharged his duty as a president of the State Bar: to defend the core values of the legal profession; to continue and build upon the undertakings of his or her predecessors; to explain for the edification of the membership and the benefit of the public how and why the State Bar is regulating the profession; and to lead the agency in a manner that is consonant with its statutory purposes and the public's interest; and

WHEREAS, President Fox led the North Carolina State Bar with a remarkably sure and even hand, bringing to bear in every instance the finely honed talents of a lawyer's lawyer. Though widely appreciated as a serious man well suited to the disposition of business of great importance, Jim Fox has never taken himself too seriously. Those who have had the pleasure of working with and for him have invariably and inevitably been impressed by his modesty, his sense of perspective and proportion, and his good humor, qualities that have made him a great man to follow.

NOW, THEREFORE, BE IT RESOLVED that the Council of the North Carolina State Bar does hereby publicly and with deep appreciation acknowledge and remember James R. Fox, a lawyer's lawyer, and a true example of personal service and dedication to the principles of integrity, trust, honesty, and fidelity.

BE IT FURTHER RESOLVED that a copy of this resolution be made a part of the minutes of the annual meeting of the North Carolina State Bar and that a copy of this resolution be delivered to the family of President Fox.

Although Jim's intellect, temperament, and experience allowed him to rise to the highest levels of the legal profession, Jim never forgot where he came from. Jim's kindness and gentility were frequent and proud reminders that small town values provide a remarkably stable foundation for leadership and practicing law. Always the gentleman, Jim treated everyone he

met with respect and courtesy. In a 2015 speech, Jim said that, "[i]n any new encounter, don't hold yourself to too high a standard. There is always someone smarter or more experienced than you are." For Jim and those of us who worked with him, even though perfection was never the expectation or the standard, excellence was essential.

The resolution of appreciation for Jim adopted by the council on that day appears above. If you seek to honor a lawyer you admire for his or her service to the legal profession and to the public, please consider a gift to the State Bar Foundation. For more information about making a gift to the foundation, contact Alice Mine at (919) 828-4620 or amine@ncbar.gov. ■

A Collaboration between Specialists Dan Pope and Ben Snyder to Aid Ukranian Refugees

BY DENISE MULLEN, MANAGING DIRECTOR, BOARD OF LEGAL SPECIALIZATION

An unlikely collaboration between Dan Pope, a workers' compensation law specialist practicing in Raleigh, and Ben Snyder, an immigration law specialist practicing in Charlotte, had a big impact on the lives of several Ukrainian refugees last year. Each of these specialists is currently serving as chair of their respective specialty committees, but they had not met in person, nor had they anticipated working jointly on a complex legal matter. The Russian aggression against Ukraine brought them together in a surprising way.



Pope

parish priest, who was desperate to bring his daughter and her infant child from war-torn Ukraine to the United States. Ben was able to help with filing an I-134 with USCIS and a sponsor was found.



Snyder

Dan also has a good friend, Father Iouri, a priest who still resides in Ukraine with no intention of leaving. They have known each other for over

20 years and Dan is the godfather to his 11-year-old daughter. As the war drew closer and closer to their home, the Iouri family made the difficult decision to send Father Iouri's wife and 11-year-old daughter to the United States. Father Iouri and his 19-year-old son would have to stay in Ukraine due to a travel ban that restricts men ages 18-60 from leaving the country under martial law.

A sponsor may agree to support more than one beneficiary, such as for different members of a family group, but must file a separate Form I-134A for each beneficiary. For Father Iouri's wife and daughter, Dan filed I-134 forms to sponsor their entry to the United States. Within two days, Iouri's wife was approved to come to the US, although the approval was only good for 90 days. This was an issue as the daughter's application seemed to be in limbo, and they were unable to get any answers. As is often the case in US immigration matters, it was impossible to get a human on the phone or to find any way to push the process along. It seemed no one was able to help, and the mother's 90-day clock to get out of the Ukraine was ticking.

Dan recognized just how complicated this part of US immigration law had become. He again reached out to Ben. They were able to

refile the daughter's I-134 application. This time, it was approved. The safest way for Iouri's wife and daughter to get to the airport was to take a bus to the Polish border and then a train to the airport. Just as they were leaving, Russia started to attack the infrastructure of Lviv. Iouri's wife and daughter saw their city plunged into darkness after power was knocked out from the attacks. They escaped without a minute to spare—arriving in the US on October 19, 2022—and are now getting settled in North Carolina. They are grateful for Dan's generosity and kindness, though they also look forward to the day they can return home to their family, city, and lives.

Dan Pope's connection to Ukraine and Ukrainian culture is still deeply important to him and to his family. It began when a mutual friend introduced him to a young Iouri, studying in Rome with plans to return to Ukraine as a Byzantine Catholic Priest. At the time he began his studies, Ukraine was still under Soviet rule and the Catholic Church was suppressed. Iouri knew that by following his calling, he would likely always be in danger. His faith was strong, and he enjoyed easier times during the years Ukraine functioned independently. Dan's friendship with Iouri deepened throughout the ups and downs, and Dan even began to learn the Ukrainian language. Dan and his daughter have taught English language classes to Ukrainian students, prior to and even during the war. The challenge of learning a new language did occasionally make Dan question his decision, but ultimately it served a purpose as his relationship with Iouri's wife and daughter have become so much a part of his life.

As Dan embarked on this journey, he was helped along the way by caring friends and colleagues. Many other board certified

CONTINUED ON PAGE 43

The first step in the U for U process is for the US-based sponsor to file a Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, with US Citizenship and Immigration Services "USCIS." The US government will then vet the sponsor to ensure that they are able to financially support the Ukrainians they wish to help.

Dan first learned about the U for U program when he reached out to Ben to help his

You Are Not Alone

BY ROBYNN MORAITES

NCLAP publishes a quarterly e-newsletter, *Sidebar*.¹ LAP volunteers regularly submit articles for *Sidebar* around recovery themes or slogans. They understand, as few others can, the sense of loneliness and isolation that are so devastatingly integral to depression and drinking problems. “You Are Not Alone” is a popular theme because it offers so much hope. We share two of our volunteers’ stories here.

One LAP volunteer writes:

It was the most difficult time of my life. I had been diagnosed as abusing alcohol. I was also diagnosed as suffering from depression. To make matters worse, I had been suspended by the Bar for two years for failure to pay income taxes. Where could I turn?

The director of LAP reached out to me and invited me to join a support group of other lawyers in Charlotte who, likewise, had addiction problems and significant mental health issues. I came to the first meeting scared and not knowing what to expect. They all greeted me and welcomed me. I told them my story. They understood and showed genuine concern. They had all traveled this road before. They knew there was hope, but they also knew it was important for me to work an amazing program of recovery.

I was assigned a mentor. He had been down my road of alcohol addiction. He called me and let me know that he would always be there for me on my road of recovery.

A judge in our support group introduced himself to me. He had been where I was for many years. I could instantly see that he knew the journey well, and he believed in the power of recovery and the power of coming together with those like me to share our stories. He invited me to my first AA meeting. It was amazing how people stood up, candidly told their stories, and gave thanks for their sobriety and their return to meaningful living. I asked my judge friend if he would be my sponsor in AA and he extended a hand of friendship. He would be with me on my journey and helped me to believe in myself once again.

I continued with the support group for 14 years every Monday night. We talked about problems in our practices, difficulties with our spouses, challenges with our children, and, most important, we talked about ourselves. Men and women with all kinds of issues: some addicted, others suffering from depression, anxiety, bi-polar disorder, schizophrenia, or suicidal ideations. They helped me begin to mold myself into an individual with self-confidence, with love for those who stood with me in my journey, and a hope for the future knowing that I would never be alone.

I worked the Twelve Steps. I came home to myself. I discovered my selfishness. I realized that there was a Higher Power in my life who unconditionally loved me and would walk with me always on my journey.

I started attending Twelve Step weekend retreats and came into the fellowship of other lawyers who were on a similar journey. We joined each other on our journeys. We began to know ourselves even deeper and we promised each other that we would always be there for each other.

After several years, I could see the power of brotherhood and sisterhood in reaching out to those beginning their journey. I became a volunteer mentor with the LAP. I promised my mentees that they too could overcome the power of their addictions as we would walk their journeys together.

This has been the most incredible and powerful journey of my life. My journey would never have been possible without my mentor, my sponsor, the director of the LAP program who believed in my promise, the endless stream of brothers and sisters in the Bar who shared their journey with me, and my Higher Power who lifted my lonely existence with grace and unconditional love.

Another volunteer reflects:

I heard someone say at a recovery meeting recently, “Only an alcoholic would choose isolation as a way to deal with loneliness.”

I was a solitary drinker. I drank every



evening from the time I got home from work until I stumbled off to bed. Even though I was married with children, my drinking became a barrier I built between myself and everyone else, including my family. At some point during the evening, I would go on a long walk with the dog, mini-bottles filling my pockets to be sure I could sustain myself until returning home. I imprisoned myself in my own home and neighborhood, afraid to go out for fear of what driving under the influence might cause. Anyway, why would I want to leave the bottomless supply of alcohol I had stashed around my home?

And of course, I was not about to share anything about my situation with anyone else. I was a lawyer, after all, charged with solving everyone else’s problems. I couldn’t let it be known I had problems of my own. And I certainly couldn’t let on that I might have a problem with alcohol. The more I drank, the more insurmountable my problems seemed to become. And the more my problems mounted, the more I drank. That makes sense, right?

Finally, God (and my wife and LAP) did for me what I could not do for myself.

My wife’s despair at what was happening to me and to our marriage led her to call on the Lawyer Assistance Program (she’s a lawyer

CONTINUED ON PAGE 62

A Few of My Favorite Things

BY LAURA MAHR

If you were my client asking for ideas on how to improve focus at work, the first question I would ask you is, “What does your office look like?” You may wonder, “Why does it matter?” It matters because our physical work environment impacts our nervous system and therefore influences our ability to focus. If your nervous system is distracted by—or uncomfortable in—the space around you, it becomes unsettled (dysregulated). When your nervous system is dysregulated, it compromises your ability to think clearly and focus on the task at hand. From the lighting and decor to the temperature of the room, your body takes its cues about whether or not it can relax and focus from the spaces you inhabit. The good news is that if you create a work environment that is comfortable and supports nervous system regulation, making you better able to think clearly, stay focused, be decisive, and be more productive.

Light Bulb about Light Bulbs

I was recently coaching an attorney seeking tools to help him feel motivated to work at the office. His firm requires him to be physically present at the office at least 50% of the work week. He found himself resistant to going in. During the pandemic, he got used to working at home and now feels more comfortable working at home than at the office. I asked him to describe the difference between his home office and his firm office. His home office, he said, surrounds him with his favorite things: pets, plants, photos of his family, and art. He also has things that support his physical comfort and relaxation like floor lamps for soft lighting, a sunny window, and a couch with blankets. “However,” he said, “my office at the firm looks like a ‘prison cell’—painted gray with no decor and overhead fluorescent lighting that agitates my eyes.” At that moment, a light bulb went off. “Oh, now I get it,” he said after doing the comparison, “I haven’t taken any time at all to

get comfortable at work. No fuzzy blankets. No furry friends. No soft white light bulbs.” As we walked through the comparison, he realized that while it may not be possible to bring his dog to work (though sometimes it actually is!), it’s possible to have most everything else from his cozy home office at work.

Lost in My Mind?

As lawyers and judges, we often find ourselves absorbed in our heads, bogged down by endless responsibilities and deadlines. It can be easy to get consumed in serving others and lose sight of the importance of caring for ourselves, our bodies, and the space around us. Taking time to decorate your office may seem like a luxury when there are case matters pressing. And yet, if you look around your office and see bare walls and shades of gray, it may be a reflection that you’re treating yourself like a bodiless brain machine. Check out the tips below and see how your body responds when you tend to it. For little cost and minimal time, you may get a big mental return on your physical investment.

Try This

Which of these office decorating tips is most interesting to you? They all promote nervous system regulation and mental clarity.

