

## McGhee, Dana

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**From:** Snyder, Ashley B  
**Sent:** Monday, April 15, 2024 3:58 PM  
**To:** Chapin, Clark; Coletti, Joe  
**Cc:** Brian Oten; Alice Mine  
**Subject:** State Bar Fee Consultation  
**Attachments:** Supreme Court Order Establishing CLE.pdf; 27 NCAC 1D 1520-OAH F TC.docx; 27 NCAC 1D 1522-OAH F TC.docx; 27 NCAC 1D 1512-OAH F TC.docx; RE: [External] NC State Bar - Submission of Rule Amendments Following Re-Entry in Supreme Court Minutes

Good afternoon, Clark and Joe,

I am reaching out to you regarding a fee consultation pursuant to G.S. 12-3.1 from the State Bar. “Notwithstanding any other law, a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee...” G.S. 12-3.1(a). The State Bar alleges in the attached email that the its CLE fees are “under the exclusive authority of the Supreme Court” referencing the attached Court Order from 1987. However, all agencies are subject to the fee consult requirement, including “every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of state government.” G.S. 12-3.1(b)(1). Brian Oten and Alice Mine with the State Bar are copied on this email.

The State Bar filed the attached rules on April 1, 2024 for publication in the Code. I asked the Bar for evidence of a fee consultation, and the State Bar has acknowledged it did not comply with the consultation requirement. Pending completion of a consultation, I am holding these rules from publication in the Code and reporting the issue to you as staff to the Joint Legislative Commission on Governmental Operations. Pursuant to G.S. 12-3.1, the effective date of these rules will also be delayed pending satisfaction of the consultation requirement. Please let me know if you have any questions.

Thanks,

**Ashley Snyder**  
Codifier of Rules  
Office of Administrative Hearings  
(984) 236-1941

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## McGhee, Dana

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**From:** Brian Oten <BOten@ncbar.gov>  
**Sent:** Friday, April 12, 2024 10:47 AM  
**To:** Rules, Oah  
**Cc:** Alice Mine; McGhee, Dana  
**Subject:** RE: [External] NC State Bar - Submission of Rule Amendments Following Re-Entry in Supreme Court Minutes  
**Attachments:** Supreme Court Order Establishing CLE.pdf

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Hello, Ashley. Please forgive me for the delayed response. The State Bar did not submit the new CLE fees to the Joint Legislative Commission on Governmental Oversight pursuant to N.C. Gen. Stat. 12-3.1 because the fees are not subject to the requirements of that statute; rather, the fees are under the exclusive authority of the Supreme Court.

By way of background: The CLE program is a Supreme Court-mandated program created by order of the Court in 1987 (attached). In that order, the Court states, "Jurisdiction over the actions of the North Carolina State Bar in administering the Program For Continuing Legal Education shall remain with this Court for entry of future orders when and as necessary to accomplish the purposes of the Program For Continuing Legal Education." The CLE program is not governed by statute.

Accordingly, it is our understanding that the Court's imposition of a fee associated with the CLE program is within the Court's exclusive discretion.

I hope this explanation answers your question. Please feel free to contact me with any additional questions.

I hope you have a great weekend!

Brian

P.S. I failed to address this before, but yes, I agree with the language in the updated history note regarding the re-entry of the rules into the minutes. I think it accurately captures the process. Thank you! For future amendments to these impacted sections, do you propose we simply add any subsequent date of approval to the list of dates in the ordinary "Amendments Approved by the Supreme Court" section?

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Brian Oten  
Ethics Counsel  
Director of Legal Specialization and Paralegal Certification  
The North Carolina State Bar  
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Raleigh, NC 27611-5908  
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**From:** Rules, Oah <oah.rules@oah.nc.gov>  
**Sent:** Monday, April 1, 2024 3:34 PM  
**To:** Brian Oten <BOten@ncbar.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** Alice Mine <AMine@ncbar.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>  
**Subject:** RE: [External] NC State Bar - Submission of Rule Amendments Following Re-Entry in Supreme Court Minutes

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Good afternoon, Brian,

Thank you. We've received your submission and are working to process it for entry into the Code. I am asking publications staff to update the history notes to reflect the re-entry into the minutes as follows: "Amendments approved by the Supreme Court [original date] and re-entered into the Supreme Court's minutes March 20, 2024." That language tracks the language in the submission, but please let me know if there are any concerns with that specific wording.

