

# 2019 Professionalism For New Attorneys (PNA) Program Content Outline

## LAW OFFICE MANAGEMENT SECTION

- I. INTRODUCTION: Why the PNA program was created and is required for new lawyers and lawyers who are new to North Carolina (and have practiced 5 years or less); what the program seeks to accomplish<sup>1</sup>. Presentation should include an explanation of CLE requirements for all State Bar members and the filing requirements for CLE annual report forms.
  
- II. Organization of Law Office
  - a. Getting a privilege license (distinction from law license)
  - b. Budgeting
    - i. Personal financial management (including managing educational debt while starting to practice law)
  - c. File management
    - i. Portable devices and media
  - d. Docket control and case management
    - i. Avoiding over commitment and setting realistic goals for caseloads.
  - e. Conflicts detection
    - i. Rules 1.7, 1.8, 1.9, 1.10
  - f. Training and supervision of employees
    - i. Rules 5.1, 5.2, 5.3
  - g. Advertising and marketing
    - i. Rules 7.1, 7.2, 7.3, 7.4, 7.5
  - h. Forms and their use
  - i. Office accounting
  - j. Finding a mentor
  - k. Resources of the State Bar and other organizations
  
- III. Attorney Client Relationship
  - a. Creation and termination
    - i. Choosing clients
      - 1. Avoiding problem clients and schemes to take advantage of new lawyers in need of business
    - ii. Decision-making and allocation of authority
  - b. Engagement letters and termination letters
  - c. Fees and fee agreements; billing
    - i. Rule 1.5
    - ii. Appropriate ways to determine what to charge for a service
    - iii. State Bar Fee Dispute Resolution
    - iv. When fees must be refunded

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<sup>1</sup> The State Bar will provide the information for this part of the program.

- d. Duties of diligence and communication
    - i. Rules 1.1, 1.3, 1.4
    - ii. Tickler systems
    - iii. Phone message systems
    - iv. Client copies
  - e. The attorney-client privilege and confidentiality
    - i. In the context of current technology and the Internet, including social media
    - ii. Inadvertent waiver by client when using email
    - iii. Waiver by lawyer and failure to “claw back” upon discovery
- IV. Technology **(Must satisfy 1-hr Technology CLE requirement)**
- a. Assembling the infrastructure of a law practice
    - i. Overview of the technology necessary to build a law office support system
    - ii. Resources for defining, acquiring, installing and integrating technology
  - b. Preview of technology’s impact on ethical responsibilities
    - i. Confidentiality
      - 1. Rule 1.6
      - 2. Communications: email, Twitter, cell phones
      - 3. Information storage: cloud computing
      - 4. Photocopies and photocopiers
      - 5. Metadata
      - 6. Portable devices and media
      - 7. Unsecure wireless networks/public computers/malware
      - 8. Working in public spaces (e.g., airports, trains, restaurants)
    - ii. Social Media
      - 1. Ethical and professional requirements when marketing a law practice
      - 2. Ethical and professional requirements when communicating with clients, judges, and 3<sup>rd</sup> parties
    - iii. Conflicts control
      - 1. Rules 1.7, 1.8, 1.9, 1.10
    - iv. Risk of spoliation of evidence
    - v. Trust accounting
- V. Trust Accounting Rules
- a. Rule 1.15
  - b. Record keeping
    - i. Software
  - c. What is deposited in trust account vs. operating account
  - d. Supervision of personnel handling trust account
  - e. Personal injury settlements
  - f. Real estate transactions
  - g. Service as escrow agent
  - h. Random audit program
  - i. IOLTA

# ETHICS/PROFESSIONALISM CLE SECTION

- I. Work/Life Balance
  - a. Substance abuse/mental health
    - i. Lawyers Assistance Program
    - ii. Statistics on lawyers
    - iii. Relation to professional discipline
  - b. Secured leave policy
  - c. Setting boundaries (e.g., cell phone and email access) with clients and the office to preserve personal time
  
- II. Overview of North Carolina State Bar
  - a. Regulatory framework – Chapter 84 of the General Statutes and State Bar rules.
  - b. Obligations of membership
    - i. Dues
    - ii. CLE—
      - 1. Return annual report form
      - 2. Complete annual hours and triennial substance abuse/mental health hour
    - iii. Reporting misconduct
      - 1. Rule 8.3
    - iv. Responding to inquiries of State Bar
  - c. Ethics and Grievance Committees
    - i. Process and Results
    - ii. Statistics on most frequent grievances
  - d. State Bar programs and committees including:
    - i. LAP
    - ii. IOLTA
    - iii. CLE
    - iv. Legal Specialization
    - v. Client Security Fund
    - vi. Fee Dispute Resolution
    - vii. Authorized Practice Committee
    - viii. Administrative Committee
  
- III. Professionalism [some portion must be devoted to a panel discussion by mentors, judges or young lawyers—see III.f. and h. below]
  - a. Basic concept
    - i. Core Values
    - ii. Citizen-lawyer model
    - iii. CJCP
    - iv. Professionalism Support Initiative
  - b. Pro Bono and public service
    - i. Local and state bar associations; committee service
  - c. Cases and State Bar opinions on unprofessional conduct