1. Consider the state of your office. Is it cluttered and chaotic, or clean and organized? For some, a cluttered or cramped space can increase feelings of stress and anxiety, while an organized and spacious environment can promote a sense of calm and clarity. Take time to declutter and arrange your office in a way that



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promotes order and tranquility. Get rid of unnecessary items, especially obsolete papers, and use storage solutions to keep things organized. Schedule a regular time on your calendar to clear and organize your space, as paper and other clutter tends to accumulate over time in a way that you may not notice. Once you have made the change, gauge whether there is an impact on your ability to concentrate.

2. Assess the overall office comfort. Is your office furnished in a way that promotes good ergonomics and physical comfort? Investing in ergonomic furniture and accessories can help to reduce physical strain and promote better posture. Do you have a supportive office chair, a sit-to-stand desk, and an ergonomic keyboard? Having a chair that offers spinal support and allows the option to stand when working creates more space in your abdomen, allowing you to breathe more deeply. Deep, full breaths oxygenate the brain, and improve nervous system regulation and cognitive functioning. In addition, do you have comfortable furniture in your office away from your desk in which you can reset? Having somewhere comfortable to sit or recline encourages taking mental breaks during your day, which allows you to tackle work rejuvenated. A bonus is that it also makes

your workspace more inviting for colleagues and clients.

3. Pay attention to the lighting and temperature. Natural light is beneficial for both mood and productivity. If possible, position your desk so you can look out a window. If natural light is not an option, consider investing in high-quality artificial lighting so that your office feels light and bright. Experiment with desk and floor lamps instead of overhead lighting. Make sure that your office is a comfortable temperature; being too hot or cold is agitating for the nervous system. If you don't have control over the temperature at your office, can you bring in a soft throw blanket or a cozy sweater or a space heater to stay warm, or a fan or water cooler to stay cool?

4. Examine office layout. Is your desk positioned in a way that allows you to see the door or are you facing a wall? Facing the door can help your nervous system relax as you can see who's coming and going. If facing the door is distracting, experiment with closing the door or, if you have a glass door, cover it with an attractive window covering. You may want to try different layouts and furniture sizes to find what works best in the space, or find somewhere outside of your office to store files if your office feels cramped. You can read up on office "feng shui" or hire someone trained in office design to help you lay out your furniture for the best flow.

5. Incorporate personal touches. Do you have a few of your favorite things at your office? Seeing personal items at your office helps to create a sense of familiarity and comfort which relaxes the nervous system. This can include artwork, photos, or small decorative objects that have personal meaning to you. Be mindful not to overcrowd your space, as too many personal items can add clutter and be distracting.

6. Consider your senses. Our senses are in charge of nervous system regulation, so pay attention to what your eyes, ears, and nose are sensing at work. For example, color therapy specialists have found that wall color and decor impact our mood and motivation. Colors like blue and green promote calm and relaxation, while warm colors like red and orange can increase energy. Consider using a color scheme that feels best for you for the atmosphere in which you want to work. Have you noticed if you work better in silence or with sound? If you prefer sound, do you work better with music, a noise machine, or a bub-

bling fountain? If you prefer music, it may be useful to create different playlists for different tasks. If you prefer quiet, do you have ear plugs or sound proofing? Are you sensitive to smell? If so, you may find that a small essential oil diffuser fills your office with a scent that helps you relax, such as lavender, or keeps you awake, such as peppermint.

7. Include nature. Incorporating natural elements into your office design can also support nervous system regulation and promote a sense of calm. The presence of nature has been shown to have a soothing effect on the brain by reducing feelings of stress and anxiety while improving your ability to think. Place a small easy-to-care-for potted plant on your desk, use natural materials like wood and stone when decorating, and if you like the sound, run a small decorative fountain. When possible, open the windows to allow for fresh air flow.

Start Small and Get Help

Decorating your office for nervous system regulation is a process of trial and error. What works for someone else may not work for you. If you feel overwhelmed by the idea of decorating and don't know where to start, get help! You may have a friend or family member who would love to offer creative inspiration. If not, hire a decorator and a decluttering/organizing professional to assist. You don't have to do it all at once; calendar it for a few hours at a time, or plan an all-office beautification project as a team building exercise. Start small and track your progress and the impact of your space on your nervous system regulation, focus, and productivity over time. Think of your office as more than just a place to work. It is an outward representation of who you are (and how you treat yourself) to those you work with and serve. It should also be a space where you feel comfortable and focused. Incorporating these mindful decorating techniques into your office can help create both a peaceful and productive workspace. With a little bit of intention and effort, you can create an office environment that supports your well-being and helps you thrive in your legal practice. ■

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 six years studying neurobiology and neuropsychology with clinical pioneers. She can be reached through consciouslegal-minds.com.

Legal Specialization (cont.)

workers' compensation specialists, some that Dan knows only as opposing counsel, helped raise necessary funding. His wife, Cathy Pope, was also incredibly supportive, contributing much of the time and resources necessary to create space in their home for two additional people to live.

According to Ben, there is still a lot that needs to be done, but the United States got it right this time. "We have been able to help many Ukrainians come to this country with the 'Uniting for Ukraine' program. The U for U program allows people to leave Ukraine by fast track, using a humanitarian parole provision. A US sponsor is needed and the I-134A must be filed to show that financial support will be given as well as a place to stay and assistance with applying for school enrollment and social security numbers as appropriate."

Ben points out that the majority of the Ukrainian citizens that he has helped enter the US are planning to return home when they are able. They all suffer the emotional scars of losing their homes and being separated from their family members, but their love for their country is strong and their desire to return even stronger: "US immigration laws tend to be written in ways that view people as statistics, policy decisions are made based on how populations could impact labor and employment in the US." The U for U program exhibited a more humane approach. As the U for U program is a temporary solution, Ben notes that the next steps are to determine ways for most refugees to return home safely while providing a process to establish permanency for those who wish to make the US their permanent home. ■

For more information on board certification for lawyers, visit us online at nclauspecialists.gov.

What's In a Name? And What Shouldn't Be?

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

You've decided to hang up your shingle as a solo practitioner or maybe with a few associates. Now you have to decide exactly what to put on that shingle. Although it might not be as career-defining as naming your newly formed garage band, there are several factors you need to consider to ensure that your law firm name complies with the Rules of Professional Conduct as well as other statutory requirements.

Keeping it Simple

For a solo practitioner who does not want to incorporate his practice, the process of naming a law firm may be relatively simple. For example, lawyer Davy Jones may decide to name his law firm "The Davy Jones Law Firm" with the intention of using that name for all his business practices. For Mr. Jones, there are no further requirements regarding his law firm name.

Incorporation

If Mr. Jones wants his law practice to operate as a professional corporation or a professional limited liability company, matters get a bit more complicated. Mr. Jones will need to register his professional entity with the North Carolina State Bar and then with the North Carolina secretary of state. Both the State Bar and the Secretary of State's Office have specific naming requirements for professional entities.

Mr. Jones needs to file the entity's articles of incorporation or articles of organization, along with an application for registration, with the membership department of the State Bar and pay a registration fee of \$50. Applications can be found on the Forms page of the State Bar's website under the Professional Organizations heading.

Applications will not be approved if the entities' name does not comply with the State Bar's naming requirements for professional organizations as set out in 27 N.C. Admin. Code 1E .0102. Briefly, the organi-

zation's name must contain the surname of one or more of its shareholders (Professional Corporation) or members (Professional Limited Liability Company) and nothing more, except for punctuation marks, conjunctions, and the entity designation. The name of a professional corporation must end with the following words: (1) "Professional Association" or the abbreviation "PA"; or (2) "Professional Corporation" or the abbreviation "PC." The name of a professional limited liability company must end with the words Professional Limited Liability Company or the abbreviations "P.L.L.C." or "PLLC." In addition, the name may reference the generic service being rendered. For example, Davy Jones Law, PC; Jones Law Firm, PLLC; Davy Jones Law Office, PA; or Jones Legal, PLLC are all acceptable professional organization names.

After properly registering the professional entity, the Bar will provide Mr. Jones with a certification form (PC-2 or PLLC-2) approving the formation of his professional corporation or professional limited liability company. Mr. Jones will need to file the certification form and the original articles with the Secretary of State's Corporation's Division pursuant to the Professional Corporation Act, N.C. Gen. Stat. § 55B. The Professional Corporation Act regulates the permissible designation endings for professional corporations and professional limited liability companies. Subject to limitations imposed by the licensing acts of the respective professions, the same standards of the business corporation name availability rules apply to professional corporation name availability; however, professional corporations may use the words "Professional Association," "PA," "Professional Corporation," or "PC," in lieu of the corporate designations specified in N.C.G.S. 55D-20(1). In addition to the standards governing the name of limited liability companies, professional limited liability company names must contain the word "Professional" or the abbreviation "P.L.L.C."

or "PLLC."

When registering a professional entity with the Secretary of State's Office it is important that the name set forth in the Articles of Incorporation or Articles of Organization are stated in the exact same manner as it appears on the PC-2 or PLLC-2 that the State Bar issues. This inconsistency is a common reason for document rejection by the Secretary of State's Office. Once processed by the secretary of state, Mr. Jones will receive filed/date stamped articles. Mr. Jones needs to submit a copy of the filed/date stamped articles to the Bar to receive his Certificate of Registration Form (PC-3 or PLLC-3).

Name Changes

It is possible that a lawyer may subsequently have to make changes to his organization's name due to changes in the membership of the organization. If a shareholder or a member whose surname appears in the name becomes legally disqualified to render professional services in North Carolina or, if the shareholder or member is not licensed in North Carolina, or in any other jurisdiction in which the shareholder is licensed, the name shall be promptly changed to eliminate the name of the shareholder or member. If a shareholder or a member whose surname appears in the name becomes a judge or other adjudicatory officer or holds any other office which disqualifies the shareholder or member to practice law, the name shall be promptly changed to eliminate the name of the shareholder or member. Changes in the organization's name are generally not required due to a shareholder or member's death, retirement, or inactivity due to age or disability.

If changes are necessary, the lawyer will need to complete Amendment to Articles Form L-17 for a PLLC or Form B-02 for a PA/PC. These forms are located on the secretary of state's website. The forms need to

be submitted to the State Bar's membership department with a \$20 administration fee. If the forms are in order, the State Bar will return the forms to the lawyer with a "non-objection letter." The letter and the forms then need to be submitted to the secretary of state. The Secretary of State's Office will return a file-stamped copy of the amendment form to Mr. Jones. Mr. Jones needs to submit the file-stamped copy of the amendment form to the Bar to receive an updated certificate of registration.

Trade Names

What if Mr. Jones decides he would like to use a catchy name for his law firm such as "The Far Out Groovy Law Firm"? A lawyer or law firm may be designated by a trade name so long as the designation is not false or misleading. *See* Rule 7.1. A law firm name is misleading if it implies a connection with: (1) a government agency; (2) a deceased or retired lawyer who was not a former principal of the firm, or a retired member who has not ceased the practice of law; (3) a lawyer not associated with the firm or a predecessor firm; (4) a nonlawyer; or (5) a public or charitable legal services organization. *See* Rule 7.1, cmt. [5]. In addition, a trade name may not compare a lawyer's services with others, create an unjustified expectation about results, or imply that the lawyer can achieve results by means that violate the Rules of Professional Conduct. *See* Rule 7.1. It is also considered misleading to use a designation such as "Smith and Associates" for a solo practice. *See* Rule 7.1, cmt. [7]. Although not referenced in the Rules of Professional Conduct, N.C. Gen. Stat. § 66-71.5, provides that a trade name may not include a professional entity designation such as PC, PA, or PLLC. Therefore, Mr. Jones would not be permitted to use the trade name "The Far Out Groovy Law Firm, PLLC."