The attached rules contain new language regarding the establishment of fees. Please provide a copy of your consultation with the Joint Legislative Commission on Governmental Operations as required by G.S. 12-3.1 so we can proceed with processing these three rules.

Thanks,

**Ashley Snyder**  
Codifier of Rules  
Office of Administrative Hearings  
(984) 236-1941

**From:** Brian Oten <BOten@ncbar.gov>  
**Sent:** Monday, April 1, 2024 1:13 PM  
**To:** Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** Alice Mine <AMine@ncbar.gov>  
**Subject:** [External] NC State Bar - Submission of Rule Amendments Following Re-Entry in Supreme Court Minutes

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Good afternoon. Attached please find a letter from State Bar Executive Director Alice Mine concerning the submission of the State Bar's rule amendments that were recently re-entered in the Supreme Court's minutes. Additionally, you will also find attached a copy of the correspondence from the Clerk of the Supreme Court, Grant Buckner, confirming the re-entry of these rule amendments in the Supreme Court's minutes.

You will shortly receive six additional emails from me containing the rule amendments referenced in the attached cover letter. I am sending the rule amendments to you in batches grouped by the date the Supreme Court originally approved the rule amendments. Please forgive the multiple emails; I thought this would be the easiest way to organize the submissions.

Please feel free to contact me with any questions or concerns.

Thank you for your assistance in this matter. I look forward to hearing from you.

Brian Oten

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Brian Oten  
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IN THE SUPREME COURT OF NORTH CAROLINA

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IN THE MATTER OF A PETITION	)	
OF THE NORTH CAROLINA STATE BAR	)	
RE:	)	ORDER
	)	
THE ESTABLISHMENT OF A	)	
PROGRAM FOR CONTINUING	)	
LEGAL EDUCATION	)	

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The North Carolina State Bar, authorized by Chapter 84 of the North Carolina General Statutes to license, supervise and discipline attorneys, has petitioned this Court to establish, in the exercise of its inherent power, a Program For Continuing Legal Education for the purpose of enhancing the professional competence and professional responsibility of attorneys who are licensed to practice law in North Carolina and who are officers of this Court.

The Court has studied the petition of the North Carolina State Bar, its Resolution and its supporting Memorandum. The Court is of the opinion that it should grant the petition of the North Carolina State Bar and order the establishment of a Program For Continuing Legal Education to enhance the professional competence and professional responsibility of North Carolina attorneys to the end that the public might be better served and that the public's confidence in the legal profession, the courts and the administration of justice might be increased.

NOW, THEREFORE, in the exercise of its inherent power to supervise and regulate the conduct of attorneys in this State, the Supreme Court of North Carolina does hereby ORDER, ADJUDGE AND DECREE:

1. The Program For Continuing Legal Education is hereby established.
2. The Program For Continuing Legal Education shall be administered by the North Carolina State Bar pursuant to the Continuing Legal Education Rules attached hereto which are hereby adopted by this Court as Rules of Court. Authority to adopt regulations to implement the Continuing Legal Education Rules is hereby delegated to the Council of the North Carolina State Bar.

3. The North Carolina State Bar shall submit annually a report to this Court accounting for all monies collected and expended in the administration of the Program For Continuing Legal Education.

4. Jurisdiction over the actions of the North Carolina State Bar in administering the Program For Continuing Legal Education shall remain with this Court for the entry of future orders when and as necessary to accomplish the purposes of the Program For Continuing Legal Education.

Done by the Court in Conference this the 7 day of October, 1987.

JAMES G. EXUM, JR.  
Chief Justice  
For the Court