- d. Professionalism checklist
  - i. Importance of good reputation
    - 1. Your word is your bond
    - 2. Cannot succeed if you are not trusted
    - 3. 5 year rule: the case won't be remembered in 5 years but you will still be practicing with your fellow lawyers
    - 4. Projecting a professional demeanor on social media
  - ii. Respect for all
    - 1. Dispute belongs to the client not the lawyer
  - iii. Treat each client as most important in office
  - iv. Personal Conflicts
    - 1. Borrowing money from clients
    - 2. Accepting gifts/giving gifts to clients
  - v. Admit lack of knowledge and seek help
  - vi. In all things dealing with practicing law, "just because you can, doesn't mean you should."
    - 1. Setting realistic goals for your practice.
  - vii. Courtesy and Relationship Skills
    - 1. Collegial and courteous relationships with other lawyers, courthouse personnel, administrative assistants, paralegals
    - 2. Relationship skills for working with other lawyers, staff, and clients
- e. Dealing with the Courts
  - i. Courtroom decorum
  - ii. Rule 11
  - iii. Local rules of court
  - iv. Truth to all: court, opposing counsel, opposing parties, witnesses
    - 1. Rule 3.3
  - v. Disclose contrary authority
  - vi. Do not advocate untenable positions
  - vii. Do not waste the court's time
- f. Mentoring and Role Models
  - i. Importance of seeking guidance from senior lawyers
  - ii. How to be a good "mentee"
- g. Rule 6.1 and the pro bono obligation
- h. Cases and examples of professionalism and the challenges of being a new lawyer
  - i. Presentations by 2 or 3 lawyers who are considered "role models" of professionalism and moral decision-making OR young lawyers who can provide the "view from the trenches"
- i. Voluntary Professionalism Oath

Recommendations and Information:

- The 2 days of programming do not have to be offered on consecutive days.
- **Beginning in 2019, providers should ensure that the programming satisfies the new 1-hr Technology CLE requirement.**
- If a provider decides not to allocate 6.0 hours/one day to each section of programming, the provider must so state in its application to the State Bar for accreditation and must indicate, in the application, the amount of time that will be allocated to each topic in the

outline. In addition, attendees at such non-traditional PNA programs will be required to take all 12.0 hours with the same provider and the provider must make this clear in marketing for its program.

- To make the programming more relevant to the audience, the law office management section may be presented as a separate day for lawyers depending upon type of practice; for example, a separate day of programming may be offered for solo/unemployed lawyers, small firm lawyers, mid/large firm lawyers, in-house counsel, government lawyers, and public interest lawyers. Alternatively, breakout sessions based upon type of practice may be offered for any or all of the topics on law office management.
- Arrange for speakers to interact prior to the program to insure that all topics are covered but that redundancy is limited as much as possible. This should be done early in the planning process to increase coordination between speakers.
- Allow for and encourage a question and answer session in each segment in which a lecture format is used. The CLE regulations allow up to 25% of each hour of a lecture presentation to be devoted to a question-and-answer period.
- Participatory and innovative teaching techniques are encouraged and are allowed by the CLE regulations. The limitation on question and answer sessions does not limit the length of time that may be devoted to participatory CLE. Rule .1605(b)(5) of the CLE regulations. Presenters should be encouraged to cover the subject matter in the most effective way.
- Providers may propose new subject matter for a PNA program if all of the subjects on this outline are covered adequately and the new subject matter falls under one of the following broad topics: law office management, professionalism, or professional responsibility. When submitting an application for credit for a PNA program to the State Bar, the provider must identify all such new subject matter and provide an explanation for why the new subject matter should be approved for inclusion in the provider's PNA program.
- Although some attendees may not anticipate the need to manage a trust account in the near future, there is a high probability that all of the attendees will be called upon to manage a trust account at some point in their legal careers. For this reason, the trust accounting segment of the PNA program (Law Office Management, IV.) must be included in the subject matter taught to all attendees and should be covered thoroughly and thoughtfully.
- Providers may offer an additional hour on trust account management and recordkeeping for lawyers who want additional training because they will be starting their own law firms or practicing in a small firm (although this is not a requirement to attend the additional hour). Lawyers who attend the additional hour will be excused from any concurrent programming. Alternatively, the in-depth trust accounting hour may be offered as an additional 1.0 hour of CLE (as a break out over lunch, for example) such that an attendee could earn 13.0 CLE hours for attending all programming.
- As a part of the 12.0 hours, providers may offer an hour on personal financial management that focuses on managing undergraduate and law school debt while starting the practice of law. No special approval is required if a provider decides to include such programming in the PNA.
- Former and emergency judges make good members of the mentor/professionalism panel (required in outline at Ethics/Professionalism, III.g.)
- Information about opportunities to obtain a mentor and how to go about doing so should be included in the programming. Discussion of such opportunities should not be limited to those available through a presenter or the CLE provider.
- A mentoring relationship can be modeled by asking a mentor and a protégé to present a segment together.

- Speakers should provide concrete, “real life” examples illustrating the application of the Rules of Professional Conduct, particularly examples in which the requirements of the Rules are not immediately apparent.
- The use of hypothetical situations that illustrate a principle of professional conduct followed by discussion, including discussion of how different jurisdictions in North Carolina might address the situation, are recommended. For example, a video with professionalism or ethics teaching vignettes might be used to initiate discussion. See Colorado and Denver Bar Associations and Attorney Regulation Counsel’s Professional Teaching Vignettes (2007).
- **Information on relevant disciplinary cases and statistics on professional discipline should be used to illustrate issues in professional conduct. You may obtain this information by calling Brian Oten or Katherine Jean at the State Bar (919-828-4620).**
- Video replays are allowed as long as the Ethics/Professionalism day includes at least one hour of live programming using lawyers and judges (active and retired) who are considered role models. These lawyers and judges may present any part of the ethics/professionalism programming but the sections on dealing with the courts, mentoring, and role models would be particularly appropriate. (See Ethics/Professionalism III.f. and g.)