It is important to note that trade names no longer need to be registered with the State Bar. The requirement to register trade names with the State Bar (found in former Rule 7.5) was originally implemented to save lawyers time and money due to the requirements of the Assumed Business Name Act. As readers are likely aware, prior to December 1, 2017, the former Business Under Assumed Name Regulated Act (N.C. Gen. Stat. § 66-68, *et al.*, (repealed 2017)) required the filing of a certificate of

assumed/trade name with the register of deeds in each county in which business was conducted under an assumed name unless a licensing board with jurisdiction over the business' services had implemented its own central registration process for assumed business names. This meant that a law firm with a four-county practice had to register its trade name with each county's register of deeds unless the State Bar maintained its own central registration process (which it did, thereby saving lawyers the potential headache of registering in multiple counties). However, as of December 1, 2017, amendments to the statute established a statewide, online, searchable database containing assumed business name filings. Notably, the statute now allows filers to *designate multiple counties for conducting business on one filing*. *See* N.C. Gen. Stat. § 66-71.4. With the statute resolving the multi-county registration requirement, the State Bar's previous trade name registration requirement became procedurally unnecessary; thus, the registration requirement—which was entirely unique to North Carolina—was eliminated during the overhaul of the Rules of Professional Conduct related to advertising in May 2021. Accordingly, Mr. Jones will still need to file a certificate of assumed name with the register of deeds *in one county* in which he will be engaged in business under the trade name, but he may include all the counties in which he will conduct business in that single filing pursuant to N.C. Gen. Stat. § 66-71.4. And, of course, Mr. Jones will still need to use a trade name that is not false or misleading pursuant to Rule 7.1.

Conclusion

Several sets of rules govern the permissibility of names associated with a law firm: the governing rules of the State Bar, the naming requirements of the Secretary of State's Office, the Rules of Professional Conduct, and the statutory requirements for assumed business names. Although the process may seem complicated, help is available. Questions on the Bar's registration procedures may be addressed to Phillip McWilliams (pmcwilliams@ncbar.gov). Questions on the secretary of state's registration procedures may be addressed to Darron Jones (djones@sosnc.gov). Questions on whether a trade name is permissible under the Rules of Professional Conduct may be sent to ethicsadvice@ncbar.gov. ■

Dry No Longer (cont.)

bottle(s) of liquor. His signed receipt still hangs in the office.

Q: I understand there is a beer named after your dad. How are the profits spent?

My dad's favorite beer was Shiner Bock. Before he died, his favorite places kept it in stock basically just for him. A few years ago, our awesome local brewery, Four Saints Brewery, created Schmidly Bock, a style very similar to Shiner Bock. It's a top seller, often selling out fast. Four Saints has a program called "Saintly Sundays" where a portion of sales are donated to a nonprofit. A year or so ago, they donated a portion of sales to Legal Aid of NC in honor of my dad.

Q: As a practicing attorney and former district court judge, have you seen any negative impacts following the legalization process.

I can't say that I have. The establishments that have opened are local, unique, and have added to our community. I haven't seen a particular increase in DWIs, etc., though I have not studied that. We had a higher percentage of DWI cases before the vote than people would have thought for a dry county. ■

Brooke Schmidly received her undergraduate degree from the University of North Carolina at Chapel Hill in 1997, where she majored in peace, war, and defense. She graduated cum laude in 1997 from the University of Houston Law Center. Following her law school graduation, she served in an active-duty capacity in the United States Air Force as a JAG officer from 2001-07, and continues to serve as a reserve JAG officer. She engaged in the private practice of law in Randolph County from 2007-19, after which she served her community as a district court judge from 2019-20. She presently serves as a family financial mediator.

Rich Costanza lives and works in Southern Pines where he is in private practice. He is a board certified specialist in state criminal law and serves as the State Bar councilor for Judicial District 29.

Endnotes

1. *Voters OK sale of alcohol in Asheboro*, journalnow.com.
2. *Asheboro Alcohol Vote on Tap? Referendum Considered*, greensboro.com.
3. *Voters OK sale of alcohol in Asheboro*, journalnow.com.
4. *Id.*

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.

Disbarments

The Montgomery County Superior Court ordered **Brook McIntosh Crump** of Lake Tillery to show cause why she should not be disciplined for professional misconduct. The court concluded that Crump routinely asserted frivolous claims, repeatedly lied to the court, engaged in abusive tactics, disparaged judges, displayed incompetence, and forged a verification that she filed with the court, among other things. Crump did not appear for the show cause hearing. She was disbarred.

David Gurganus of Williamston acknowledged that he misappropriated entrusted funds and altered and forged court documents. Gurganus submitted an affidavit of surrender to the State Bar Council and was disbarred at the January 2023 quarterly meeting.

Stuart L. Egerton of Wilmington acknowledged that he misappropriated \$91,663.01 from his mother's estate, collected an additional \$21,010.26 in attorney fees without approval of the clerk of court, and did not comply with the clerk's order to return those fees. Egerton submitted an affidavit of surrender to the State Bar Council and was disbarred at the January 2023 quarterly meeting.

Suspensions & Stayed Suspensions

Willie R. Brooks Jr. of Monroe did not conduct monthly and quarterly reconciliations and reviews of his trust account, disbursed more funds from his trust account for clients than he had in the trust account for the clients, did not maintain accurate identification of all funds in his trust account, improperly disbursed funds to himself and to others, did not deposit entrusted funds in a trust account, and

improperly provided financial assistance to clients. The Disciplinary Hearing Commission suspended Brooks' law license for four years. He may apply for a stay of the suspension upon compliance with enumerated conditions.

The Moore County District Court ordered **Brook McIntosh Crump** (see disbarments) to show cause why she should not be disciplined for professional misconduct. The court concluded that Crump made false extrajudicial statements on Facebook about an assistant district attorney; that those statements were sufficiently prejudicial to warrant a mistrial in a criminal matter; that Crump interrupted an unrelated district court trial to serve the same assistant district attorney with a subpoena to appear and testify in the same criminal matter about which Crump made the Facebook posts; and that Crump's purpose in making the Facebook comments and subpoenaing the assistant district attorney was to try to force recusal of the Moore County DA's Office from her client's case. Crump did not appear for the show cause hearing. The court suspended her license for two years.

Michael A. DeMayo of Charlotte engaged in dishonesty, fraud, deceit, or misrepresentation in his statements to a departing associate about the content of DeMayo's call with a client who chose to be represented by the departing associate. The DHC suspended his law license for one year. The suspension is stayed for two years upon his compliance with enumerated conditions.

Lloyd T. Kelso of Gastonia attempted to have sexual relations with a client, provided financial assistance to a client, improperly revealed confidential information, and grossly mismanaged his trust account. The DHC suspended his law license for one year. He must comply with enumerated conditions to be reinstated and during the first year after reinstatement.

Mark A. Key of Lillington chronically

failed to comply with the law regarding personal and business taxes, engaged in felony mortgage fraud, disclosed client confidences, mismanaged his trust account, was disruptive during a superior court trial, made misrepresentations to an employee and knowingly underreported the employee's wages to the IRS, and made misrepresentations to the Grievance Committee. The State Bar presented evidence of Key's 20-year disciplinary history and argued that Key should be disbarred. The DHC announced its decision to suspend Key for five years, with a possible stay after three years upon compliance with conditions. The order of discipline has not yet been entered.

George Rouco of Charlotte pled guilty to felony possession of a controlled substance. He was suspended for three years by the DHC. The suspension is stayed for three years upon Rouco's compliance with enumerated conditions.

Ayeshinaye Smith of Raleigh lacked competence to represent an elderly, incompetent client, allowed herself to be used to facilitate elder fraud, did not maintain an arms-length relationship with the third party who paid her legal fee, allowed the third party to interfere with her independent professional judgment, did not receive informed consent from her client, and failed in her duty to a client with diminished capacity. The DHC suspended her license for three years. The suspension is stayed upon her compliance with enumerated conditions.

Completed Grievance Noncompliance Actions before the DHC

Elizabeth J. Caviness of Charlotte did not respond to a letter of notice and ignored subpoenas issued by the chair of the Grievance Committee. Caviness did not respond to the DHC's order to show cause why her license should not be suspended for grievance non-compliance. The chair of the DHC determined that Caviness was non-compliant and suspended her law license.



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Reprimands

Keisha M. Lovelace of Raleigh did not turn over documents ordered to be provided to opposing counsel, did not make reasonable efforts to ensure that her paralegal's conduct was compatible with her professional obligations, and did not timely respond to communications from opposing counsel, prejudicing the administration of justice. Lovelace also did not respond to her client's repeated requests for information and did not inform her client that the case was dismissed without prejudice. She was reprimanded by the DHC.

Scott D. Neumann of Highlands and staff under his supervision initiated a wire transfer of a client's funds pursuant to fraudulent wiring instructions without verifying the wiring instructions and failed to note numerous "red flags" which should have raised their suspicions about the fraud. By failing to verify the wiring instructions before disbursing, Neumann failed to use reasonable security measures to protect against theft from his trust account and failed to adequately supervise

his nonlawyer assistants.

Jason Michael Peltz of Asheville and staff under his supervision initiated a wire transfer of a client's mortgage payoff funds pursuant to fraudulent wiring instructions without verifying the wiring instructions and failed to note numerous "red flags" which should have raised their suspicions about the fraud. By failing to verify the wiring instructions before disbursing, Peltz failed to use reasonable security measures to protect against theft from his trust account and failed to adequately supervise his nonlawyer assistants.

Completed Petitions for Reinstatement/Stay – Uncontested

In 2016, **Keith C. Booker** of China Grove was suspended for five years by the DHC, which concluded that he neglected and did not communicate with clients, did not properly manage his trust account, and misapplied entrusted funds. Booker petitioned for reinstatement after six years. On October 13, 2022, the DHC reinstated Booker subject to a two-year probationary

period.

Transfers to Disability Inactive Status

Donald E. Britt of Wilmington, **G. Wendell Spivey** of Gatesville, and **Renita Linville** of Winston-Salem were transferred to disability inactive status.

Notice of Intent to Seek Reinstatement

In the Matter of Mildred A. Akachukwu

Notice is hereby given that Mildred A. Akachukwu, of Durham, NC, intends to file a Petition for Reinstatement before the Disciplinary Hearing Commission of The North Carolina State Bar. Mrs. Akachukwu was disbarred effective January 12, 2011, by The North Carolina State Bar for misappropriating client funds.

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611-5908, before May 1, 2023. ■

Legal Needs Spotlight: Improving Legal Services for Immigrant Populations

Each day North Carolinians searching for a solution to their legal problems are forced to navigate the system alone, facing cases in court, administrative bureaucracy, and complex problems without the assistance of a lawyer. In 2021, the NC Equal Access to Justice Commission and NC Equal Justice Alliance released the 2020 Legal Needs Assessment, the first comprehensive assessment of civil legal needs in North Carolina in more than two decades. Completed with funding support from NC IOLTA, the executive summary and report documented with greater clarity the most significant legal needs and the biggest barriers facing individuals seeking legal help. The executive summary is available at nclegalneeds.org.

In 2022, NC IOLTA convened the legal aid community to discuss specific strategies to respond to the greatest areas of identified need. An in-person convening in March led to the formation of four working groups, comprised of subject matter experts from

NC IOLTA grantees and stakeholders, to provide recommendations for improving the availability of and access to legal services in four areas: (1) family law; (2) legal services for immigrant populations; (3) outreach and communications; and (4) coordinated intake. The working groups released their recommendations in September 2022. The full set of recommendations can be found on NC IOLTA's website at bit.ly/LegalNeeds.

As NC IOLTA works this year to respond to the needs identified in the report and the community's recommendations about how to improve the availability of and access to legal services, we plan to highlight each identified area of need and the work being done across the state to provide solutions. We hope you will take this opportunity to learn more about pressing challenges facing our communities and join in meeting our shared professional obligation to improve the justice system and ensure the availability of legal services for all.

Legal Services for Immigrant Populations

Legal services for immigration and naturalization were the second-most cited underserved practice area in the Legal Needs Assessment, in addition to other areas of civil legal need for immigrant populations such as consumer issues, landlord/tenant issues, and workers' rights. The barriers impacting expanded access include restrictions on funding, changing federal laws, delays in processing, and language and literacy challenges. The Legal Services for Immigrant Populations Working Group recommended the following:

- (1) Developing a formal space for coordination among legal services providers serving this population to support better coordination, referral, and community strategy;
- (2) Expanding legal resources for immigrant populations including *pro se* resources, limited services, and *pro bono* opportunities;
- (3) Analyzing legal needs of the popula-

- **IOLTA Revenue.** Monthly revenue from participant income in 2022 was slightly depressed in the first six months of the year, but rose significantly in the second half of 2022 due to increases in the Federal Funds Target Rate (FFTR) and positive adjustments being made by many financial institutions in their interest rates paid on IOLTA accounts. Income from IOLTA accounts from January through December 2022 exceeded \$7.5 million.

- **2023 Grantmaking.** 2023 IOLTA awards were approved by the trustees at the December Board Meeting. IOLTA awarded 33 grants totaling \$6.1 million in 2023. For a list of all 2023 grants, visit nciolta.org/media/730722/2023-grants.pdf.

- **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. In the first half of the 2022-23 state year, NC IOLTA has administered \$421,688 in domestic violence state funds. An additional \$100,000 in state funding in 2022-23 was directed to Pisgah Legal Services in the state budget for their veteran's legal services program. A report on funding administered under the Domestic Violence Victim Assistance Act can be found at

nciolta.org/media/730496/domestic-violence-report.pdf.

- **Don't forget to certify!** Each year, as part of the annual dues process, all members of the North Carolina State Bar are required to make a certification regarding your IOLTA status. This simple question asks you to confirm if you do or do not hold funds on behalf of North Carolina clients. Whether you complete the dues process online through the State Bar's Member Portal or print a form and mail it in, don't forget to complete this step. 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.

IMPACT AT A GLANCE

For more about NC IOLTA's impact, visit www.nciolta.org



OUR MISSION

NC IOLTA improves the lives of North Carolinians by strengthening the justice system as a leader, partner, and funder.

OUR VISION

A North Carolina where all people can effectively meet their legal needs.



In 2021, NC IOLTA surpassed more than \$100 million in grants awarded to improve the lives of North Carolinians.

NC IOLTA awards grants to provide civil legal aid for low-income individuals and other programs designed to improve the administration of justice.

NC IOLTA distributed more than \$4.8 million in 2021, including both NC IOLTA awards and state funds.

tion further; and

(4) Supporting staff recruitment and retention.

Legal aid providers offer legal services to immigrant populations, for example, assisting victims of crime to obtain legal status for which they are eligible because they helped in the prosecution of a crime or securing orders of protection to keep families and children safe from abuse, in addition to a host of other general civil legal needs. In the past year, organizations responded to emerging needs in innovative ways, including through the following two new programs:

Legal Services for Afghan Refugees

Following the withdrawal of US troops from Afghanistan in August 2021, over 80,000 Afghan refugees have arrived in the United States. Certain Afghan partners who were employed by the US government qualified for a Special Immigrant Visa. However, most refugees received two-year Temporary Protected Status that expires in 2023. The US Congress discussed but did not pass the Afghan Adjustment Act, which would have extended a pathway to lawful permanent residency. Therefore, Afghan parolees must apply for asylum before their temporary protected status expires.

Legal aid providers in North Carolina have stepped up to assist qualified refugees in navigating the legal process. The Charlotte Center for Legal Advocacy initiated an Afghan

Asylum Project that represented 35 refugees in the first half of 2022. Similarly, Pisgah Legal Services (Western NC) launched a *pro bono* program to assist 38 refugees seeking asylum status. World Relief Durham welcomed approximately 100 Afghan refugees and hosted an information session to help the families better understand the immigration legal system. International House of Metrolina (Charlotte) also began serving Afghan refugees in 2022 through their Immigration Law Clinic.

Statewide Removal Defense Network

The Charlotte Immigration Court (CIC), which covers all of North Carolina and South Carolina, has the lowest proportion of respondents who are represented by an attorney of any immigration court in the United States. 23.5% were represented compared to a national average of 60.2%. Additionally, only 15% of asylum applications filed in the CIC were granted, compared to the nationwide asylum grant rate of 47.7%. Lawyers who practice in the CIC observe anecdotally that they have never seen even one unrepresented respondent receive asylum.

In response, the Charlotte Center for Legal Advocacy (i.e., the Advocacy Center) has developed a statewide network to provide free eligibility screenings for immigrants who are in removal proceedings. The Statewide Removal Defense Network launched in May 2022. Participating organizations include the

North Carolina Justice Center as well as law school immigration clinics at Duke, UNC, and Campbell.

Staff at the Advocacy Center help desk room located at the Charlotte Immigration Court now offer free eligibility screenings to help determine the types of immigration relief for which someone may be eligible. Once the screening is completed, staff determine if representation is warranted and, if so, attempt to find *pro bono* or low-cost representation for eligible individuals.

One Advocacy Center client, "James," was trafficked to the United States by his stepfather at the age of 14. After arrival, the stepfather would not allow James to enroll in school and forced him to work in construction six days a week and took his wages. After a few months, the stepfather abandoned James, who was able to move in with an uncle in Charlotte. This uncle also forced him to work in construction. Eventually, after falling off a roof and hurting his back while working at a construction site, James went to the Advocacy Center office and sought help to apply for a T-Visa (for victims of human trafficking). James is now eligible to go to school and lives with a cousin.

The Charlotte Center for Legal Advocacy is also partnering with American Immigration Lawyers Association-Carolinas and the Capital Area Immigrants' Rights Coalition to host a CLE on how to advise immigrant respondents on how to represent themselves in immigration court. ■

Committee Publishes Opinions on Confidentiality in Settlement Agreements and Duties When Selling a Law Practice and Handling Aged Client Files

Council Actions

The State Bar Council did not adopt any ethics opinions this quarter. At its meeting on January 19, 2023, the Ethics Committee considered a total of seven inquiries. Notably, the committee withdrew Proposed 2020 FEO 6 (published in October 2020) following the adoption of amendments to Rule 1.6 and Rule 1.9 regarding a lawyer's professional responsibility in handling confidential client information (see page 54). The proposed opinion originally concluded that a lawyer must have client consent to publicly discuss any aspect of the client's case, including information contained in the public record or events at a public hearing. Under the newly amended rules, a lawyer may discuss information acquired during the representation of a former client if the information is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated unless disclosure would be detrimental to the client. As the amended rules rendered the original opinion moot, the committee voted to withdraw the opinion and allow the rule amendments to resolve the inquiry.

Two inquiries were returned or sent to a subcommittee for further study, including Proposed 2022 FEO 4, Billing Considerations for Overlapping Legal Services, and an inquiry examining a lawyer-mediator's ability to draft an agreement between *pro se* parties defining the terms of participating in a mediation. The committee declined to opine on an inquiry addressing a lawyer's ability to use the title "Doctor" in the lawyer's communications, thereby confirming the State Bar's prior decisions on the issue (RPC 5 and 2007 FEO 5). Additionally, the committee received a report from a new subcommittee created to study a possible "humanitarian exception" to the prohibition on providing financial assistance to a

client set forth in Rule 1.8(e). The exemption would permit a lawyer to provide nominal financial assistance to indigent clients under limited circumstances. Lastly, the committee approved the publication of two new proposed opinions, which appear below.

Proposed 2023 Formal Ethics Opinion 1 Sale or Closure of a Law Practice and Proper Handling of Aged Client Files January 19, 2023

Proposed opinion clarifies a lawyer's professional responsibility when closing and/or selling a law practice and when handling aged client files.

Background:

Lawyer A is a solo practitioner with a general practice focused primarily on real estate, estate planning, and small business matters. After 40 years of practice, Lawyer A has decided to retire. Lawyer B, a solo practitioner in Lawyer A's town with a practice similar

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.

to Lawyer A's practice, approached Lawyer A about purchasing Lawyer A's practice. After negotiations, Lawyer A agrees to sell his entire practice to Lawyer B. The sale includes Lawyer A's entire book of business, encompassing both current clients and former clients, but does not include Lawyer A's office space. Lawyer A plans to provide Lawyer B with the client files for all current

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.

clients as well as all former clients, which will be stored in Lawyer B's office. Lawyer A did not dispose of any client files created during his 40 years of practice.

Inquiry #1:

Considering Lawyer B's experience and current practice, is Lawyer B an appropriate purchaser of Lawyer A's practice?

Opinion #1:

Yes.

A lawyer who sells his or her practice must do so in a way that protects the interests of the lawyer's clients and complies with all of the lawyer's obligations under the Rules of Professional Conduct. Rule 1.17, cmt. [11]. These protections include selecting a purchasing lawyer who is competent to assume the representation of the seller's clients and who is willing to undertake the entirety of the representation. Rule 1.1; Rule 1.17, cmt. [11]. Such protections also include selecting a purchaser who is not disqualified from participating in the representations transferred via the sale due to a conflict of interest. *See* Rules 1.7 & 1.9; Rule 1.17, cmt. [11]. If a conflict exists, the seller should attempt to obtain the client's informed consent to any conflict to ensure continuous representation of the client. Rule 1.17, cmt. [11]. If a conflict exists that would prevent the purchaser from assuming the representation of the seller's client, the seller must notify the client to obtain new counsel as a result of the sale. Rule 1.17(d).

Here, Lawyer B has a practice concentrated in similar areas of law to that of Lawyer A's practice. Lawyer B also practices in the same geographic area as Lawyer A, contributing to Lawyer B's potential to smoothly and successfully assume the representations of Lawyer A's clients. Accordingly, and presuming no other concerns relative to Lawyer B's competency exist, Lawyer A's decision to sell his practice to Lawyer B satisfies Lawyer A's duty to provide competent representation to his clients through the sale of his practice. Lawyer A and Lawyer B must also review the clients whose representations will be transferred to Lawyer B to detect and resolve any conflicts of interest. During such a review, confidential client information may be disclosed to the extent reasonably necessary to detect conflicts of interest. Rule 1.6(b)(8).

Inquiry #2:

Despite his retirement and sale of practice to Lawyer B, Lawyer A hopes to offer limited legal services to a few of his long-term clients, family members, and friends in the area (for example, Lawyer A might perform an occasional residential closing transaction or draft a simple will).

May Lawyer A offer these limited services after selling his practice to Lawyer B?

Opinion #2:

No, unless the service is offered *pro bono* to indigent persons or members of the seller's family. Rule 1.17(a) requires that a lawyer selling a law practice must "cease[] to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice[.]" As an exception to this general prohibition, Rule 1.17(a) allows the seller to continue practicing law with the purchaser, provide *pro bono* legal services to indigent persons, and/or provide legal services to members of the seller's family.

Upon completing the sale of his practice, Lawyer A must cease practicing law within a 100-mile radius of the purchased practice's location. Should Lawyer A want to provide any legal services within this radius, Lawyer A is restricted to only providing legal services a) through Lawyer B's practice, or b) to indigent persons or family members at no charge. *See* Rule 1.17, cmt. [3]. The requirement to cease practice under Rule 1.17(a) also does not prohibit Lawyer A from being employed as a staff member of a public agency or legal services entity that provides legal services to the poor, or as in-house counsel to a business. *Id.*

Inquiry #3:

In preparing the sale and transfer of his practice to Lawyer B, including all of Lawyer A's client files, Lawyer A plans to mail written notice of the sale to all current clients impacted by the sale pursuant to Rule 1.17(c).

Does written notice of the sale only to Lawyer A's current clients satisfy Lawyer A's obligation under the Rules?

Opinion #3:

No. Rule 1.17(c) requires the seller of a law practice to send written notice "to *each* of the seller's clients" prior to the sale informing

them of the proposed sale (including the identity of the purchasing lawyer), the client's right to retain other counsel and take possession of the client's files before and after the sale, and that the client's consent to the transfer of the client's files and representation will be presumed if the client does not object to the transfer within 30 days of receipt of the notice. Rule 1.17(c)(1) – (3) (emphasis added). The comment to Rule 1.17 clarifies, "Written notice of the proposed sale must be sent to all clients who are currently represented by the seller *and to all former clients whose files will be transferred to the purchaser.*" Rule 1.17, cmt. [6] (emphasis added).

Clients impacted by the sale of a law practice and whose information and/or client property¹ is subject to transfer to a new lawyer are entitled to know about the intended transfer and have a reasonable opportunity to redirect their information and/or property as they deem appropriate. This is particularly important for client files containing original documents of legal significance, such as original wills and other estate planning documents. The purpose of notifying both current clients and former clients whose files are transferred to the purchaser is to ensure clients are aware of the location of their files and provide those clients with the opportunity to exercise control over the location and possession of their files.

What constitutes sufficient written notice will depend upon the circumstances and the information available to the lawyer, but a lawyer must make reasonable efforts to provide the required notice to the affected clients using the contact information available to the lawyer. Reasonable efforts may include sending a letter to the client's last known address, sending an email to the client's last known email address, and/or attempting to call the client using the last known telephone number to facilitate the provision of the written notice. Comment 6 to Rule 1.17 adds, "Although it is not required by this rule, the placement of a notice of the proposed sale in a local newspaper of general circulation would supplement the effort to provide notice to clients as required by paragraph (c) of the rule." In the event a lawyer is uncertain of whether a client received the written notice sent specifically to the client, a lawyer should publish a notice of the proposed sale in the local newspaper. If these reasonable efforts are made, and if the client does not communicate his or

her objection to the transfer of the client's information,² the client's consent to the transfer of client information will be presumed pursuant to Rule 1.17(c).

Accordingly, Lawyer A must make reasonable efforts to provide the written notice described in Rule 1.17(c) to all current clients and all former clients whose information, client files, and/or client property will be transferred to the possession of Lawyer B.

Inquiry #4:

Upon making reasonable efforts to provide written notice of the proposed sale as described in Opinion #3, may Lawyer A transfer a former client's information, client file(s), and/or client property to Lawyer B if the client fails to communicate an objection to the transfer within 30 days of receiving the notice?

Opinion #4:

Yes. *See* Opinion #3.

Inquiry #5:

Upon making reasonable efforts to provide written notice of the proposed sale as described in Opinion #3, may Lawyer A transfer the active representation of a current client, including the client's information, client file(s), and/or client property, to Lawyer B if the client fails to communicate an objection to the transfer within 30 days of receiving the notice?

Opinion #5:

No, unless authorized by a court order. Rule 1.17(e) states, "If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction." Unlike the transfer of information concerning a former client, Rule 1.17 requires the extra step of obtaining a court order to authorize the transfer of an active representation of a client as a means of protecting the client's interests in a pending matter. The comment to Rule 1.17 explains,

Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate

interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

Rule 1.17, cmt. [7].

Once Lawyer A obtains a court order authorizing the transfer of the active representation to Lawyer B, and presuming Lawyer A has otherwise complied with the written notice requirement set out in Rule 1.17(c) (*see* Opinion #3), Lawyer A may transfer the current client's client file and prospective responsibility for the representation to Lawyer B. If a court does not grant the petition to transfer the client/representation to the purchaser, the matter must be excluded from the sale of the practice.

Alternatively, if Lawyer A cannot successfully communicate with his current client regarding the proposed transfer of the representation to Lawyer B, Lawyer A may consider withdrawing from the representation pursuant to Rule 1.16.

Inquiry #6:

Considering Opinion #3, must Lawyer A provide notice of the sale of his practice to former clients whose files are not transferred to Lawyer B?

Opinion #6:

No. Lawyer A may, however, inform former clients of his retirement and sale of his practice to Lawyer B should Lawyer A desire to do so. Lawyer A should include language in such notice clarifying that no action is required of these former clients.

Inquiry #7:

Many of Lawyer A's former client files contain original documents of legal significance for his clients, such as executed original wills and original stock certificates. Given the age on some of the files, Lawyer A anticipates it will be extremely difficult to locate a number of these former clients.

Must Lawyer A attempt to contact all former clients whose files contain original documents of legal significance to facilitate the return of the client file or provide notice of the sale and transfer of the client's files to Lawyer B?

Opinion #7:

Yes.

"Original documents of legal significance" are documents generated during the representation of a client that have an ongoing legal value to the client. Such documents have an inherent value, and their continued existence is necessary to achieve the client's goal for the representation. Conversely, the destruction or absence of such documents prior to the termination of the document's value could thwart the purpose of the representation, damage the client's legal position, cause the client to experience a material loss. For example, client files stemming from estate planning work—including the drafting of wills, powers of attorney, and the like—may contain original documents that must be returned to the client if the lawyer did not provide these documents to the client at the conclusion of the representation. Similarly, an original contract drafted by a lawyer and executed by the lawyer's client and other relevant parties may qualify as an original document of legal significance if the parties remain subject to the terms of the contract; upon the conclusion or fulfillment of the contract, the contract may lose its legal significance. On the other hand, client files stemming from real property closings will likely not contain original documents of legal significance that must be returned to the client, largely due to the documents' availability in the public record or because the documents need not be preserved to carry out the goals of the representation.³

Original documents of legal significance are property belonging to the client that cannot be destroyed or otherwise disposed of regardless of age. RPC 209. As a general rule, lawyers must return client property—including original documents of legal significance—at the conclusion of the representation. Rule 1.16(d) ("Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as...surrendering papers and property to which the client is entitled[.]"). Although lawyers may retain a client's original documents as a method of safekeeping, lawyers and their practices are subject to a variety of interruptions and changes that threaten the client's awareness, the client's control, and the preservation of these significant documents. Clients and lawyers are best served by having the client's original documents of legal significance provided to them upon the conclusion of the representation to ensure the client is in con-

trol of the documents' safekeeping. Relatedly, if a lawyer provides a client with his or her original document(s) of legal significance and retains a duplicate of the original document in the lawyer's client file, the duplicate is presumptively not legally significant.

If a lawyer and client agree to have the lawyer serve as the repository for the client's original documents, the lawyer must take steps to safeguard the client property in accordance with the Rules of Professional Conduct. Specifically, Rule 1.15-2(d) provides:

All entrusted property received by a lawyer that is not deposited in a trust account or fiduciary account (such as a stock certificate) shall be promptly identified, labeled as property of the person or entity for whom it is to be held, and placed in a safe deposit box or other suitable place of safekeeping.

The Rule goes on to require the lawyer entrusted with such client property to "disclose the location of the property to the client or other person for whom it is held." *Id.* A lawyer's duty to properly safeguard the client's property—including original documents of legal significance—remains intact until the lawyer returns the entrusted client property to the client or to the person for whom the property is held pursuant to the client's instructions. Rule 1.15-2(n).

In the present scenario, Lawyer A has an ongoing obligation to safeguard the property entrusted to him by his clients, to wit: the original documents of legal significance contained in his client files. Retirement does not terminate Lawyer A's professional obligation. Thus, Lawyer A must review all of his files to determine which have client property that must be returned and must contact all impacted clients to either facilitate the return of the client property or notify the clients of the impending sale of his practice and proposed transfer of the client property to Lawyer B. *See* Opinion #3; Rules 1.17(c) and 1.15-2(d). Doing so is the only fair way to ensure clients are aware of the location of their property and are provided the opportunity to retrieve their property as they see fit.

It must be noted, however, that transferring such client property to Lawyer B is not ideal due to the client's eventual need to access or obtain the document. Rather, returning the property to the client should be prioritized to avoid potential confusion

regarding the location of the property.

Returning the client property, however, is not always possible, and thus transferring the property to Lawyer B is permissible if done in compliance with Rules 1.17 and 1.15-2(d). If transferring the property to Lawyer B is necessary, Lawyer A should strongly consider supplementing his efforts to notify a client about the impending sale with a public notice to the community—such as an advertisement in a local newspaper of general circulation in the community, a posted notice at the courthouse, or a notice posted on a website relevant to the community—to reach a wider audience or to serve as a potential archive of where the property will be located should the client desire to retrieve the property. to serve as a potential archive of where the property will be located should the client desire to retrieve the property. Rule 1.17, cmt. [6]. Additionally, if the client does not retrieve the property and Lawyer A does not transfer the property to a subsequent lawyer via the purchase of Lawyer A's practice, Lawyer A may attempt to locate a "suitable place of safekeeping" to safeguard the property, such as the identified executor of a client's will, the named holder of the client's power of attorney, or the clerk's office in the county where the lawyer's practice was located pursuant to N.C. Gen. Stat. § 31-11 (lawyers should contact the clerk's office to confirm the ability to safeguard such documents prior to bringing the documents to the clerk's office). If the client property is not retrieved, if Lawyer A does not transfer the property to Lawyer B in accordance with the Rules, and if Lawyer A cannot identify an alternative suitable place of safekeeping that preserves the property for the client and makes the property appropriately identifiable and accessible, Lawyer A retains his obligation to safeguard the property despite his retirement and the sale of his practice.

This opinion does not speak to any legal obligations imposed on Lawyer A's retention and/or production of a client's original document, as such obligations are outside the scope of the Rules of Professional Conduct. Lawyer A should take steps to identify and comply with any applicable legal obligations concerning the client property. Rule 1.1.

Inquiry #8:

Instead of transferring his former clients' files to Lawyer B, may Lawyer A destroy the

former client files without notice to the former clients?

Opinion #8:

Yes, provided that the files are more than six years old, except that any client property, such as original documents of legal significance, contained in the client files must be securely retained or returned to the client regardless of age. RPC 209, RPC 234. Any file less than six years old should be retained by Lawyer A or returned to the client. *Id.* Lawyer A may only destroy a client file less than six years old if the client consents. *Id.* The applicable statute of limitations may require Lawyer A to retain a closed file for more than six years. RPC 209. Lawyer A should also maintain a record of all destroyed client files. *Id.*

Inquiry #9:

Lawyer A sold his practice to Lawyer B. In completing the sale, Lawyer A transferred some of his former client files containing original documents of legal significance to Lawyer B without providing notice to those former clients about the sale of his practice and transfer of the client's file.

Is Lawyer A still professionally responsible for those former client files despite them being in Lawyer B's possession?

Opinion #9:

Yes. Lawyers may not ordinarily transfer their professional responsibility concerning a client to another person. The Rules of Professional Conduct, however, recognize an exception to this general maxim via the sale of a law practice, but this exception can only be realized if the selling lawyer complies with the entirety of Rule 1.17. Here, Lawyer A failed to provide notice of the transfer of the client files to the affected former clients. Accordingly, Lawyer A did not comply with Rule 1.17(c), and has not relieved himself of his professional responsibilities towards those clients. Lawyer A must promptly inform the affected clients of the sale and transfer of those client files to Lawyer B to fulfill his professional responsibility under Rule 1.17.

Because Lawyer B has accepted the transfer of the former client files containing client property, Lawyer B shares professional responsibility with Lawyer A to properly safeguard the client property, to ensure that the clients and/or individuals for whose ben-

efit the property is held are aware of the property's location, and to provide an opportunity for retrieval of the property.

Inquiry #10:

Same scenario, but instead of selling his practice to Lawyer B, Lawyer A decided to close his law practice and retire. Must Lawyer A comply with the same written notice obligations and attempt to return client property to former clients as outlined above?

Opinion #10:

It depends. For current clients, Lawyer A must determine if he can resolve the client's pending matter prior to closing his practice. If so, Lawyer A need not send notice of his intent to retire and close his practice to those clients. If Lawyer A cannot resolve a current client's matter prior to closing his practice, Lawyer A must notify the client of his intention to terminate/withdraw from the representation. Rule 1.16. Lawyer A's withdrawal must be accomplished without material adverse effect on the interests of the client, and Lawyer A must "take steps to the extent reasonably practicable to protect a client's interests," including giving the client reasonable notice and sufficient time to obtain new counsel, as well as returning to the client all property to which the client is entitled (e.g., the client's file, any unearned fees, etc.). Rules 1.16(b) & (d). If necessary, Lawyer must also seek permission from the court prior to withdrawing. Rule 1.16(c).

Former clients, however, need not be notified of Lawyer A's retirement and law office closure, though Lawyer A is permitted to send such a notice. If Lawyer A is still in possession of client files at the time of closing his practice, Lawyer A may notify clients to retrieve their files or Lawyer A may destroy the client files if the files are older than six years. *See* Opinion #8. If the files are not older than six years, Lawyer A must retain the files for the requisite period of time or return the file to the client. *Id.* If Lawyer A possesses property belonging to the client, including original documents of legal significance, Lawyer A must either return the property to the client or safeguard the property in a suitable place of safekeeping for future client retrieval. *See* Opinion #7.

Inquiry #11:

May Lawyer A transfer entrusted client funds to Lawyer B or any other third party in

connection with the sale or closure of his practice?

Opinion #11:

No, unless the client consents or the court approves the transfer. If a client does not expressly consent to the transfer of entrusted funds, Lawyer A must either retain and continue to safeguard the funds until returned to the client, or Lawyer A must escheat the funds pursuant to Rule 1.15-2(r).

Endnotes

1. "Client property" as referenced in this opinion does not include entrusted client funds. *See* Opinion #11 for analysis of handling entrusted client funds when selling or closing a law practice. Additionally, client information or client property referenced in this opinion refers to both physical and/or electronically stored information. *See* RPC 234, 2013 FEO 15 for guidance on electronic storage of client information.
2. Rule 1.17(c)(3) requires a client to note his or her objection to the proposed transfer of the client's file within 30 days of receipt of the written notice. When receipt may be presumed to occur, thus triggering the 30-day period, will depend on the method of notice. For example, if the lawyer sends written notice to a client via email to the client's last known email address, and the email does not "bounce back" or otherwise indicate the email was undeliverable, the lawyer can reasonably presume receipt occurred on the day the email was sent. If the notice was mailed to the client's last known mailing address, the lawyer can reasonably presume the notice was received three days after the notice was deposited in the mail as set out in Rule 6(e) of the North Carolina Rules of Civil Procedure.
3. The inclusion of a particular document in the public record does not determine whether the original document is "legally significant." Each document must be evaluated on its own to determine if the original document is legally significant, i.e., if destruction of the original document would harm the client or thwart the purpose of the representation that produced the document.

Proposed 2023 Formal Ethics

Opinion 2

Confidentiality Clause that Restricts a Lawyer's Right to Practice January 19, 2023

Proposed opinion rules that a confidentiality clause contained in a settlement agreement that restricts a lawyer's ability to disclose publicly available information violates Rule 5.6.

Lawyer A represents Plaintiff in a tort action that has been publicly filed and pending for several years. The trial court issued an extensive written summary judgment decision that includes important analyses and applications of North Carolina law. Certain issues were appealed to the North Carolina Court of Appeals. The court of appeals issued a published opinion that included

new law. The parties thereafter agree at mediation to settle the case and sign a Memorandum of Mediated Settlement Agreement, which, along with the settlement amount and other terms, states that the parties will agree to a "standard" confidentiality clause. Lawyer B, counsel for the defendants, later provides a draft Settlement Agreement and Release that includes proposed confidentiality language. Instead of an agreement to keep non-public information (such as the settlement terms) confidential, this provision purports to make publicly available information¹ (such as the facts of the case, the names of the parties, and the jurisdiction where the case was filed) confidential. It also seeks to restrict Lawyer A's use of and reference to the case, including public court decisions, by prohibiting disclosure to "any person for any reason" other than in "similar cases," and even then, only as "minimally required."

Inquiry #1:

As part of a settlement agreement between private parties, may Lawyer B restrict or otherwise limit Lawyer A's disclosure and/or use of publicly available information concerning or stemming from the case, including court decisions and opinions?

Opinion #1:

No. Rule 5.6(b) provides that a lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties. Rule 5.6 is intended to "(1) preserve the public's access to lawyers who, because of their background and experience, might be the best available talent to represent these individuals, (2) to prevent parties from 'buying off' the opposing lawyer, and (3) to prevent a conflict between a lawyer's present clients and the lawyer's future ones." ABA Formal Ethics Opinion 93-371 (1993).

In Formal Opinion 00-417, the ABA Standing Committee on Ethics and Professional Responsibility addressed the application of Rule 5.6(b) to a settlement agreement that prohibited counsel from using information learned during the existing representation in any future representation against the same opponent. Finding that the restriction was impermissible under Rule 5.6(b), the committee explained that, even though it was not a direct ban on any future

representation, as a practical matter, “[it] effectively would bar the lawyer from future representations because the lawyer’s inability to use certain information may materially limit his representation of the future client and, further, may adversely affect that representation.” The committee also concluded that such a provision would undermine an important policy rationale underlying Rule 5.6(b). By preventing the use of information learned during the prior representation, the provision would restrict the public’s access to the services of a lawyer who, “by virtue of [his] background and experience, might be the most qualified lawyer available to represent future clients against the same opposing party.” *Id.*

Similarly, Rule 5.6(b) prohibits settlement provisions that restrict a lawyer from disclosing publicly available information. For example, a confidentiality provision prohibiting a lawyer from disclosing publicly available information regarding the lawyer’s handling of a particular type of case against the settling defendant would be an impermissible restriction on the lawyer’s right to practice and would deprive potential clients of information important to the lawyer’s evaluation of the competence and qualifications of potential counsel. Such conditions have the purpose and effect of preventing the lawyer from informing potential clients of their experience and expertise, thereby making it difficult for future clients to identify well-qualified counsel and employ them to bring similar cases.

The ABA has concluded that settlement agreements containing indirect restrictions on the lawyer’s right to practice—such as the restriction proposed in this inquiry—violate Rule 5.6(b). We agree. Rule 5.6 prohibits not only express restrictions on a lawyer’s right to practice, but also prohibits settlement terms whose practical effect is to restrict the lawyer from undertaking future representations. As noted in RPC 179, “Although public policy favors settlement, the policy that favors full access to legal assistance should prevail.” The public and prospective clients must be empowered to identify and receive legal services from qualified counsel who are not restricted in their use of publicly available information, particularly court orders and opinions that have a direct impact on the law at issue in the client’s case. Permitting the restriction proposed in this inquiry harms the public and

the administration of justice by depriving potential clients of qualified, experienced counsel. Lawyer B may not propose such a restriction, and Lawyer A may not agree to such a restriction.

Inquiry #2:

Are there any circumstances under which Lawyer A may agree to a settlement of a client’s claim that restricts Lawyer A’s ability to use or disclose information concerning the case?

Opinion #2:

Yes.

Confidentiality provisions cannot be used to completely bar a lawyer from disclosing at least some information related to disputes the lawyer has handled and resolved. This does not mean that all confidentiality clauses are prohibited. A settlement agreement may provide that the terms of the settlement and other non-public information may be kept confidential, *see* 2003 FEO 9, but it may not require that public information be confidential. There is no ethical prohibition under the Rules of Professional Conduct against the most common confidentiality provisions, which prohibit disclosure of the terms of a specific settlement, including the amount of the payment. Negotiating for, agreeing to, and ultimately including a confidentiality provision precluding disclosure of the fact of or terms of the settlement agreement (if the information is not publicly known) is not prohibited. A settlement condition providing for nondisclosure of the amount and terms of a settlement is not only proper, but should be recognized where the details are not a matter of public record.

The Alabama Office of General Counsel reached a similar conclusion. They opined that (1) it is ethically permissible to agree to enter or recommend a confidentiality agreement that prevents the disclosure of the settlement amount; (2) it is also ethically permissible to agree to maintain confidentiality over certain facts, or the identities of individuals or corporate entities that are not in the public record; and (3) it is ethically permissible to agree not to publish or disseminate the manner in which a case has been resolved. Alabama Office of General Counsel Rule 18 Ethics Opinion (February 7, 2022).

We agree. A settlement agreement cannot include a confidentiality clause that pro-

hibits a lawyer from using or disclosing publicly available information, but may restrict a lawyer’s ability to use or disclose non-public information concerning the case as described above.

Inquiry #3:

Does the “right to practice” under Rule 5.6(b) include a lawyer informing members of the Bar about developments in the law of which the lawyer is aware through CLE presentations, articles in professional publications, conversations, or email communications? If so, would a restriction in a private settlement agreement seeking to prevent Lawyer A from including the case in any updates on legal development to members of the Bar infringe on the “right to practice”?

Opinion #3:

Yes, and yes. Prioritizing one party’s settlement terms over the ability of an experienced lawyer to educate other lawyers on legal developments through continuing legal education harms the profession and the clients they serve. Lawyer A may share publicly available information in a public forum. *See* Opinion #1.

Inquiry #4:

Are there any other Rules of Professional Conduct that prevent a lawyer from insisting on or agreeing to provisions in a private settlement agreement that would inhibit the lawyer from being able to fully disclose and discuss publicly available court decisions in a case or to a court in the future?

Opinion #4:

Yes. First, limiting the ability of a lawyer to discuss prior cases implicates Rule 1.7 (Conflict of Interest: Current Clients). Rule 1.7(a)(2) provides that a lawyer may not represent a client if the representation of the client may be materially limited by a personal interest of the lawyer. Including a confidentiality clause in a proposed settlement agreement that restricts a lawyer’s ability to represent future clients, or to use and/or disclose publicly available information creates a conflict of interest between the lawyer and the lawyer’s current client. The lawyer has a personal interest in being able to use and disclose the public elements of one client matter to assist a new client or to educate other

CONTINUED ON PAGE 57

Amendments Approved by the Supreme Court

On 2 November 2022, the North Carolina Supreme Court approved the following rule amendments. (For the complete text of the amendments, see the Spring 2022 and Summer 2022 editions of the *Journal* or visit the State Bar website: ncbar.gov.)

Amendments to the Rules Concerning Rulemaking Procedures

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

The 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.

Amendments to the Rules Concerning Procedures for the Administrative Committee

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

The amendment gives 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.

Amendments to the Rules Concerning the Plan for Certification of Paralegals

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

The 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.

Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Section .0100, Client-Lawyer Relationship

The amendment to Rule 1.6 adds a sentence to comment [1], explaining that information acquired during a professional rela-

Highlights

· Proposed amendments to the CLE rules and regulations reimagine the procedures and process for regulating mandatory CLE. See the complete set of rule amendments on page 13 of the *Journal*.

tionship with a client does not encompass information acquired through legal research. The amendments to Rule 1.9 clarify when a lawyer who has formerly represented a client may use or reveal public information relating to the former representation. The amendments to Rule 1.19 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.

Amendments Pending Supreme Court Approval

At its meetings on October 21, 2022, and January 20, 2023, the Council of the North Carolina State Bar 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 Fall and Winter 2022 editions of the *Journal* or visit the State Bar website: www.ncbar.gov.)

Proposed Amendments to the Rule on Standing Committees of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees and Boards

The proposed amendments designate the Access to Justice Committee as a standing committee of the Council.

Proposed Amendments to the Discipline and Disability Rules

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

Proposed amendments to Discipline and Disability Rules .0113, .0105, and .0106 provide the procedural framework for grievance reviews for discipline issued to a respondent by the Grievance Committee. Statutory amendments enacted last year required the establishment of the review procedure.

The proposed amendments to Rule .0119 set forth what the State Bar must do when a criminal conviction relevant to a disciplinary matter has been expunged, overturned, or otherwise eliminated.

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 judicial official to offset each year of inactive status for the purpose of determining whether the judge (inactive member) must sit for and pass the bar exam to be reinstated to active status.

Proposed Amendments to the Rules Governing IOLTA

27 N.C.A.C. 1D, Section .1300, Rules

Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts (IOLTA)

The proposed amendments are largely technical in nature, improving clarity and revising designated dates and timeframes to comport with practice.

Proposed Amendments to the 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 a prepaid legal services plan to prohibit a plan from operating simultaneously as an intermediary organization (formerly known as a lawyer referral service).

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rule 1.15, Safekeeping Property

The proposed amendments add definitions for four different types of ledgers to Rule 1.15-1, and reorder the subparagraphs in Rules 1.15-2 and 1.15-3 to make the progression of requirements more logical.

27 N.C.A.C. 2, Rule 4.1, Truthfulness in Statements to Others

The proposed technical correction to Rule 4.1, Comment [2], replaces a reference to "tortuous misrepresentation" with "tortious misrepresentation."

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

At its meeting on January 20, 2023, the council voted to publish for comment the following proposed amendments:

Proposed Amendments to the CLE Rules and Regulations

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the

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

The proposed amendments reimagine the procedures and processes, including fees, for regulating compliance with mandatory CLE. Additional information and the full text of

the proposed amendments can be found on page 13 of the *Journal*. ■

Proposed Opinions (cont.)

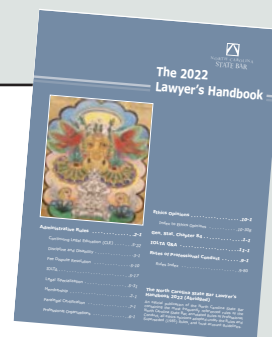
lawyers. The client, however, has an interest in signing a settlement agreement even if the agreement includes language that restricts the lawyer. Lawyers may not, therefore, prepare or agree to a private settlement agreement that includes a confidentiality clause that restricts a lawyer's ability to practice in violation of Rule 5.6. The second rule implicated is Rule 3.3 (Candor Toward the Tribunal). Rule 3.3(a) provides in pertinent part that; a lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. Should new litigation be filed either with similar facts and/or against the same defendant, each lawyer has a profes-

sional responsibility to inform the court of any prior controlling opinions. Furthermore, under Rule 3.4 (Fairness to Opposing Party and Counsel), lawyers generally should not seek to obstruct another lawyer's or individual's access to evidence. Lastly, "any attempt to prevent a lawyer from using information he has or knows about when trying to assist a client would violate Rule 8.4(d) (Misconduct) since such limitations would be prejudicial to the administration of justice." Alabama Office of General Counsel Rule 18 Ethics Opinion (February 7, 2022). ■

Endnote

1. "Publicly available information" includes information contained in the public record, information that was disclosed at a public hearing, or information that is otherwise publicly disseminated.

Preorder the 2023 Lawyer's Handbook



Order a hard copy by submitting an order form (found on the State Bar's website at bit.ly/2qXcDTA) by April 21, 2023. The digital version will still be available for download and is free of charge.

John B. McMillan Distinguished Service Award

Charles R. Hardee

Charles R. Hardee was presented with the John B. McMillan Distinguished Service Award at the Pitt County Bar Association holiday party held on December 8, 2022, in Greenville. State Bar Vice-President Matthew W. Smith and State Bar Councilor Scott C. Hart presented the award. Past-President Darrin D. Jordan also attended the presentation.

Mr. Hardee was born and raised in North Carolina. He obtained a bachelor's degree in business administration from the University of North Carolina at Chapel Hill in 1978. He went on to receive his law degree from Campbell University Norman Adrian Wiggins School of Law in 1981. Since graduating from law school, Mr. Hardee has developed a personal injury practice in Greenville, North C. He partnered with his sons-in-law, attorneys Brack Massey and Kyle Blodgett, to form the law firm of Hardee, Massey & Blodgett, LLP.

Mr. Hardee is a member of the American Board of Trial Advocates, and he holds licenses to practice law before all North Carolina state courts, the US District Court for the Eastern District of North Carolina, the US Court of Appeals for the 4th Circuit, and the Supreme Court of the United States. Mr. Hardee has a reputation for navigating complex cases with skill, while maintaining an extraordinary level of collegiality and professionalism. He is known for treating everyone he encounters with respect, regardless of a person's station in life, ethnicity, or religion.

Mr. Hardee has served in many leadership positions for the North Carolina State Bar. He served as a bar councilor for District 3A from 2011 to 2020. During that time, he served on the Grievance Committee, the Issues Committee, the Executive Committee, and the Distinguished Service Award Committee. He previously served as president of the Pitt County Bar Association and as president of

the Eastern Carolina Inn of Court. He is a long-time member of the North Carolina Advocates for Justice and served two terms on its Board of Governors. He is a member of the North Carolina Bar Association and previously served on its Litigation Council.

Mr. Hardee has the reputation of providing his clients with superior legal advice and service, regardless of their ability to pay for his services. In addition, he was quick to help lawyers who were struggling with problems that impact lawyers' health and ability to practice ethically. He provided help and resources, as well as a sympathetic ear for these peers.

Mr. Hardee has demonstrated high character, integrity, compassion, and devotion to the legal and local community. He is a most deserving recipient of the John B. McMillan Distinguished Service Award.

J. Anderson Little

J. Anderson Little was presented with the John B. McMillan Distinguished Service Award December 1, 2022, at the Fearington Barn in Fearington Village as part of the 18th Judicial District Bar's annual holiday party. State Bar President Marcia H. Armstrong presented the award with State Bar Executive Director Alice Neece Mine.

Over the span of many years, Mr. Little has committed his time and talent to the State of North Carolina and its court system. Perhaps most notably, Mr. Little was instrumental in the creation of the alternative dispute resolution (ADR) process that is now a common part of the practice of law in North Carolina. He chaired the NCBA committee that developed the pilot and statewide program of Mediated Settlement Conferences in superior court. He sought and obtained legislative and judicial enactment of authorizing statutes and rules to implement the program. Additionally, he was the first chair of the North Carolina Bar Association's Dispute Resolution Section,

and he served on the NC Dispute Resolution Commission for many terms, twice as the commission's chair by appointment of Chief Justices Lake and Parker. His leadership efforts led to the establishment of mandatory mediation and other settlement procedures in civil trial courts of North Carolina. Mr. Little was awarded the NCBA Dispute Resolution Section Peace Award in 2006.

Many lawyers know Mr. Little for two other reasons. For almost 30 years he has mediated cases—an estimated 6,000 of them. Mr. Little is also known for his mediation training programs for aspiring mediators. His guidance has provided large groups of professionals, attorneys, and nonattorneys, both in North Carolina and in other states, the skills necessary to help resolve disputes and improve outcomes in all types of disputes. Mr. Little has been influential nationally with his work with the American Bar Association Dispute Resolution Section. He has presented numerous CLEs and CMEs as well as published through the ABA a highly regarded book on mediation, *Making Money Talk: How to Mediate Insured Claims and Other Monetary Disputes* (ABA 2007). As part of his service to the ABA, Mr. Anderson served on the Dispute Resolution Section Publications Committee.

Mr. Little currently serves as president and lead trainer of Mediation, Inc., where he trains lawyers, judges, and nonlawyers about mediation.

Mr. Little's work has been tremendously influential both for the art and practice of mediation and for the court system and its many varied ADR programs along with the thousands of participants. His contributions will continue to influence the ADR professionals, the participants, the general public, the courts, and the ADR programs for years to come. He is truly a hero to many mediators and deserving of the John B. McMillan Distinguished Service Award.

Douglas Carmichael “Mike” McIntyre

Douglas Carmichael “Mike” McIntyre II was presented with the John B. McMillan Distinguished Service Award at the 77th Annual Buck Harris Dinner on Friday, December 9, 2022, in Lumberton. State Bar President Marcia H. Armstrong and State Bar Councilor Joshua D. Malcolm presented the award. Peter Bolac, State Bar assistant executive director, also attended the presentation.

Mr. McIntyre graduated from the University of North Carolina at Chapel Hill in 1978, where he was a Morehead Scholar, and from the UNC School of Law in 1981. Throughout his career, Mr. McIntyre has been deeply committed to supporting and improving North Carolina’s education system. Upon graduation, he founded and chaired the Citizenship Education Committee of the Robeson County Bar. He served on the Executive Committee of the Citizenship Education Committee of the American Bar Association Young Lawyers Division and chaired the North Carolina Bar Association’s Youth Education Committee.

He has volunteered in the classroom for over 35 years, chaired Robeson County’s Bicentennial of the Constitution celebration, served on the American Bar

Association Young Lawyers Division’s National Community Law Week Committee, and chaired the local Law Day Committee. He has also served on the North Carolina Bar Association’s Lawyers Advisory Committee for the Commission on the Bicentennial of the Constitution and received the Governor’s Award for Outstanding Volunteer Service for his work with students and educators.

Mr. McIntyre hosted the Youth Leadership Summit annually for all the schools in his congressional district, as well as taught his “Classroom from Congress on Citizenship” at schools across the region. He is co-founder of the McIntyre-Whichard Legal Fellows mentorship program at UNC Law. He is founder of the McIntyre Youth Leadership Challenge, which encourages students to embrace and practice the principles of good citizenship. The annual competition, held in conjunction with Law Day, was created in 2017 through the establishment of the Douglas Carmichael McIntyre II Justice Fund of the NCBF Endowment.

Mr. McIntyre served in the US House of Representatives for North Carolina’s 7th District from 1997 to 2015, and now serves as director of government relations for Poyner Spruill in Raleigh.

In recognition of his many contributions to the legal profession, Mr. McIntyre was named a charter member of the North Carolina Pro Bono Honor Society by the North Carolina Supreme Court in 2016. In 2018 he received the Chief Justice I. Beverly Lake Jr. Public Service Award, which is presented by the North Carolina Bar Association to “an outstanding lawyer in North Carolina who has performed exemplary public service.” Mr. McIntyre was chosen as Lawyer of the Year by *North Carolina Lawyers Weekly* in 2019. In 2020 he received the Liberty Bell Award from the Young Lawyers Division of the North Carolina Bar Association.

Mr. McIntyre has been an outstanding contributor to the legal profession and community and is an extremely deserving recipient of the John B. McMillan Distinguished Service Award.

Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. Information and the nomination form are available online: ncbar.gov/bar-programs/distinguished-service-award. Please direct questions to Suzanne Lever at slever@ncbar.gov. ■

Client Security Fund Reimburses Victims

At its January 19, 2023, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$23,225 to four applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$10,000 to a former client of Peter S. Coleman of Raleigh. The board determined that Coleman undertook to serve as closing attorney for a client’s home purchase. Coleman deposited the client’s \$10,000 earnest money deposit into his trust account, but did not conduct the closing before he was enjoined from handling entrusted funds. Due to Coleman’s embezzlement of entrusted funds, there are insuffi-

cient funds in his frozen trust account to pay all of client obligations. Coleman was disbarred on June 4, 2020. The board previously reimbursed seven other Coleman clients a total of \$76,574.76.

2. An award of \$9,750 to a former client of George L. Collins of Jacksonville. The client retained Collins to handle a personal injury case. Facing imminent disbarment, Collins referred the case out to another firm and sent the other firm a check he received for \$9,750. Not knowing the purpose or source of the funds, the new firm did not immediately negotiate the check. Upon obtaining a settlement for the client and learning the facts surrounding the funds, the firm attempted to negotiate the check to col-

lect the fee, but no funds remained in Collins’ trust account due to his misappropriations. Collins provided no legal services for the fee obtained. He was disbarred on December 31, 2019, and died on April 16, 2020. The board previously reimbursed seven other Collins clients a total of \$56,192.47.

3. An award of \$975 to a former client of Mary March Exum of Asheville. In February 2017, the client retained Exum to file a motion for appropriate relief. On June 12, 2017, Exum’s law license was suspended and she was no longer eligible to provide legal services, including not being able to complete and file this client’s MAR. Nonetheless, Exum accepted multiple payments for legal

services from this client and provided no meaningful legal services. Upon being suspended, Exum formed a “consulting company” through which she continued to offer legal services and accept clients, which ultimately resulted in her disbarment on February 17, 2019. The board previously reimbursed two other Exum clients a total of \$30,105.

4. An award of \$2,500 to a former client of John F. Hanzel of Cornelius. The client retained Hanzel to assist her in administering her husband’s estate. Hanzel undertook the

representation after his order of disbarment was entered, knowing that he soon would be winding down his practice and unable to complete the estate within the remaining available time before the effective date of his disbarment. Hanzel provided no meaningful legal services for the fee paid. He was disbarred on October 16, 2019. The board previously reimbursed four other Hanzel clients a total of \$9,200.

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 \$7,354 this past quarter. ■

Law School Briefs

Campbell University School of Law

The Campbell University School of Law will no longer participate in the *US News and World Report’s* Best Law Schools ranking. Dean J. Rich Leonard announced the decision to faculty, staff, and students in a December email. Leonard’s statement cited concerns with both the ranking’s purpose and methodologies, among others. The statement follows: “The Campbell Law School faculty has decided not to participate this year in the *US News and World Report’s* Best Law Schools rankings. We are not opposed to objective rankings, but the reputational aspect of the *US News* rankings has always undervalued strong regional law schools. Additionally, the rankings do not sufficiently consider factors most critical to prospective students, such as bar passage and employment outcomes. We believe objective evaluations that value factors like these better serve prospective students. As an example of the difference between objective and subjective rankings, in 2015 a North Carolina law professor at another school provided an alternative ranking based simply on student employment outcomes, LSAT scores, and citations received by the *Law Review*. As reported in the lead story by *Bloomberg Business*, that analysis identified Campbell Law as the most underrated law school in the country. The *US News* methodology is substantially flawed, and we are no longer willing to

spend the significant administrative time necessary to comply with requests for data irrelevant to the needs of prospective students.” Leonard and the Campbell Law faculty join a number of other law schools in disagreeing with the *US News* ranking system. Most recently, University of Virginia (UVA) School of Law announced it will not provide information to *US News and World Report*, partly because its rankings, “fail to capture much of what we value at UVA,” said Dean Risa Goluboff in an open letter on December 9.

Duke University School of Law

Michael Murphy has joined Duke Law as clinical professor of law and supervising attorney of the Start-Up Ventures Clinic. Most recently, Murphy held a similar position at University of Pennsylvania Carey Law School’s Entrepreneurship Legal Clinic. Prior to that he practiced law at a large Philadelphia firm and two technology companies. Murphy’s scholarly interests include technology and legal practice and lawyer well-being.

The Bolch Judicial Institute will award the 2023 Bolch Prize for the Rule of Law on March 1 to the International Association of Women Judges for its efforts to evacuate, support, and resettle Afghan women judges who have faced persecution and violence since the Taliban took over the country in late 2021. Also, a trauma-informed courts curriculum developed by the institute will

become part of the required curriculum for newly elected and appointed judges in North Carolina, beginning with the NC District Court Judges’ annual conference in June.

The Wilson Center for Science and Justice, in partnership with the Berkshire (Mass.) District Attorney’s Office, released data from a year-long study of factors involved in plea agreements. Plea deals account for 90-95% of all criminal case dispositions, yet few studies have been done on them. The Berkshire data sheds light on disparities based on race and lawyer type, and the impact of mandatory minimum sentences on plea deals, among other issues. The center is conducting a similar project in Durham.

Student *pro bono* work included a fall break trip to Wilmington to assist with Legal Aid North Carolina’s Second Chance expunction program and an expunction clinic in Durham exclusively for participants in TROSA, a Triangle-area residential recovery program. Student volunteers with the Duke Immigrant & Refugee Project also helped immigrants file applications for asylum at a clinic sponsored by the Charlotte Center for Legal Advocacy.

Elon University School of Law

North Carolina Bar Association President-elect Parti Ramseur delivered the commencement address on December 9 to the Class of 2022. Degrees were conferred on 127 graduates of Elon Law’s highly expe-

riential 2.5-year, seven-trimester program of legal study, which requires every graduate to complete a full-time residency-in-practice with a practicing attorney or judge. In her remarks, Ramseur encouraged members of the class to “take every opportunity that you can to get out of your office to meet people face-to-face and connect.”

A new Elon Law graduate who served in a variety of leadership roles that allowed him to mentor and encourage classmates received the law school’s highest honor bestowed on a member of each graduating class. Emmanuel Agyemang-Dua accepted the David Gergen Award for Leadership & Professionalism during December’s commencement for the Class of 2022. Agyemang-Dua previously

earned his bachelor of arts in public policy and leadership and a master of public health in health policy, law, and ethics from the University of Virginia. He plans to practice in either employment law or health law in North Carolina.

The nuances of voting machine technology in shaping public perceptions about the integrity of elections was the focus of an October 19 global webinar moderated by Professor David S. Levine. Featuring four top national experts, including a representative from the voting machine company Smartmatic, “Engendering Trust in Election Outcomes” was attended by dozens of industry experts, scholars, and law students. A spring webinar hosted by

Levine is currently under consideration.

University of North Carolina School of Law

On November 4, alumni, students, faculty, and staff joined members of Sylvia X. Allen’s family as well as special guests Provost Chris Clemens, UNC Board of Trustees Chair Dave Boliek, and the Honorable James F. Ammons (’80), Cumberland County Senior Resident Superior Court Judge, for the portrait unveiling of Sylvia X. Allen (’62). Allen was the first Black woman to graduate from Carolina Law, one of the first three Black women lawyers admitted to the North Carolina bar, and the first Black female

In Memoriam

Robert Alexander Banner-Lyerly
Banner Elk, NC

David Michael Blackwell
Raleigh, NC

Benjamin Hudson Bridges III
Salisbury, NC

James Michael Brown
Washington, DC

Franklin Kent Burns
Raleigh, NC

Stephen Reveley Carley
Charlotte, NC

Joel Miller Craig
Durham, NC

Wade Leon Davis
Lancaster, SC

Charles Edward Daye
Durham, NC

William Kase Diehl Jr.
Charlotte, NC

Robert Eugene Dillow Jr.
Wilmington, NC

Edwin G. Farthing
Raleigh, NC

Spurgeon Fields III
Raleigh, NC

John Gardner Golding
Charlotte, NC

Richard S. Gordon
Matthews, NC

Larry Eugene Harris
Concord, NC

James Derrick Hibbard
Sudbury, MA

Lynne Hicks
Mocksville, NC

Charles McFarland Hunter
Wilmington, NC

Robert Kason Keiger
Statesville, NC

Dewey Lynn Keller
Hudson, NC

Annie Brown Kennedy
Winston-Salem, NC

Celia Grasty Lata
Durham, NC

William Fitzhugh Williams Massengale
Chapel Hill, NC

Craig Carlisle McVea
Omaha, NE

Frank Fetzer Mills
Wadesboro, NC

Roger Alston Moore
Jacksonville, NC

Marvin D. Musselwhite Jr.
Raleigh, NC

Stuart Namm
Hampstead, NC

James Arthur Nelson Jr.
Greenville, NC

David Wayne Oglesby
Durham, NC

Edward S. Shapack
Charlotte, NC

Daniel Eugene Smith
Greensboro, NC

Michael Conrad Smith
Baton Rouge, LA

Steven Dale Starnes
Monroe, NC

Patrick Thomas White
Goldsboro, NC

John George Wolfe III
Kernersville, NC

Ernest J. Wright
Jacksonville, NC

Edward Avery Wyatt
Raleigh, NC

assistant district attorney in the state.

The US Patent and Trademark Office appointed Deborah Gerhardt to its Trademark Public Advisory Committee. Gerhardt specializes in intellectual property law with an emphasis on the intersection of law and creativity. She is the only legal academic of the three people appointed to the committee. Gerhardt will serve a three-year rotating term.

Dr. Beth Moracco and Professor Deborah Weissman received the NC

Evaluation Fund Grant to support Project RESTART. The goal of Project RESTART (Restorative, Effective Solutions Toward Accountability, Responsibility and Treatment) is to develop a theory- and evidence-informed domestic violence intervention model program that incorporates restorative justice, trauma-informed programming, wrap-around services, partnerships with social justice and economic opportunity organizations, and communication strategies to prioritize survivor-cen-

tered content.

Patricia Bryan's New Book, *The Plea: A True Story of Young Wesley Elkins and His Struggle for Redemption*, is Bryan's second book based on murders in the late 19th century and the legal proceedings that followed. The book details the murder of Iowa farmer John Elkins and his young wife, Hattie, in a remote farmhouse in rural Clayton County, Iowa, in 1889. Eight days after the murders, the couple's 11-year-old son was arrested and imprisoned for life. ■

Upcoming Appointments

The following appointments must be made at the April 2023 Quarterly Meeting of the State Bar Council. Anyone interested in being appointed to serve on any of the State Bar's boards, commissions, or committees should email lheidbrink@ncbar.gov to express that interest (being sure to attach a current resume), by April 7, 2023.

Disciplinary Hearing Commission (three-

year terms)—There are five appointments to be made by the State Bar Council. Irving L. Joyner and Brian O. Beverly are eligible for reappointment.

The Disciplinary Hearing Commission (DHC) is an independent adjudicatory body that hears all contested disciplinary cases. It is composed of 12 lawyers appointed by the State Bar Council and eight public members

appointed by the governor and the General Assembly. The DHC sits in panels of three: two lawyers and one public member. In addition to disciplinary cases, the DHC hears cases involving contested allegations that a lawyer is disabled and petitions from disbarred and suspended lawyers seeking reinstatement. ■

Lawyer Assistance Program (cont.)

too). She wasn't so much turning me in as she was looking for some help with a problem I denied existed and she felt powerless to solve on her own. So, on that fateful day, I arrived home to be met by my darling wife who said she had been to the alcohol enforcement division of the North Carolina State Bar and that they wanted to see me. (Well, that's how I remember it sounding at the time.)

A lot of things could have happened next: denial, shouting, cursing, "how dare you." Instead, I was oddly relieved. Maybe my imprisonment would end. Maybe there was help. Maybe I was not alone.

And, in fact, that's how it turned out. I visited the LAP office the next day. The day after that I went to my first AA meeting. I've been going to meetings of AA and LAP ever since.

Most of what I discovered surprised me—amazed me, really. It's amazing that after being a daily drinker for years, I found I did not have to drink, and I have not had a drink since that day. I was equally amazed at how happy and upbeat recovery meetings always seemed to be. Those in recovery are truly blessed, and for the most part they seem to know it. I hear more gratitude expressed at recovery meetings than anywhere else I go.

It is also amazing how much one recovering alcoholic is willing to do to help the alcoholic who still suffers. And, to be clear, we remain alcoholics after we stop drinking, and we sometimes still suffer. As one lawyer in recovery said: "AA doesn't open the gates of heaven and let you in; but it does open the gates of hell and let you out."

There is still loss; there is still fear; there is still guilt—but now there is a solution other than a drink. And a very big part of the solution is that I/we are not alone. LAP and other

recovery programs are there, literally 24/7, to listen, to understand, to not judge, to empathize in a way only someone who has been where you've been can. It is a blessing.

I am not alone.

You are not alone.

We are not alone. ■

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 or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.

Endnote

1. You can subscribe to *Sidebar* from a desktop computer on LAP's home screen, nclap.org.



Meeting the Moment

Lawyers Mutual goes beyond simply being a malpractice insurance company. We are here for you – our insureds – to make the practice of law in North Carolina better.

In response to changes in the legal profession, Lawyers Mutual now offers a Practice Management program to assist insureds with issues of technology and practice management, spanning from start up to wind down and all points in between.

By focusing on technology and a systems-based approach to practice management, our goal is to help insureds operate more efficiently and with less risk.

We are more than an insurance company; **we are your partner in law.**

“I wanted to thank you for your help. I have gone through a couple of concerning situations and your assistance was exactly what I needed to successfully navigate every issue I had.”

The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611

Spring 2023

This is what recovery looks like.

Interested? Contact us today.



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